

THE HON' BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON' BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

WRIT APPEAL No. 1096 of 2017

JUDGMENT: (per GSP, J)

This writ appeal is filed assailing the order dated 11.07.2017 in W.P.No.30118 of 2014 wherein the appellant herein has challenged the order dated 20.06.2013 passed by the Commissioner of Collegiate Education, Andhra Pradesh, rejecting his request for promotion as Principal of SVKP Composite Aided College, Markapur, Prakasam District, Andhra Pradesh-respondent No.3.

2. The brief facts of the case necessary for disposal of this writ appeal are that the appellant was appointed as Sweeper (contingent) on 26.03.1980 in the SVKP Composite Aided College, Markapur. He was converted to Class IV employee with effect from 26.03.1985. Later, he passed M.A.(Telugu) from Andhra University in July 1996. Vide G.O.Ms.No.302 dated 30.12.1993, he made a request for promoting him as a Lecturer in Telugu and his request was rejected on the ground that the aforesaid G.O., was meant for non-teaching staff of the Government colleges for promotion as Junior Lecturers and not for Lecturers in Degree Colleges, and that the said G.O., was not extended to the non-teaching staff of private aided colleges. The appellant, aggrieved by the said decision of the college, has filed W.P.No.5695 of 1997 seeking a direction to the respondents to consider his case for promotion under G.O.Ms.No.302 dated 30.12.1993. He also filed C.C.No.1666 of 1997 for non-implementation of the orders of the Court. The said contempt case was dismissed on 20.11.1997. Thereafter, the petitioner again made a

representation for promoting him as Junior Lecturer and his request was rejected by the 3rd respondent-Commissioner and Directorate of Collegiate Education. Then the appellant filed W.P.No.2568 of 1999 wherein this Court granted interim direction on 17.09.1999 to consider his request. Subsequently, the Government has issued orders in G.O.Ms.No.08, Education, 02.02.2001 with instructions to appoint the appellant as Junior Lecturer in Telugu as a special case by giving relaxation in selection procedure. Consequently, the appellant was appointed as Junior Lecturer in Telugu vide proceedings dated 09.02.2001. Thereafter, he filed W.P.No.35886 of 2009 for re-designation of his post as Lecturer by considering his representation dated 03.12.2009. An interim order was granted in the said writ petition directing the college to consider his representation. On 04.03.2010, his request for re-designation as Lecturer was rejected holding that he was not entitled for the said relief as, even though there was no sanctioned post of Junior Lecturer in the college, he was appointed as Junior Lecturer in Telugu. The appellant contended in the writ petition that as per G.O.Ms.No.127, Education, dated 07.06.1993, he is entitled to be appointed as Principal of the said college as he has got the qualification prescribed therein. The amended G.O.Ms.No.12, Education dated 10.01.1992 provides that the posts of Principals of Degree colleges shall be filled by Recruitment by Transfer from among the eligible, qualified and suitable lecturers having ten years of service under the same management, and in the absence of such lecturers, the recruitment is to be made by Direct Recruitment. The 3rd respondent, vide order dated 20.06.2013, has rejected the request of the petitioner for appointment as Principal of the said college on the ground that as per G.O.Ms.No.47 dated 14.05.2007, a candidate must possess Masters

Degree with 55% of marks and above, or Grade B in the 7 point scale with letter grades O, A, B, C, D, E and F from Universities in India, and must possess Ph.D. or equivalent qualification and he should have experience of 15 years of teaching as Lecturer in Degree college. The 3rd respondent has also held that since the petitioner was only working as a Junior Lecturer and not as a Lecturer in Telugu with effect from 09.02.2011 and that as he was at serial No.16 in the Seniority List, he was not qualified for the post of Principal as per G.O.Ms.No.47. Assailing the order of the 3rd respondent, the petitioner filed W.P.No.30118 of 2014.

3. The learned single Judge has dismissed the writ petition mainly on two grounds viz., (i) that as per G.O.Ms.No.125, dated 07.06.1996, a candidate must be a Lecturer for being considered for the post of Principal of Degree college and that his request for re-designation as Lecturer was rejected by respondent No.3 on 04.03.2011; and (ii) that one Sri B. David Stone was appointed as Principal as he was the senior most lecturer working in the college and therefore the petitioner's claim cannot be considered as he was the junior most in the seniority list.

4. We have heard the arguments of learned counsel for the appellant, and the learned counsel for the respondents.

5. Admittedly, the appellant was originally appointed as a Sweeper (Contingent) on 26.03.1980 and was later converted into Class IV employee in 1985. He acquired post graduation degree in M.A.(Telugu) from Andhra University and requested the 3rd respondent College to consider him for being appointed as a Lecturer and the same was considered and he was appointed as Junior Lecturer as a special case vide G.O.Ms.No.08 dated 02.02.2001 and G.O.Ms.No.12, dated 10.01.1992.

Thereafter, the petitioner filed W.P.No.35886 of 2009 for re-designation of his post as Lecturer and his request was rejected. Later, the appellant filed W.P.No.30118 of 2014 for appointing him as Principal of the said college as per G.O.Ms.No.127, Education, dated 07.06.1993, and G.O.Ms.No.12, Education, 10.01.1992 which provides that posts of Principals of Degree colleges shall be filled by recruitment by transfer from among the eligible, qualified and suitable lecturers having ten years of service under the same management, and in the absence of such lecturers, the recruitment to be made by Direct Recruitment.

6. The contention of the appellant is that he is eligible for the post of Principal. He claimed that he is the senior-most lecturer in the college on the basis of the date of his initial appointment as Sweeper on 26.03.1980, and therefore he is senior to B. David Stone who was already appointed as Principal of the college.

7. The learned single Judge observed that the appellant/petitioner has been re-agitating the issue of his seniority against the 7th respondent. In paragraphs 16 and 17 of the impugned order, it is observed as under:

“16. When a specific question was put to the petitioner’s counsel as to how the petitioner could claim to be senior to the 7th respondent in view of the decision of this Court in WP No.15453 of 2013, which was confirmed in the order dt. 18.07.2013 in W.A.No.872 of 2013, and in the Special Leave Petition (Civil) No.27379 of 2013, the counsel for petitioner had no valid answer. It is thus clear that petitioner is re-agitating the issue of his seniority vis-à-vis the 7th respondent under the guise of challenging the order dt.20.06.2013 passed by the 3rd respondent.

17. The said issue, having attained finality in the earlier round of litigation in WP.No.15453 of 2013, the petitioner is barred by the principle of *res judicata* from re-opening the said issue and principle of *constructive res-judicata* from raising new points which he could have raised at that time, but did not raise.”

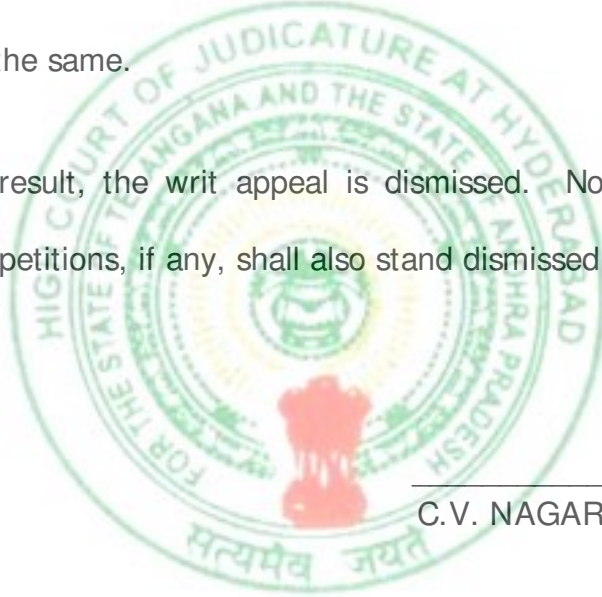
8. It is obvious from the order of the learned single Judge that the appellant was trying to re-agitate the issue of his seniority vis-à-vis the 7th respondent under the guise of challenging the orders dated 20.06.2013 passed by the 3rd respondent.

9. Learned counsel for the appellant contended that as per G.O.Ms.No.127, even the Junior Lecturer is entitled for appointment as Principal of the college. He has referred to the provisions of G.O.Ms.No.127, dated 07.06.1993. As per the said G.O., a candidate must be a lecturer with ten years of service under the same management. As a matter of fact, the appellant has sought for consideration of his services from the date of his appointment as Sweeper on 26.03.1980 which cannot be accepted, the reason being that he has not worked as a Lecturer from the date of his initial appointment. Initially he was appointed as Sweeper in 1980, and later converted as Class IV in 1985 and thereafter he was appointed as a Junior Lecturer as a special case. The appellant is not entitled for the relief of appointment as principal as he has not been a Lecturer and that too with 10 years service as contemplated in G.O.Ms.No.127.

10. It is the contention of the learned counsel for the appellant that as per G.O.Ms.No.127, even Junior Lecturers working in aided colleges by possessing 50% marks in P.G. are eligible for appointment to the post of Principal. He has further contended that the appellant has secured 60 marks in Post Graduation., and apart from that the proceedings of rejection dated 04.03.2010 for re-designating him as lecturer is under challenge in W.P.No.35886 of 2009.

11. It is obvious from the very contention raised by the learned counsel for the appellant that the appellant was not re-designated as Lecturer and the rejection proceedings dated 04.03.2010 for re-designating him as Lecturer are under challenge in the W.P.No.35886 of 2009. Therefore the appellant is not eligible for appointment as a Principal. As per G.O.Ms.No.12, a candidate for being considered for the post of Principal of a Degree college has to put in ten years of experience as a lecturer. Both these criteria are not fulfilled in the case of the appellant, and therefore he is not entitled for appointment as the Principal. The learned single Judge has passed a well reasoned order and there are no grounds to interfere with the same.

12. In the result, the writ appeal is dismissed. No costs. Pending miscellaneous petitions, if any, shall also stand dismissed.



C.V. NAGARJUNA REDDY, J

GUDI SEVA SHYAM PRASAD, J

7th August, 2017

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