

HON'BLE SRI JUSTICE S.V. BHATT

W.P.Nos.18987 & 32051 OF 2017

COMMON ORDER:

Heard Mr.M.Sudheer Kumar and Mr.Ch.Siva Reddy for petitioners and Mr.Svaraju Sinivas for respondents 1 and 2 in these two writ petitions.

Smt.V.Venkata Ramani and Smt.T.Narayanamma are petitioners in these two writ petitions and are working as Lecturers in Physics and Commerce respectively in SPW Degree & PG College. SPW Degree & PG College is one of the educational institutions established and administered by Tirumala Tirupati Devasthanams (TTD)/1st respondent.

W.P.No.18987 of 2017 is filed for Mandamus declaring proceedings Roc.No.Edn1/9817/DEO/2011 dated 23.12.2016 of 1st respondent rejecting the claim of petitioner for the post of Principal in the colleges under the management of TTD/1st respondent as contrary to Rule 8 of the A.P. Collegiate Education Service Rules issued in G.O.Ms.No.47 Higher Education (CE-I-1) Department dated 14.05.2007 ('the Rules' for short) as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India. The petitioner prays for a direction to respondents 1 and 2 to consider the case of petitioner for regular promotion/in-charge arrangement to the post of Principal in three colleges under the management and administration of 1st respondent by treating the petitioner as satisfying the requirements of Rule 8 of G.O.Ms.No.47 dated 14.05.2007.

On 13.06.2017, this Court granted interim direction as prayed for in WPMP.Nos.23140 & 23141 of 2017. Thereafter, the 1st respondent issued orders Roc.No.Edn1/8748/DEO/2017 dated 16.09.2017 placing Smt.V.Venkata Ramani (petitioner in W.P.No.18987 of 2017) as in-charge Principal of SPW Degree College, TTD, Tirupati, until further orders.

Dr.T.Narayanamma who was till then discharging as in-charge Principal filed W.P.No.32051 of 2017 challenging the appointment of Smt.V.Venkata Ramani/3rd respondent herein as in-charge Principal of SPW Degree College, TTD, Tirupati until further orders vide orders Roc.No.Edn1/8748/DEO/2017 dated 16.09.2017, as illegal, violative of principles of natural justice and rules and regulations.

The respondents filed vacate stay petitions and counters in these two writ petitions. The 1st and 2nd respondents through the proceedings impugned in these two writ petitions have made in-charge arrangements. Learned counsel have made submissions in the writ petitions, hence, they are taken up for hearing and disposal by this common order.

The 1st and 2nd respondents produced the record relating to the orders regularizing the services of V.Venkata Ramani and also the impugned proceedings in these two writ petitions for inspection of the Court and the record is examined.

The issue for consideration of this Court arises under G.O.Ms.No.47 dated 14.05.2007. The prayer in W.P.No.32051 of 2017 is an offshoot of the interim order dated 13.06.2017 issued by this

Court. Hence, the counsel appearing for the parties have submitted that W.P.No.18987 of 2017 covers the issues in both the writ petitions by referring to the averments and record in W.P.No.18987 of 2017.

Averments in W.P.No.18987 of 2017

On 18.02.1982, the petitioner was appointed as Junior Lecturer in Physics in SPW Degree College. In the year 1991, she was promoted as Lecturer. The 1st respondent through Roc.No.D3/6789/DEO/99 dated 11.12.2002 re-designated a few Junior Lecturers working in the educational institutions run by 1st respondent as Lecturers notionally from the date of initial appointment as Junior Lecturer. Therefore, the petitioner satisfies the condition of Rule 8 of the Rules for promotion as Principal in the colleges run by 1st respondent.

The petitioner further alleges that the 1st respondent has established and been managing SV Arts College, S.G.S Arts College and SP.W Degree and PG College. The three educational institutions are treated as single unit for the purpose of filling up the posts of Principal. The 1st respondent on 30.09.2016 made in-charge arrangements to the post of Principal for these three colleges by appointing Smt.V.Padmavathi, Miss M.Jacintha and Dr.A.B.Santi of SV Arts College, SPW Degree and PG College and SGS Arts College respectively. The petitioner states that she has no grievance against with the appointment of Smt.V.Padmavathi. As regards the other two candidates, the petitioner avers that they are juniors to her, and they ought not to have been kept as

in-charge Principals. The action of 1st respondent in ignoring the claim of petitioner on the ground that the petitioner does not possess Ph.D., qualification as required by Rules is illegal and untenable. According to petitioner, the Ph.D., qualification requirement prescribed in Rule 8 read with Annexure to Rules is not applicable to her, for she is covered by the footnote appended to the qualifications clause. Therefore, the petitioner is entitled for consideration while making in-charge arrangement or regular arrangement to the post of Principal. The petitioner challenges proceedings Roc.No.Edn1/9817/DEO/2011 dated 23.12.2016 as illegal, arbitrary and unconstitutional. At the time of hearing, standing counsel has brought to the notice of this Court that the fact-in-issue decided by Devasthanam through proceedings dated 23.12.2016 between petitioner on the one hand and other three candidates kept as in-charge Principals on the other may not substantially survive in view of subsequent developments i.e., retirement of these individuals from service.

The 1st respondent filed counter affidavit and the circumstances stated by the petitioner are not denied. For convenience and better appreciation of the circumstances relied on by the 1st respondent, this Court refers to the chronology of dates and events from the record produced by the 1st respondent.

On 27.11.2000, the Lecturers working in SPW Degree College, Tirupati represented to 1st respondent for re-designation of their posts as Lecturers from the date of appointment. The Lecturers have given an undertaking to forgo their seniority on the Lecturers

recruited or absorbed between 1977 and 1984 (*emphasis added*).

The 1st respondent on 11.12.2002 basing on Resolution No.442 dated 24.11.2002 of the Board of Trustees re-designated the Junior Lecturers as Lecturers notionally from their initial date of appointment. The Annexure appended to the letter dated 11.12.2002 refers to the date of appointment and their seniority as Junior Lecturers etc. The petitioner (V.Venkata Ramani) is at Sl.No.6. I have perused the common tentative seniority list maintained by 1st respondent. The seniority of these two petitioners (V.Venkata Ramani and T.Narayanamma) is at Sl.Nos.18 and 22 respectively. The 1st respondent by referring to the qualifications and also non-possessing of Ph.D., by petitioner (V.Venkata Ramani) justifies its action in not considering the case of petitioners for the in-charge or regular promotion as Principal.

The 4th respondent filed vacate stay petition and counter affidavit and there is no dispute on the dates and the orders referred above. The main objection of 4th respondent against the claim of petitioner is that the petitioner is appointed as Lecturer in the year 1991 and the minimum requirement for promotion is - one must possess Ph.D., or equivalent qualification. The petitioner does not possess Ph.D., and a person who does not satisfy educational qualification can neither be considered for in-charge arrangement nor permanent arrangement. The respondent prays for dismissing the writ petitions.

Mr.M.Sudheer Kumar contends that denying or non-considering the petitioner as a Lecturer appointed in the 1991

for promotion as Principal, by considering her, is illegal and untenable. The petitioner was appointed on 18.02.1982 as Junior Lecturer and on 21.12.1991 was promoted as Lecturer. The petitioner represented to management to re-designate the initial appointment as Lecturer. On 20.11.2002, the petitioner along with a few other similarly situated Lecturers had given undertaking to 1st respondent to forego seniority, if re-designated on the Lecturers recruited between 1977 and 1984. Thereafter, the proceedings dated 11.12.2002 were issued re-designating the petitioner and other similarly situated Junior Lecturers as Lecturers with effect from the date of appointment as Junior Lecturers and in the case on hand w.e.f., 18.02.1982. From the record, he submits that the service register was, accordingly, updated and for all purposes, the petitioner will have to be treated as a Lecturer working in SPW Degree & PG College from 1982 onwards. The petitioner in view of the undertaking dated 20.11.2002 firstly cannot claim seniority over Lecturers appointed between 1977 and 1984 and ought not to claim monetary benefit upon re-designation as Lecturer. According to him, in the present writ petition, the petitioner is not praying for any relief contrary to the undertaking given by petitioner on 20.11.2002. The endeavour of petitioner is to implement the condition dealing with qualification by duly taking note of petitioner's service as Lecturer from 1982, but not from 1991 onwards. Therefore, he prays for declaring that the non-consideration of petitioner is illegal and untenable and prays for issuing appropriate direction to respondents to consider the

case of petitioner either for in-charge or permanent arrangement made for the post of Principal in the colleges referred to above.

Mr.Svaraju Sinivas has drawn the attention of the Court to the orders and proceedings referred to above and submitted that in view of the proceedings dated 11.12.2002 or re-designating petitioner as Lecturer w.e.f., 1982, Rule 8 read with qualification, no doubt, has to be considered and applied according to the note appended to qualification. The record and also the rule position are placed before the Court. He prays for considering the material and the Rules and dispose of the writ petition. He draws the attention of the Court to letter dated 11.10.2017 addressed by 2nd respondent to Devasthanam Law Officer, categorically stating that the time schedule is required for filling up the post of Principal on regular basis, which reads as follows:

“Regarding regular appointment to the post of Principal of three degree colleges, it is to inform that the post (sic) posts will be filled by conducting DPC as per procedure within a month after final orders are passed by the Hon’ble High Court in W.P.No.18987 of 2017 filed by V.Venkata Ramani and W.P.No.32051 of 2017 filed by T.Narayanamma”.

Therefore, he submits that once the issue on the interpretation of qualification is decided by this Court, the 1st respondent will take up regular promotion and complete the promotion within one month.

Mr.Ch.Sva Reddy contends that the educational qualifications for promotion as Principal are not in dispute, likewise there is no dispute on V.Venkata Ramani possessing Ph.D., for promotion as Principal. According to him, the petitioner has been

appointed as Lecturer in 1991 and, therefore, the petitioner must possess Ph.D., for consideration either for in-charge arrangement or for promotion on regular basis. According to him, the reasoning which weighed with respondents 1 and 2 while promoting Smt.V.Padmavathi, Miss M.Jacintha and Dr.A.B.Santi is equally applicable now for promoting T.Narayanamma and the 1st and 2nd respondents are justified in not considering petitioner for the post of Principal. He prays for dismissing the writ petition.

From the above averments and contentions, the following points arise for consideration in this writ petition:

- (i) Whether the non-consideration of petitioner (V.Venkata Ramani) for promotion as Principal is legal and according to Rule 8 read with Annexure? And
- (ii) Whether the orders in Roc.No.Edn1/8748/DEO/2017 dated 16.09.2017 are valid, legal and tenable?

The undisputed circumstances are already referred to above. For ensuring brevity, all the circumstances are not once again reiterated, but to pick up the thread for discussion of the fact-in-issue, the circumstances relevant are briefly referred to. On 18.02.1982, V.Venkata Ramani was appointed as Junior Lecturer and on 21.12.1991 was promoted as Lecturer. On 16.09.1993, T.Narayanamma was appointed as Lecturer in TTD service. The appointment of T.Narayanamma as Lecturer is subsequent to the promotion and appointment of V.Venkata Ramani as Lecturer in 1991. The Lecturers who were appointed as Junior Lecturers between 1977 and 1984 represented to 1st respondent for re-designation of their appointments as Lecturers from the date of

their respective initial appointments. On the undertaking given by these Lecturers to 1st respondent to forgo their claim of seniority on the Lecturers appointed or absorbed between 1977 and 1984, the 1st respondent re-designated them as Lecturers from the respective dates of appointments. From the service record produced by 1st respondent of V.Venkata Ramani, it is evident that for other benefits such as implementation of career advancement scheme, award of senior scale, selection grade etc., the services of V.Venkata Ramani have been treated as Lecturer w.e.f., 1982, but not 1991. The undertaking is confined only to the seniority but not to other entitlement on and above the Lecturers appointed between 1977 and 1984 upon re-designation as Lecturers. The proceedings dated 11.12.2002 are not under challenge and basing these proceedings read with the seniority list prepared, the 1st respondent is considering Lecturers for promotion etc. G.O.Ms.No.47 dated 14.05.2007 was issued prescribing experience and educational qualification for promotion to the post of Principal. Rule 8 and Annexure read as follows:

“8. Qualifications:

No person shall be eligible for appointment to the category of post in the class specified in column (1) of the Annexure to these rules by the method specified in column (2) unless he possess the qualifications specified in the corresponding entry in column 3 thereof.

ANNEXURE
(See Rule 8)

<u>Class and Category of post</u>	<u>Method of appointment</u>	<u>Educational qualifications</u>
(1)	(2)	(3)
Class A Category 2 Joint Director/	By promotion	3 years of service in the cadre of Principal of Government Degree College/Deputy

Regional Joint Director		Director
Class B Category 1 Principal, Government Degree College	By promotion	i) Must possess a Master's Degree with a minimum of 55% of marks or its equivalent degree or grade of B in the 7 point scale with letter grades O, A, B, C, D, E & F, obtained from the Universities recognized in India. ii) Must possess Ph.D or equivalent qualification. iii) An experience of 15 years of teaching as a Lecturer in Government Degree College <u>Note:</u> (a) Persons who were appointed as Lecturers on or before 01.01.86 are exempted from possessing the qualification at item (ii) above. (b) They are also exempted from possessing minimum of 55% of marks in Masters degree. However, the percentage of marks should not be less than 50% marks in the relevant subject.

The Government taking into totality of circumstances prescribed minimum experience and educational qualifications by the candidates for consideration of promotion as Principal. The excerpt of note referred above provides for exemption from possessing a few qualifications by Lecturers appointed prior to 01.01.1986. At appropriate stage of this order, this Court would consider and explain the effect of note on the two categories of Lecturers appointed i.e., before and after 01.01.1986. Adverting to the fact-in-issue, this Court is of the view that the 1st respondent has re-designated the petitioner as Lecturer with effect from the date of appointment as Junior Lecturer i.e., 18.02.1982 and further made it clear that re-designation is notionally (without the benefit of seniority and financial implication) ordered. Thereby, there is no financial benefit to the individual or loss to the institution on account

of re-designation of petitioner as Lecturer. Once the re-designation as Lecturer is implemented, for all other purposes viz., Grade, Scale etc., this Court is of the view that the petitioner is required to be treated as a Lecturer working in TTD service w.e.f., 1982. Therefore, the experience or qualification of petitioner (V.Venkata Ramani) is examined by applying the exemption granted by Note. V.Venkata Ramani does not possess Ph.D., but satisfies the requirement of 15 years of teaching experience and also possessing 55% marks etc. The Note exempts from possessing Ph.D., qualification by Lecturers appointed on or before 01.01.1986. Similarly, the Lecturers appointed prior to 01.01.1986 are also exempted from possessing 55% marks in master's degree, but the Note insists upon the percentage of marks as not less than 50% in the relevant subject. The Courts in interpreting the clause dealing with 'exemption' adopts firstly literal and liberal interpretation to the language used in the clause containing 'exemption'. The restriction on liberal or literal interpretation is that by such interpretation no violence is done to the language of the clauses interpreted. In the event of there being real difficulty in ascertaining the meaning of particular rule, the question of strictness or of liberality of construction arises. Further, while giving effect to an exemption clause, construction which results in absurdity should be avoided. Testing the educational qualification excerpted above, the literal and plain construction to the educational qualification is that persons who are appointed after 01.01.1986 must satisfy the following:

- i) Must possess a Master's Degree with a minimum of 55% of marks or its equivalent degree or grade of B in the 7 point scale with letter grades O, A, B,

C, D, E & F, obtained from the Universities recognized in India.

ii) Must possess Ph.D or equivalent qualification.

iii) An experience of 15 years of teaching as a Lecturer in Government Degree College

and the Lecturers appointed on or before 01.01.1986 are not required to possess Ph.D., qualification and minimum of 55% marks in master's degree, but is sufficient if they possess 50% in the relevant subject. V.Venkata Ramani (petitioner in W.P.No.18987 of 2017) falls under Note appended to the educational qualification possessed by a candidate considered for promotion. Therefore, she is exempt from possessing the qualification of Ph.D., for promotion as Principal. The insistence upon possessing Ph.D., by V.Venkata Ramani by 1st respondent is contrary to Rule 8 read with the Annexure to G.O.Ms.No.47 dated 14.05.2007. The points are answered accordingly.

The statement of standing counsel that the exercise for filling up the posts on regular basis is placed on record and this Court, after taking note of the litigation between the eligible candidates even at the stage of in-charge arrangement and by accepting the statement made on behalf of 1st respondent, directs 1st respondent to complete the process of filling upon the post(s) of Principal within one month from today.

As already noted, the proceedings impugned in the W.P.No. 32051 of 2017 are an offshoot of the interim direction issued by this Court. W.P.No.18987 of 2017 is ordered by holding that

V.Venkata Ramani (petitioner in W.P.No.18987 of 2017) is entitled for consideration of promotion as Principal. The petitioner in W.P.No.32051 of 2017 i.e., T.Narayanamma is junior to V.Venkata Ramani even as Lecturer and contesting the claim of V.Venkata Ramani on the ground that V.Venkata Ramani does not possess Ph.D. For the reasons already referred, this aspect of the matter needs no further deliberation. The challenge to proceedings fails. The prayer is accordingly rejected. Hence, the following order:

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- (i) W.P.No.18987 of 2017 is ordered by declaring that the petitioner (V.Venkata Ramani) is entitled for consideration of promotion as Principal in accordance with Rule 8 read with Annexure to G.O.Ms.No.47 dated 14.05.2007 and the respondents are directed to consider the case of petitioner accordingly, when promotion for the post of Principal is undertaken by 1st respondent; and
 - (ii) For the reasons stated above, the prayer in W.P.No.32051 of 2017 fails and is, accordingly, dismissed.

There shall be no order as to costs.

Consequently, pending miscellaneous petitions, stand closed.

S.V.BHATT, J

31st October, 2017

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