

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Writ Petition No.30118 of 2014

ORDER :

This Writ Petition is filed by the petitioner challenging the order dt.20.06.2013 of the Commissioner of Collegiate Education, Andhra Pradesh (for short, '3rd respondent'), rejecting petitioner's request for promotion as Principal of S.V.K.P. composite Aided College, Markapur, Prakasam District, Andhra Pradesh.

2. The petitioner was appointed as Sweeper (contingent) on 26.03.1980 in the above College and was converted to Class-IV employee with effect from 26.03.1985. Later, he passed M.A. (Telugu) from Andhra University in July, 1996. He then requested for promotion as Lecturer in Telugu invoking G.O.Ms.No.302 dt.30.12.1993. The said request was rejected on the ground that the said G.O. was meant for non-teaching staff of the department for promotion as Junior Lecturers and not for Lecturer posts in Degree Colleges, and also because the said G.O. was not extended to non-teaching staff of private aided colleges.

3. Aggrieved by the said decision, the petitioner filed WP.No.5695 of 1997 seeking directions to consider his case for promotion under G.O.Ms.No.302 dt.30.12.1993. He also filed C.C.No.1666 of 1997 for non-implementation of the orders of the Court. The Contempt Case was dismissed on 20.11.1997.

4. Thereafter, the petitioner again represented for promotion as Junior Lecturer / Lecturer in Telugu and the same was rejected by the 3rd respondent since there were no existing rules to consider his request.

5. The petitioner then filed WP.No.2568 of 1999, and the High Court granted interim direction on 17.09.1999 to consider his request.

6. Subsequently, the Government issued orders in G.O.Ms.No.08 Education dt.02.02.2001 with instructions to appoint him as Junior Lecturer in Telugu in the above college as a special case in relaxation of the selection procedure prescribed in G.O.Ms.No.12 Education dt.10.01.1992. The petitioner was then appointed as Junior Lecturer in Telugu in the said college vide proceedings dt.09.02.2001.

7. Again, the petitioner filed WP.No.35886 of 2009 for re-designation of his post as Lecturer and for consideration of his representation dt.03.12.2009 in that regard. An interim order was granted in the said Writ Petition to consider his representation.

8. On 04.03.2010, his request for re-designation as Lecturer was rejected holding that he is not entitled for the said relief on the ground that even though there is no sanctioned post of Junior Lecturer in the said college, as a special case, he was appointed as Junior Lecturer in Telugu, and that G.O.Ms.No.29 dt.26.04.2001, cited by him in his representation dt.03.12.2009, did not apply to him.

9. The petitioner contended that he is entitled to be appointed as Principal of the said college as per G.O.Ms.No.127 Education dt.07.06.1993, since he fulfills the qualification prescribed therein. The said G.O. amended

G.O.Ms.No.12 Education dt.10.01.1992 and provided that posts of Principals of Degree colleges shall be filled by recruitment by transfer from along eligible, qualified and suitable lecturers with ten years of service under the same management and in the absence of such lecturers by direct recruitment.

10. By the impugned order dt.20.06.2013, the 3rd respondent rejected the request of the petitioner for promotion as Principal of the said college on the ground that as per G.O.Ms.No.47 dt.14.05.2007, a candidate must possess Master's Degree with 55% and above or Grade B in the 7th point scale with letter grades O, A, B, C, D, E & F from Universities in India, and he must possess Ph.D. or equivalent qualification and he should have experience of 15 years of teaching as a Lecturer in Degree College. He further held that since the petitioner was only working as Junior Lecturer and not as a Lecturer in Telugu, that too, with effect from 09.02.2001, and was then doing his Ph.D. and stood at Sl.No.16 in the seniority list of the college, he is not qualified for promotion to the post of Principal as per G.O.Ms.No.47.

11. Assailing the same, the present Writ Petition is filed.

12. Heard the counsel for petitioner, and the learned Government Pleader for Higher Education for respondent nos.1 to 6.

13. The counsel for petitioner contended that G.O.Ms.No.47 dt.14.05.2007 applies to Government Degree Colleges such as the one where he is employed and since he has put in 15 years of service in the category of Junior Lecturer, he should be appointed to the said post. According to him, his teaching experience in the Junior Lecturer cadre

should be treated as teaching experience in the Lecturer cadre and promotion should be given to him taking into account his service in the college from 1980.

14. Counter-affidavit is filed by respondent nos.1 and 3 refuting the above contentions. It was pointed out that petitioner had earlier filed WP.No.15453 of 2013 challenging the recommendation for appointment of one Sri B. David Stone, Lecturer in Zoology, as Principal of the above college (7th respondent herein) on the ground that he was senior to the said Sri B. David Stone; that petitioner therein contended that his service from 26.03.1980 should be counted and he would be senior to Sri B. David Stone, who was appointed as aided lecturer on 27.12.1982; that this Court dismissed the said Writ Petition holding that he was only a Junior Lecturer and his service from 26.03.1980 to 02.02.2001 cannot be counted as he was a non-teaching faculty member of the college and cannot be counted; that he preferred Writ Appeal No.872 of 2013 which was also dismissed on 18.07.2013; that he filed Special Leave Petition (Civil) No.27379 of 2013 to the Supreme Court of India which was dismissed; and therefore, the present Writ Petition again claiming that he is senior-most Lecturer in the college on the basis of his appointment as Sweeper on 26.03.1980 and is senior to Sri B.David Stone, cannot be maintained.

15. It is stated that Sri B. David Stone was already appointed as a Principal on the basis that he was the senior-most Lecturer working in the college, and the petitioner's claim cannot therefore be considered as he was junior-most in the seniority list.

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 by principle of *constructive res-judicata* from raising new points which he could have raised at that time, but did not raise.

18. In any event, the petitioner does not hold the post of Lecturer and is only a Junior Lecturer, and it is not in dispute that his request for re-designation as Lecturer was rejected on 04.03.2010 by the 3rd respondent, which was not challenged by him.

19. Since even G.O.Ms.No.127 dt.07.06.1993 requires a candidate to be a Lecturer for being considered for the post of Principal of a Degree college and since admittedly the petitioner is not a Lecturer, no relief can be granted to the petitioner in this Writ Petition.

20. Accordingly, the Writ Petition is dismissed with costs of Rs.1,000/- to be paid by the petitioner to the High Court Legal Services Committee.

21. As a sequel, miscellaneous applications pending if any, in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11.07.2017

Ndr/*

