

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.21442 OF 2004

ORDER:

1. This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to the proceedings of the 1st respondent vide G.O.Rt.No.739, Higher Education (CE.II.2) Department, dated 7.10.2004, and to quash the same and consequently, to direct the respondents to fix the pay of the petitioner under Career Advancement Scheme laid down in paragraph No.9(b) of Appendix to paragraph No.4 of G.O.Ms.No.520, Education Department, dated 15.12.1988 with effect from 13.11.1989 with all consequential benefits like arrears etc.

2. Heard Sri S. Gopal Rao, learned Counsel for the petitioner and the learned Government Pleader for Higher Education.

3. The case of the petitioner in brief is as follows:

(i) The petitioner was appointed as Lecturer in Geology on part time basis vide letter of the Principal, Bhavan's New Science College, Narayanaguda, Hyderabad, dated 21.12.1981 and he was continued upto March, 1982. Thereafter, the Management of the said college issued advertisement inviting applications from the eligible candidates for the posts of Lecturers in various subjects

including Geology. The petitioner applied for the post of faculty of Geology and he was selected by the selection committee by order dated 13.11.1984, which was approved by Osmania University on 19.11.1984. But he was designated as part time lecturer in the Department of Geology though he was appointed in a vacancy admitted in grant-in-aid. Subsequently, the Correspondent of the College addressed a letter to the 2nd respondent for permission to absorb the petitioner as full time lecturer. But the 2nd respondent rejected the same vide proceedings dated 2.12.1991. Challenging the same, the petitioner filed W.P.No.17066 of 1991. Thereafter, the petitioner remained out of service from June, 1992. The said W.P.No.17066 of 1991 was allowed on 21.4.1993 holding that there is no justification in rejecting the claim of the petitioner for regularization. Further, in the above said W.P., this Court directed that the petitioner should be reinstated within two months without back wages, but his pay shall be fixed by taking into account the notional seniority.

(ii) Pursuant to the orders in W.P.No.17066 of 1991, the petitioner was reinstated. However, the petitioner approached this Court by filing W.P.No.12321 of 1994 challenging the pay fixation done by the management and seeking to fix his pay in senior scale of Rs.3000- 5000/-. The said W.P. was disposed of on 7.11.1996 directing the 1st respondent to pass appropriate orders in

accordance with law, within three months and to consider the claim of the petitioner for entitlement to the scale of pay of Rs.3000-5000/- under Career Advancement Scheme laid down in G.O.Ms.No.520, dated 15.12.1988 and for consequential arrears. Thereafter, the 1st respondent issued a Memo dated 4.11.1997 rejecting the claim of the petitioner. Aggrieved by the same, the petitioner filed another writ petition viz., W.P.:No.30757 of 1997.

(iii) This Court allowed W.P.No.30757 of 1997 on 25.3.2004 directing the 1st respondent to consider the case of the petitioner for regularization of his services as lecturer in Geology in terms of the judgment dated 21.4.1993 in W.P.No.17066 of 1991, and if the services of the petitioner are regularized from the date anterior to the date of his reinstatement to service, the petitioner shall also be entitled to all consequential and incidental benefits of the Career Advancement Scheme. As the said judgment had not been complied with, within the time specified by this Court, the petitioner filed a contempt case and thereafter, the 1st respondent issued the impugned proceedings in G.O.Rt.No.739, dated 7.10.2004 regularizing the services of the petitioner with effect from 12.8.1993 though the petitioner is entitled for regularization of his services as lecturer in Geology with effect from 13.11.1984. Challenging the same, the petitioner filed the present writ petition.

4. Learned Counsel for the petitioner contends that the petitioner is entitled for regularization with effect from the date of his initial appointment, in terms of G.O.Ms.No.905, dated 21.9.1976 and that the judgment of this Court in W.P.No.17066 of 1991, dated 21.4.1993 was not implemented in true letter and spirit.

5. The learned Government Pleader appearing for the respondents contended that the services of the petitioner were rightly regularized with effect from 12.8.1993 and the petitioner is not entitled for retrospective regularization i.e., from the date of his initial appointment with effect from 13.11.1984 and there are no merits in the writ petition.

6. This Court has considered the rival submissions made by the parties and perused the material available on record. Perusal of the material on record discloses that the petitioner filed W.P.No.17066 of 1991 seeking a specific direction to the respondents therein to regularize the services of the petitioner as lecturer in Geology in the 3rd respondent-college therein in the aided post vacant due to the resignation of one Dr.M.Y.D. Kamal, with effect from 13.11.1984, with all arrears of pay and allowances. W.P.No.17066 of 1991 was allowed on 21.4.1993 with the following observations:

“I have scrutinized the entire record placed before me pertaining to the workload and procedure in terms of G.O.Ms.No.905, dated 29.9.1976. Accordingly, I have no

hesitation to hold that the college has sufficient work to continue the petitioner. Insofar as the procedures contemplated in the said G.O. is concerned, the initial appointment was in accordance with the G.O., therefore, there need not be any interview required for the taking the services of the petitioner second time. Therefore, the contention of the Government Pleader that the appointment of the petitioner second time was not in accordance with the said G.O. is misconceived.

It is not disputed that the post of the petitioner is not admitted to grant-in-aid. Under this background, I hold that the post of the petitioner is admitted to grant-in-aid and that there is sufficient work for the petitioner. In my view there is no justification in rejecting the claim of the petitioner for continuation and regularization of his services. The learned Government Pleader has brought to my notice the G.O.Ms.No.302, dated 23.8.1991 by which the Government had power to regularize the services of the lecturers, who are appointed temporarily. Since the Government issued the said G.O. in 1991, I am of the view that the petitioner is also entitled to the benefit recurred in terms of the said G.O. Accordingly, I held that the petitioner is entitled for regularization as lecturer in the third respondent college. Since the petitioner is ceased to be in service with effect from June, 1992, the only other question that would fall for consideration is whether the respondents could be directed to reinstate the petitioner with full back wages. As the petitioner is not in service since June, 1992, I consider it just and appropriate to direct the respondents to reinstate the petitioner within two months from the date of receipt of a copy of this order, but without any back wages by regularizing his services. However, the petitioner's claim for the seniority is concerned, the respondents have to decide the question of seniority taking into account the interest of other

claimants if any. It is made clear that the pay of the petitioner shall be so fixed by taking into account the notional seniority. The order impugned in this writ petition is set aside. The writ petition is accordingly, allowed. No costs."

In the above writ petition, the relief sought by the petitioner is to regularize his services with effect from 13.11.1984 was not considered. On the other hand, this Court specifically directed that the case of the petitioner should be considered in terms of G.O.Ms.No.302, dated 23.8.1991. Further, it was held in the said judgment that since the petitioner is ceased to be in service with effect from June, 1992, the only question that would fall for consideration is whether the respondents could be directed to reinstate the petitioner with full back wages, and that as the petitioner was not in service since June, 1992, this Court considered it just and proper to direct the respondents to reinstate the petitioner within two months from the date of receipt of a copy of the order, but without any back wages by regularizing his services. In view of the above findings of this Court in W.P.No.17066 of 1991 preferred by the petitioner, the question of granting retrospective regularization with effect from 13.11.1984 would not arise.

7. The next contention of the petitioner is that he filed another writ petition i.e., W.P.No.30757 of 1997 and this Court allowed the said writ petition on 25.3.2004 with the following observation:

“On the analysis above the impugned order of the 1st respondent is unsustainable as vitiated by the vice of incoherence, fundamental misconception of relevant facts and misconstruction of the judgment of this Court dated 21.4.1993 in W.P.No.17066/1991. It is accordingly set aside.

The 1st respondent shall forth with and at any rate within three months from the date of this order, consider the case of the petitioner for regularization of his services as Lecturer in Geology in the 3rd respondent-college, in terms of the judgment of this Court dated 21.4.1993 in W.P.No.17066 of 1991. If the services of the petitioner are regularized from a date anterior to the date of his reinstatement to service, the petitioner shall also be entitled to and be admitted to all consequential and incidental benefits of the Career Advancement Scheme. The decision of the 1st respondent in this regard duly containing the reasons for the decision shall be communicated to the petitioner within the time ordained above.

In the circumstances of the case as there is total non-application of mind and the petitioner is avoidably made to suffer, I consider it appropriate to allow the writ petition with the directions above, with costs, quantified at Rs.2,500/-. The writ petition is allowed as above.”

Perusal of the above directions given by this Court would indicate that the earlier order in W.P.No.17066 of 1991, dated 21.4.1993 was reiterated in the order in W.P.No.30757 of 1997, dated 25.3.2004. Since the petition filed by the writ petitioner i.e., W.P.No.17066 of 1991 was allowed on 21.4.1993 directing the respondents to

regularize the services of the petitioner in terms of G.O.Ms.No.302, dated 23.8.1991. Since a specific direction was given to regularize the services in terms of G.O.Ms.No.302, dated 23.8.1991, the date of regularization of the petitioner cannot travel beyond the issuance of G.O.Ms.No.302, dated 23.8.1991 that is the meaning, which has to be construed in both the writ petitions in which the petitioner has succeeded.

8. Insofar as W.P. filed by the petitioner i.e., W.P.No.15366 of 2001 is concerned, the prayer therein was for issuance of writ of Certiorari calling for the records regarding seniority list of lecturers dated 6.7.2001 issued by the college; for quashing the same and for directing the management to place the petitioner at an appropriate place reckoning his seniority from 13.1.1984. In the said writ petition, the issue whether the service rendered prior to regularization can be reckoned or not for the purpose of seniority was not taken into account. As per the service jurisprudence, there cannot be any seniority even before regularization of services. At best, the services rendered prior to regularization can be counted for the purpose of pensionary benefits only, if at all the petitioner is entitled to. Moreover, when a specific finding was recorded in the judgment in W.P.No.17066 of 1991, dated 21.4.1993 that the petitioner was out of employment from June, 1992 till he was reinstated in pursuance of the judgment passed in W.P.No.17066 of

1991 in the year 1993 and when there was a gap in the services of the petitioner for a period of more than two years, there cannot be any retrospective regularization with effect from 13.11.1984. Therefore, this Court is of the view that the 1st respondent has rightly regularized the services of the petitioner vide G.O.Rt.No.739 dated 7.10.2004 with effect from 12.8.1993 in terms of the judgment in W.P.No.17066 of 1991, dated 21.4.1993 . There are no merits in this writ petition.

9. Accordingly, the Writ Petition is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.



JUSTICE ABHINAND KUMAR SHAVILI

Dated: 10th September, 2018.
Nn.

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10/09/2018

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