

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.15579 of 2014

ORDER :

Heard the counsel for petitioner, and the learned Government Pleader for Higher Education (Telangana) for respondents.

2. The petitioner herein was appointed in an Un-aided post of Lecturer in Commerce in the 3rd respondent-College on 25.06.1990. He passed National Eligibility Test (N.E.T.) for Lectureship conducted by the University Grants Commission in January, 1991.

3. Consequent on the promotion of one Dr. A. Venkata Ramaiah, a post of Lecturer in Commerce in the 3rd respondent-College fell vacant during 1993.

4. The petitioner contended that he is fully qualified and eligible for being appointed as regular lecturer, that persons similarly situated like him have been absorbed to the aided post and though he was designated as part-time lecturer, he was discharging the duties and functions on par with regular lecturers working in the 3rd respondent-College; and that his case for absorption against the grant-in-aid post was erroneously rejected by the 1st respondent through its memo dt.20.12.2004.

5. The petitioner then filed WP.No.1969 of 2005 in this Court challenging the Government Memo dt.20.12.2004 issued by the 1st respondent and sought quashing of the same and sought a declaration

that he is entitled for absorption / regularization of his service in the existing grant-in-aid post of Lecturer in Commerce in the 3rd respondent-college with all consequential benefits on par with a similarly situated person by name Dr. R.V. Anuradha, Lecturer in English in the 3rd respondent-College.

6. By order dt.04.10.2007, a learned Single Judge of this Court allowed the Writ Petition No.1969 of 2005, setting aside the Government Memo dt.20.12.2004 and directed the respondents to consider the case of petitioner for regularization of his services by relaxing the selection procedure, etc., and pass appropriate orders within a period of eight (08) weeks.

7. Thereafter, the respondents in WP.No.1969 of 2005 preferred Writ Appeal No.332 of 2008 before the Division Bench of this Court.

8. By order dt.20.10.2009, the Division Bench in W.A.No.332 of 2008 modified the order dt.04.10.2007 in WP.No.1969 of 2005, passed by the learned Single Judge. It held as under :

“In the circumstances, we feel it appropriate to modify the order of the learned single judge and direct the Directorate of Collegiate Education, Andhra Pradesh, Hyderabad, the 1st appellant herein, to consider the case of the 1st respondent for absorption as Lecturer and pass appropriate orders in accordance with the rules, after issuing notice to the 2nd respondent college and after calling for necessary records. Before considering the case of the 1st respondent for absorption / regularization, the 1st appellant shall also satisfy himself as to whether the 1st respondent had fulfilled the conditions laid down under G.O.Ms.No.328, dt.15.10.1997, i.e., whether he had completed three years of service by 1991 or five years of service as on

25.11.1993, including the condition as to whether the 1st respondent had completed the minimum number of 600 working days.”

9. There was a further modification by the Division Bench of this Court by order dt.18.06.2010 in Rev.WAMP.No.2798 of 2009 in W.A.No.332 of 2008, wherein its earlier order was modified to read as *“The 1st appellant has to examine as to whether the petitioner has fulfilled the requirements of 360 working days as on 30.07.1991 or 600 working days of service as on 25.11.1993.”*.

10. Thereafter, the respondents preferred Special Leave Petition to the Supreme Court in SLP (Civil) C.C.No.13420 of 2012. The said SLP was dismissed by the Supreme Court on 31.07.2013.

11. Subsequently, the 2nd respondent considered the case of petitioner and held in proceedings dt.03.12.2003 that the petitioner did fulfill the conditions stipulated in G.O.Ms.No.328 Education dt.15.10.1997 by completing (708) days instead of (600) working days required.

12. This was communicated by the 2nd respondent to the 1st respondent. However, no action was taken by the 1st respondent on the basis of the proceedings dt.03.12.2013, issued by the 2nd respondent.

13. The petitioner then filed the present Writ Petition to declare the action of the 1st respondent in not regularizing his services in the existing grant-in-aid post of Lecturer in Commerce in the 3rd

respondent-College as illegal, arbitrary and to direct the 1st respondent to regularize his services in the said post with all consequential benefits from the date of her eligibility for absorption in the aided post, in terms of proceedings dt.03.12.2013 issued by the 2nd respondent.

14. On 09.06.2014, while admitting the Writ Petition, this Court passed the following order in WPMP.No.19301 of 2014 in WP.No.15579 of 2014 :

“Pending further orders, there shall be a direction to the 1st respondent authorities to consider the case of the petitioner in the light of the recommendation made by the 2nd respondent through his proceedings, dated 03.12.2013 and pass appropriate orders thereon, as expeditiously as possible, at any rate within a period of eight (08) weeks from the date of receipt of copy of this order.”

15. Alleging that the said order also was not complied with by the 1st respondent, Contempt Case No.1424 of 2014 was filed by the petitioner herein.

16. However, subsequently the 1st respondent passed order dt.09.06.2015 rejecting the case of petitioner for regularization. In the said order, reference is made to G.O.Ms.No.328, Education (CE.III) Department dt.15.10.1997 issued by the Education Department; that it is stated that this G.O. provides guidelines for regularization of part-time lecturers and part-time junior lecturers working in the aided degree / aided junior colleges with a condition that all cases will be considered on the basis of the said guidelines and appropriate orders

will be passed within six months from the date of issuance of the said G.O.; that the said G.O. would stand automatically annulled after the expiry of period of six months; that thereafter, the said G.O. was extended up to 31.10.1999 vide G.O.Ms.No.342, Edu. (CE.III) Dept., dt.18.09.1998; that subsequently, G.O.Ms.No.283, Education (CE.II.1) Department dt.03.11.1999 was issued stating that the purpose of the scheme was achieved and therefore the Government annuls the scheme formulated in G.O.Ms.No.328, Education (CE.III) Department dt.15.10.1997 with immediate effect; and on that count, the petitioner's case for regularization of his services cannot be considered.

17. The counsel for petitioner contended that during the subsistence of G.O.Ms.No.328, Education (CE.III) Department dt.15.10.1997 also the petitioner's case was not considered forcing the petitioner to approach this Court through WP.No.1633 of 1998 which was disposed of on 15.11.2001, directing the respondents to consider his case for regularization as Lecturer in Commerce in Grant-in-Aid post of the 3rd respondent-College; that subsequently also the petitioner filed WP.No.15745 of 2001 when his case was not considered for regularization, which was disposed of on 01.08.2001 directing consideration of his representation by respondent nos.1 and 2; that thereafter, the petitioner filed WP.No.1969 of 2015 which was allowed on 04.10.2007; that the order in WP.No.1969 of 2015 was modified in W.A.No.332 of 2008 vide order dt.20.10.2009; that there

was a further modification by the Division Bench of this Court by order dt.18.06.2010 in Rev.WAMP.No.2798 of 2009 in W.A.No.332 of 2008, wherein its earlier order was modified to read as “*The 1st appellant has to examine as to whether the petitioner has fulfilled the requirements of 360 working days as on 30.07.1991 or 600 working days of service as on 25.11.1993*”; thereafter, Special Leave to Appeal (Civil) was dismissed on 31.07.2013; and having failed to consider the case of petitioner during the subsistence of G.O.Ms.No.328, Education (CE.III) Department dt.15.10.1997, the 1st respondent cannot now seek to apply the sunset clause in the said G.O. and refuse to consider the case of petitioner on the ground that the said G.O. is no longer subsisting and that it had been annulled vide G.O.Ms.No.283, Education (CE.II.1) Department dt.03.11.1999.

18. The learned Special Government Pleader, appearing for 1st respondent, refuted the said contentions and sought to sustain the order dt.09.06.2015 passed by the 1st respondent. He contended that the petitioner did not have (120) working days in five years by 25.11.1993 individually in each of those five years, and therefore, he could not have been considered for regularization under the said G.O., even if it was in vogue.

19. But, this ground is not mentioned in the proceedings dt.09.06.2015 of the 1st respondent.

20. As per the decision of the Supreme Court in **Mohinder Singh Gill v. Chief Election Commr¹ and Commissioner of Police, Bombay vs. Gordhandas Bhanji²**, the validity of an order has to be supported only on its contents and fresh grounds by way of counter-affidavit or oral arguments cannot be taken into account.

21. Therefore, the ground raised by the Special Government Pleader cannot be accepted.

22. Also, I am of the opinion that in G.O.Ms.No.328, Education (CE.III) Department dt.15.10.1997, para no.5 intended that a part-time Lecturer should work for (600) working days as on 25.11.1993, and merely because it indicated that normally (120) days should be taken into account as the reasonable number of working days in an academic year, persons like the petitioner who possess 600 working days as on 25.11.1993 and much more cannot be held to have not fulfilled the condition of working for 600 days under the said G.O., and cannot be discarded on the ground that he did not have (120) clear working days in each of the preceding five academic years.

23. Having failed to consider the case of petitioner during the subsistence of G.O.Ms.No.328, Education (CE.III) Department dt.15.10.1997, compelling the petitioner to approach this Court in WP.No.1633 of 1998, WP.No.15745 of 2001 and WP.No.1969 of 2015 repeatedly by its inaction, the 1st respondent cannot be allowed

¹ 1978 (1) SCC 405

² AIR 1952 SC 16

to plead the sun-set clause in the above G.O. to defeat the petitioner's right. If it is allowed to do so, then it would be allowing the 1st respondent to take advantage of its own failure to consider the case of petitioner for regularization during the subsistence of G.O.Ms.No.328, Education (CE.III) Department dt.15.10.1997 which was in force up to 31.10.1999, admittedly. This cannot be permitted.

24. Also, it may be that the order dt.09.06.2015 passed by the 1st respondent came about during the pendency of WP.No.15579 of 2014. However, there is no necessity for petitioner to seek amendment of the prayer challenging the said order specifically since the plea of petitioner in the Writ Petition to declare his non-regularization by the 1st respondent as illegal would cover the order dt.09.06.2015, passed by the 1st respondent also.

25. For the aforesaid reasons, the Writ Petition is allowed. The order dt.09.06.2015, passed by the 1st respondent is set aside. The declaration of eligibility of petitioner for regularization as per G.O.Ms.No.328, Education (CE.III) Department dt.15.10.1997 made by the 2nd respondent in proceedings dt.03.12.2013 is held to be valid and binding on the 1st respondent, and the 1st respondent is directed to regularize the services of petitioner in the existing Grant-in-Aid post of Lecturer in Commerce in the 3rd respondent-College with all consequential benefits from the date of his eligibility for absorption in the aided post in terms of proceedings dt.03.12.2013 of the 2nd respondent.

26. The 1st respondent shall also pay costs of Rs.5,000/- to petitioner.

27. Accordingly, the Writ Petition is allowed as above with costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 19.03.2018

Ndr/*

