

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.26532 OF 2018

Date: 23.08.2018

Between:

Sk. Yakub Pasha, s/o. Jamal Saheb, Aged 36 years,
Working as Junior Lecturer, Govt.Jr.College,
Karepally, Singareni Mandal, Khammam district
and others.

.....Petitioners

and

The State of Telangana, rep.by its Principal Secretary,
Higher Education Department, Secretariat, Hyderabad
and another.

.....Respondents



The Court made the following:

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ORDER:

Petitioners were engaged as Guest Lecturers during academic year 2013-14 and their engagement was renewed in subsequent academic years. In this writ petition petitioners challenge the proceedings of the Commissioner of Intermediate Education, dated 25.07.2018 to the extent of not providing for engaging the existing Guest Faculty and sought further declaration that petitioners are entitled to continue as Guest Lecturers in their respective subjects without reference to proceedings dated 25.07.2018.

2. Heard learned senior counsel for petitioners and learned special Government Pleader for respondents.

3. According to senior counsel for petitioners, all the petitioners are highly qualified and have been discharging their responsibilities as Guest Lecturers for the last five academic years. Instead of continuing the existing Guest Lecturers, respondents are now intending to induct new Guest Lecturers from the open market and the same is illegal. Learned senior counsel by reading clause (5) of the Commissioner's proceedings dated 25.07.2018 would submit that it only prescribes preference to the teaching experience in the past and does not recognize the teaching experience gained by petitioners alone and the same is bad in law. By referring to this clause, respondents are now indulging in calling applications from the freshers and seeking to induct them as Guest Lecturers. He would submit that in the year 2017 also,

the same clause was incorporated in the proceedings of the Commissioner dated 31.05.2017, but subsequently Commissioner clarified vide his proceedings dated 15.06.2017. By this clarification, Commissioner directed the Principals to grant preference to Guest Faculty, who worked in the previous academic year i.e., 2016-17 in the first instance and should not be disturbed. Only to remaining vacancies fresh Guest Faculty should be hired. He would submit that similar clause ought to have been incorporated in the present exercise also. According to learned senior counsel, petitioners apprehend that they would be thrown out from the employment and at this stage if their services are terminated grave prejudice would be caused to them. He would submit that even in the present academic year their services were utilized and they cannot be thrown out in the middle of the academic year.

4. *Per contra*, according to learned special Government Pleader, as there are large number of vacancies in the cadre of Junior Lecturers and recruitment process would take considerable time, in order to avoid inconvenience to the students prosecuting their academic courses, Government decided to induct Guest Lecturers, who are be assigned 72 classes per month by paying 150/- per class subject to maximum of 10,000/- per month. The Guest Lecturers were engaged during the academic session only. Petitioners are not in service as their tenure for the academic year 2017-18 was over. No fresh induction was taken up till the circular was issued by the Commissioner on 25.07.2018. According to learned special Government Pleader, consequent to lifting of ban on transfers, Government has undertaken exercise of transferring

the Junior Lecturers also. As liberty was granted to the Junior Lecturers to opt choice of posting, subject to fulfillment of norms of transfer, the induction of Guest Faculty was deferred. Many serving Lecturers have opted to places where earlier Guest Faculty was employed. Thus, after completion of transfer exercise, the vacancies are identified and instructions were issued by the Commissioner in his proceedings dated 25.7.2018. He would submit that clause (5) enables preferential treatment to a person having teaching experience in the past. The candidates are required to produce authenticated evidence in support of claiming teaching experience. Instructions were issued to the Principals by the Commissioner directing them to issue certificate of experience to the Guest Faculty working with them. He would submit that enough safeguards are provided in the instructions.

5. According to learned special Government Pleader, what is required by the Government is, qualified and competent Junior Lecturers. The engagement is only on Guest Faculty basis by paying them hourly basis remuneration for the hours of teaching. Such faculty is employed only for the academic session. Merely because petitioners continued in the earlier academic years, cannot be a ground to insist that as a matter of course, their Guest Faculty engagement should be renewed and petitioners cannot restrain the Government to source Guest Faculty from the open market. He would submit that in the year 2017, instructions were issued, having regard to the circumstances obtaining at that time and more particularly, in view of apprehension expressed on the issue of arbitrary exercise of discretion by the concerned Principals. For the present academic year, the District Intermediate

Education Officer is authorized to supervise induction of Guest Faculty in the concerned districts. He supervised the exercise undertaken by the Principals.

6. According to learned special Government Pleader, the selection process is completed. In the selections undertaken by the respective Districts, approximately 70% of the existing Guest Lecturers are again selected for granting renewal of Guest Faculty assignment for the next academic session. He would therefore submit that contention of learned senior counsel that there is an attempt to throw out existing Guest Faculty and induct freshers merits no consideration.

7. Learned special Government Pleader pointed out that there are no averments in the affidavit filed in support of writ petition as to why the impugned proceedings are illegal. He would submit that merely because in the previous academic year, the Guest Lecturers who worked in the earlier academic years were given absolute preference cannot be a ground to insist that Government should adopt the same principle for every year. The Government intends to have a better Guest Faculty in the larger interest of student community.

8. Admittedly, petitioners were engaged as Guest Faculty. The Guest Faculty assignment is for the academic session. They are paid remuneration on hourly basis for the hours of teaching they undertake. They have no lien to the post of Lecturers. Their suitability for regular employment is not assessed. Assignment granted to them earlier was over during the academic year 2017-18 and no fresh assignment is granted to them as of now.

9. From the reading of prayer sought in the writ petition, it is apparent that petitioners have no grievance in undertaking the process calling for applications and engaging the Guest Faculty for the present academic year. Their objection is only with reference to clause (5) and that the Guest Faculty of the previous academic year is not extended automatic renewal. In other words, petitioners seek automatic renewal without subjecting them to any selection process.

10. It may be true that the Government ought not to have resorted to the system of appointing Guest Faculty on academic year basis and ought to have made regular recruitment on permanent basis. But, however, any impediment in inducting Guest Faculty would have an adverse impact on the students prosecuting their respective courses at Intermediate Educational level and, therefore, Court is not examining the desirability of Guest Lecturer system in this writ petition and leaves it to the State to take appropriate steps to fill all posts of Lecturers on permanent basis and to dispense with Guest Faculty.

11. Merely because some concession was given on the earlier occasion cannot be a ground to insist to apply same principle. More so, the assignment granted was as Guest Lecturer by paying remuneration on hourly basis. It is appropriate to note that there is no manner of right for petitioners to insist that they alone be continued as Guest Faculty merely because they worked earlier. Further, experience is not given a go bye. There is no attempt to induct freshers without considering Guest Lecturers who worked earlier. It appears, the endeavour is to secure qualified Guest

Lecturers. The intendment of Government to induct qualified Guest Faculty cannot be faulted. Petitioners cannot restrain the respondents from undertaking the process to secure better talent. Inducting competent teaching faculty is always helpful to the students. Ultimately, what is required to be seen is students must have competent lecturers, who are well qualified, well equipped to teach and have the inclination to teach the students.

12. As rightly pointed out by the learned Special Government Pleader, enough safeguards are incorporated in the Commissioner's proceedings dated 25.07.2018 and he issued further instructions to the Principals to issue experience certificates. As pointed out by the learned special Government Pleader, approximately 70% of the existing Guest Lecturers are now identified as suitable for giving fresh assignment during the academic year 2018-19. Thus, apprehension expressed by learned senior counsel that there is an attempt to replace existing Guest Faculty is misplaced.

13. At this stage, it is apt to note the observations of learned single Judge in **Boggadi Rama Chandra Reddy vs. State of Andhra Pradesh**¹, wherein batch of writ petitions were considered by this Court on the issue of non-renewal of contract of appointment as Field Assistants. Field Assistants were appointed on one-year contract and renewed from year to year. With reference to the issue whether non-renewal of contract is stigmatic, further even if stigmatic whether mandamus can be issued and not affording opportunity before holding them as not meeting the

¹ 2016 (5) ALT 45

targets would amount to arbitrary exercise of power were considered. On review of law on the scope of renewal of contract appointment with fixed tenure, this Court held as under:

“102. In *Gridco Ltd. v. Sadananda Doloj and others* (AIR 2012 SC 727), Supreme Court created small window of opportunity to seek judicial review on the parameters set out above. However, those parameters may attract in case of premature termination of contract of appointment. In the cases on hand, petitioners are not terminated. Their contract is not renewed further on assessment of past performance. It is the right of an employer to choose right person to do right job. If the employer found that employee has not reached to its expectations, he can dispense with his services. In the instant writ petitions, petitioners appointment is one of contract, even if the stand of petitioners that their appointment is one of temporary but not contractual is accepted, they are not holding permanent employment and have not acquired status to a public post. They are appointed in a scheme post. It is permissible to employer to assess past performance to continue the relationship further. According to employer, on assessment of performance of all Field Assistants, appointment is not renewed to only such of the employees who did not achieve the set targets.

103. Renewal is not automatic but termination of relationship on completion of tenure is automatic and unless renewal is granted the relationship of master and servant comes to an end after the period of contract. Renewal is at the sole discretion of the employer.

104. Furthermore, tenure of appointment is over and there is no manner of right vested in petitioners to continue in employment after 30.6.2015. Thus, petitioners cannot seek a mandamus in exercise of power of judicial review to ask for renewal of contract, irrespective of fulfilment of targets fixed. When relationship is determined by contract, no mandamus can be issued to compel party to a contract to renew the contract. Therefore, even if it is assumed that words employed in the communication impugned in these writ

petitions informing the decision not to renew the employment is stigmatic at the most it may give rise to right to sue for damages but no direction to renew the contract and to employ the petitioners be granted on that ground.”

14. The only issue remains is why all Guest Lecturers are not reemployed and some of them are rejected. This writ petition is instituted even before the process was undertaken by the respondents. What remains now is individual grievance of a person, who earlier worked as Guest Lecturer, sought renewal of his contract, but such renewal is not granted and another person is chosen in his place. It would thus be a case of assessment of relative merit and eligibility. The Court cannot undertake relative assessment and to hold a person as more suitable to be a Guest Lecturer. Thus, it is for individual to ventilate his grievance before Commissioner for Collegiate Education by placing before him, the qualifications possessed by him, his teaching experience compared to person inducted. As and when such issue is raised, the Commissioner is required to consider as to whether the process of identifying a person as Guest Faculty ignoring the existing Guest Faculty member was validly made and whether there was proper assessment of suitability and whether less qualified person is selected.

15. Having regard to the facts noted above, I see no merit in the contention of learned senior counsel for petitioners and writ petition deserved to be dismissed and it is accordingly dismissed.

16. However, it is needless to observe that if petitioners or any person, who are not selected for granting renewal of Guest Faculty assignment for the academic year 2018-19, make appropriate

applications to the Commissioner of Collegiate Education and alleges wrong selection made in his/their place(s), the Commissioner shall look into the grievance(s) by duly verifying the relevant records and furnish suitable reply/take appropriate action as warranted in the facts of a given case. As and when such representation(s) are submitted, appropriate decision as warranted by law be made and communicated by assigning due reasons in support of the decision within a period of three weeks from the date of receipt of such representation(s). Pending miscellaneous petitions shall stand closed.

Date: 23.08.2018
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JUSTICE P.NAVEEN RAO



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