

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos.36190 OF 2017 AND 5845 OF 2018

Dated:13.03.2018

Between:

Dr. B. Krishna Reddy, S/o. Sri B. Janardhan Reddy, aged 52 years, presently working as an Assistant Professor in Mathematics, Department of Mathematics, University College of Science, Osmania University, Hyderabad, R/o BKR Residency, H.No.7-31/13, Sree Laxmi Narasimha Colony Hydershakote Village, Rajendranag Mandal, Hyderabad

.. Petitioner

And

The Osmania University, rep., by its Registrar, Hyderabad

.. Respondent



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos.36190 OF 2017 AND 5845 OF 2018

COMMON ORDER:

Heard learned counsel for the petitioner, Sri Ch. Jagannatha Rao, learned Standing Counsel for Osmania University. With consent, Writ Petitions are finally disposed of.

2. Petitioner was initially appointed as Part Time Lecturer in the year 1993 in Mathematics. Earlier, petitioner and others filed Writ Petition before this Court seeking regularization of their services. By order dated 11.03.1998, this Court allowed the said Writ Petition and directed authorities to consider regularization claim of petitioner and other similarly situated persons. Aggrieved thereby, the respondent-University preferred W.A.No.764 of 1999 and batch. The Division Bench of this Court was informed by the University that the University is willing to make selections on regular basis for the vacant posts, but however it requires clearance from the Government. On behalf of the Government the Division Bench was informed that in principle the Government agreed to authorize the Osmania and Kakatiya Universities to issue fresh notifications inviting applications from eligible candidates including the writ petitioner to consider petitioner for regular appointment by relaxing age limit. Taking note of the instructions furnished by the Government, the Division Bench disposed of the Writ Appeals directing the respondents – Universities to complete the process of selection within a period of four months from the date of disposal of the Writ Appeals by relaxing the age limit. The Division Bench further directed that if the selection was not completed within four months, after expiry of four months,

petitioner would be entitled to salary in the grades which are meant for lecturers without further orders from the Court.

3. The Court is informed that as the selection process got delayed, the scale of Assistant Professor was extended to the petitioner and other similarly situated persons in the year 2003 on completion of four months fixed by the Division Bench. Regular selection process was completed in the year 2006 and orders of appointments were issued in the year 2007 and petitioner was selected and appointed as Assistant Professor in Mathematics. It is not in dispute that the petitioner continued to work, initially as a Part Time Lecturer and later in the scale of Assistant Professor from the year 2003 and till he was appointed on regular basis. It appears, the University called for applications for grant of selection of Assistant Professor. Petitioner responded to the said notification and was selected. The Executive Council in the meeting held on 26.08.2009 recommended the name of petitioner to grant senior scale of Assistant Professor w.e.f.04.01.2010. Petitioner was considered to grant senior scale by taking into consideration the scale of Assistant Professor granted to him in the year 2003. Petitioner filed W.P.No.36190 of 2017 seeking enforcement of the decision of the Executive Council to extend the Academic Grade Pay (AGP) of Rs.8,000/- and Rs.9,000/- as recommended.

4. In the counter affidavit, it is also stated that claim of the petitioner was placed before the Executive Council in the meeting held on 05.06.2017 and the Executive Council rejected request of the petitioner to count past service and also stated that recommendation made by the Selection Committee dated

26.08.2009 is not agreed. The copy of such decision is not placed on record.

5. A reading of the counter affidavit would show that the Executive Council was only referring to the recommendations made by the Selection Committee but is not referring to the earlier decision made by the Executive Council accepting the said recommendations.

6. This Court by order dated 03.01.2018 directed the respondent – University to consider the case of the petitioner for extension of AGP as approved by the Executive Council in its meeting held on 04.01.2010 with all consequential and attendant benefits.

7. Praying to vacate the said interim order, I.A.No.1 of 2018, is filed.

8. During the pendency of above Writ Petition, process was set in motion to grant Rs.9,000/- AGP i.e., in Associate Professor cadre. Petitioner therefore filed W.P.No.5845 of 2018 declaring inaction on the part of the respondents in sending communication calling him for CAS interview to extend AGPs of Rs.8,000/- and Rs.9,000/- scheduled to be held in the fourth week of February, 2018 or any other subsequent day in pursuance to Circular dated 18.09.2017, as arbitrary and illegal. This Writ Petition is directed to be taken up along with W.P.No.36190 of 2017.

9. University Grants Commission (for short, 'UGC') introduced periodical financial upgradation/elevation to teaching faculty as an incentive and to remove stagnation. UGC notified guidelines for consideration of claims to grant such financial upgradation. After

revision of Pay Scales in the year 2006, fresh set of guidelines were notified. The post of Assistant Professor is in the AGP of Rs.7,000/-; Assistant Professor Senior Scale in the AGP of Rs.8,000/-; Associate Professor in AGP of Rs.9,000/- and Professor in AGP of Rs.10,000/-. Assistant Professor with AGP of Rs.7,000/- and possessing P.hd. degree is eligible to move into AGP of Rs.8,000/- after completion of 5 years of service.

10. The guidelines also prescribe computation of past service for consideration under CAS. Under the heading of *Counting of Past Service for Promotion under CAS*, there are 8 paragraphs prescribing various conditions of eligibility.

11. Placing reliance on the UGC guidelines, learned counsel for the petitioner claims that the petitioner is entitled to AGP of Rs.7,000/- and AGP of Rs.8,000/- in Assistant Professor cadre and Associate Professor in AGP of Rs.9,000/- as per the schedule of eligibility prescribed in the UGC Guidelines. According to learned counsel, the service rendered by the petitioner from the date of granting of scale of pay of Assistant Professor in the year 2003 shall have to be computed for the purpose of determination of the eligibility service to grant the benefits under the scheme and not granting the benefits under the scheme is erroneous.

12.1. He would submit that the Executive Council considered the claim of the petitioner and recommended his name to grant the benefits under the UGC CAS duly taking note of the service rendered by him in the scale of Assistant Professor from the year 2003. Once such recommendation is validly made, there is no justification for the University to deny the benefits flowing out of

the UGC CAS. Even while appointing the petitioner as Part Time Lecturer, the Selection Committee assessed his eligibility and on finding him eligible only he was appointed as Part Time Lecturer. By the time petitioner was appointed as Part Time Lecturer, he fulfilled the qualifications and eligibility.

12.2 He would further submit that even otherwise, if the directions of the Division Bench of this Court were implemented, within time, the petitioner could have been selected as regular lecturer way back in the year 2003 and delay on the part of the respondent – University in conducting selections in spite of time fixed by the Court cannot be used to the disadvantage of the petitioner and therefore, as directed by the Division Bench, when scale is extended to the petitioner in the year 2003, the service rendered at least from that date should be counted towards eligibility service under the CAS. As per the CAS, *adhoc*/temporary service rendered for more than one year shall have to be computed towards eligible service. Therefore, the service rendered by the petitioner from the year 2003 is required to be considered.

12.3. Learned counsel for the petitioner would further submit that in the batch of Writ Appeals disposed of by the Division Bench of this Court, one Dr. B. Venkat Ram Reddy was also a party. He was also granted benefit of scale of pay attached to the post of Assistant Professor in the year 2003. The Kakatiya University considered Dr. B. Venkat Ram Reddy as suitable for grant of benefits of UGC scales and CAS by computing the service rendered by him in the scale of pay extended to him as per the directions of the Division Bench. The proposal submitted by the Kakatiya

University was accepted by the Government and permitted the Kakatiya University to compute the past service of said person as Lecturer (Assistant Professor) w.e.f. 11.02.2003 to extend the benefits of UGC scales. With reference to the claim of petitioner, the Government referred the matter to the Andhra Pradesh State Council of Higher Education for its opinion. The Council for Higher Education considered the claim of the petitioner vis-à-vis the relief granted to Dr. B. Venkat Ram Reddy and recommended to extend the same benefit to the petitioner as well vide his letter dated 29.10.2014.

12.4. He would therefore submit that denial of CAS as per the UGC Career Advancement Scheme is erroneous and amounts to arbitrary exercise of power and authority. He would further submit that copy of decision to reject alleged to have been taken by the Executive Council to count past service from 08.03.2003 till regular appointment was initially served on him but was taken back and in fact there is no further communication. However, as an abundant caution, I.A.No.2 of 2018 is filed to hold the said resolution as a nullity.

13.1. Per contra, learned Standing Counsel for the respondent – University would submit that petitioner has not fulfilled the requirements of UGC guidelines and therefore he is not entitled to computation of service rendered by him from 2003. He submits petitioner was appointed as Assistant Professor in the year 2007 on regular basis and therefore after completion of four years, he is granted Rs.7,000/- AGP in the year 2011 and he would acquire eligibility for AGP of Rs.8,000/- by the year 2016 and AGP of Rs.9,000/- i.e., Associate Professor only in the year 2019.

13.2. According to learned Standing Counsel, initial selection of the petitioner was not done by a duly constituted Selection Committee as required by Section 43 of the Universities Act, 1991 (for short, 'the Act') and he was only appointed as Part Time Lecturer and later granted minimum of scale of Assistant Professor in the year 2003 and appointed regularly in the year 2007 and therefore only from the year 2007 his service can be computed. As the past service was not in accordance with the guidelines prescribed by the UGC, petitioner is not entitled to count that service for eligibility for CAS.

13.3. He would submit that earlier decision of the Executive Council was contrary to the UGC guidelines. Recently, the Executive Council has taken a decision to annul the earlier decision and to deny the benefits of CAS as claimed by the petitioner.

13.4. With reference to the opinion given by the State Council of Higher Education, learned Standing Counsel would point out that as per paragraph (e), the State Council of Higher Education opined that the petitioner was not eligible to count past service. Opinion of the Council was only with reference to the earlier orders passed by the Government to another person. As opinion of the Council is not in favor of petitioner, he cannot claim past service.

14. In ***Dr. N.J. Prameela Subhashini v. Registrar, Osmania University, Hyderabad***¹, the Osmania University objected to count past service claiming that selections were not made in accordance with Section 43 of the Universities Act. The Court

¹ 2017 (5) ALD 743

noted that petitioners therein were subjected to selection process by a Committee constituted at the institution level and such selection is valid and therefore the service rendered after such selection can be computed towards eligibility service under the CAS and rejected contention of the University that unless selections are made only in accordance with Section 43 of the Act, such service cannot be computed.

15. In the case on hand, the facts are slightly different on this aspect. As noted above, the petitioner was earlier appointed on part time basis. He filed Writ Petition before this Court claiming regularization of his service contending that he fulfilled all the required conditions and his appointment on part time basis was erroneous and it would amount to exploitation of labour. Learned single Judge of this Court granted relief of consideration for regularization. When matter came up before the Division Bench, the Division Bench directed holding of regular selections and further directed to consider claims of the petitioner therein without reference to age restriction. The Court fixed time limit of four months to complete selection process and further directed that in the event of not completing selection process within four months, the lecturers should be granted salary in the grades which are meant for lecturers appointed on regular basis. As the selections could not be completed, the grade, as applicable to the regular Assistant Professors, was granted to the petitioner in the year 2003.

16. If only the University complied with the directions issued by the Division Bench to complete the selection process within four months, petitioner could have been appointed as Assistant

Professor on regular basis in the year 2003. It is not in dispute that petitioner was not responsible for the delay in completion of selection process and issuing regular appointment only in the year 2007. Delay attributable to the University cannot deprive the petitioner to compute service at least for limited purpose of securing financial upgradation as per the UGC guidelines. It is also not in dispute that petitioner was fully qualified even by the time he was initially appointed as Part Time Lecturer and has rendered continuous service till his services were regularized in the year 2007. In the facts of this case, the contention of the respondent–University that petitioner was not subjected to regular selection process as required under Section 43 of the Act by the time he was granted scale/grade in the year 2003 cannot be countenanced. Further, procedure envisaged in Section 43 of the Act is applicable when regular selections are made. In the facts of this case the Court is of the opinion that petitioner is entitled to compute service rendered by him from 11.02.2003 towards eligible service to grant various grades of AGP as per the University Grants Commission Career Advancement Scheme and rejection by the University is not valid.

17. UGC guidelines are only intended to grant periodical upgradation to the higher scales/promotions by fixing time schedule. The guidelines are couched in liberal terms to compute past service for eligibility. Guidelines only seek to deny past service if the person was a guest lecturer or was appointed on *ad hoc* basis or on a leave vacancy of less than one year. It is not in dispute that even by the time petitioner was appointed as Part Time Lecturer and later as Assistant Professor, his services were

utilized as regular lecturer. He rendered service for more than one year. He was not appointed as guest lecturer. Thus, all the conditions of paragraph (f) of the UGC Guidelines are fulfilled except to the extent of selection by duly constituted selection committee. However, it is appropriate to take note the fact that by the time petitioner was appointed on part time basis, there was internal selection process by the University, interviews were conducted and on assessment made by the selection committee, selections were made. Thus, it cannot be said that there was no selection process at all before petitioner was selected though selection as required under Section 43 of the Act was not observed. For the limited purpose of extending the benefit of UGC CAS, the selection undergone by the petitioner would suffice to fulfill the requirements of clause (f).

18. Thus, the Executive Council in its meeting held on 26.08.2009 has made proper assessment and arrived at correct conclusion about eligibility of the petitioner to grant CAS benefits. The Executive Council is highest body of the University vested with power to undertake selections to various positions in the University and the recommendations made by such highest body of the University must be approved in the normal course, but for any valid reason to overrule the decision. As noticed from the submissions made by learned Standing Counsel, the stand of the University is that petitioner was not subjected to selection process as required under Section 43 of the Act when he was appointed as Part Time Lecturer and that he was regularly selected only in the year 2007. The objection in not complying with Section 43 of the Act selection process is negated in the earlier paragraphs.

Merely because he was granted scale/grade of Assistant Professor in the year 2003 but not regularly selected, that service cannot be ignored towards eligible service under CAS. More so, when petitioner was not responsible for such delay. For the reasons assigned above, this contention of the University cannot be accepted.

19. Before parting with these cases, it is appropriate to note that even according to learned counsel for the petitioner, the so called decision of the Executive Council is not communicated to the petitioner as copy served on him was taken back and therefore it is deemed that there is no communication of any rejection. Therefore, petitioner cannot seek to file application to amend the prayer as if an order was made. The Court is not inclined to go into that issue at this stage. I.A.No.2 of 2018 is dismissed.

20. Accordingly, W.P.No.36190 of 2017 is allowed in terms of the prayer sought. The respondent – University is directed to subject petitioner to selection process to grant various grades of AGP, such as Rs.7,000/-, Rs.8,000/- and Rs.9,000/- by computing the service rendered by him from 11.02.2003 towards eligibility service. The entire selection process shall be completed within two months from the date of receipt of a copy of this order.

21. In view of orders in W.P.No.36190 of 2017, W.P.No.5845 of 2018 is disposed of. Pending miscellaneous Petitions in these Writ Petitions stand closed.

P. NAVEEN RAO, J

Date:13.03.2018

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