

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

Writ Appeal No.1313 of 2017

Date: 23.09.2019

Between:

The State of Telangana,
Rep. by its Principal Secretary to Government,
Higher Education, Secretariat Buildings,
Hyderabad & two others

..Appellants

and

Ch.Lingaiah S/o.Mallaiah,
Watchman, Sri Visweswara Sanskrit Andhra Kalasala
(Degree & P.G. College), Station Road, Warangal,
H.No.18-7-297, Kareemabad, Warangal District,
and two others

...Respondents

Standing Counsel for the Appellants : G.P. for Higher Education

Counsel for the respondent No.1 : Mr.S.Rajeswara Reddy.

The Court made the following:

JUDGMENT: (Per the Hon'ble Sri Justice A.Abhishek Reddy)

The present Writ Appeal is filed by the State of Telangana and two others, who are arrayed as respondents 1 to 3 in W.P.No.9321 of 2008, aggrieved by the Order, dated 12.04.2017.

For the sake of convenience, the parties are referred to as they are arrayed in the writ petition.

The brief facts of the case are that the writ petitioner – Ch.Lingaiah, had filed the writ petition with the following prayer:

.... calling for the records pertains to the impugned proceedings in Rc.No.614/Admn.IV-1/08, dated 25.03.2008, issued by the second respondent in rejecting the claim of the petitioner's request for absorption against grant-in-aid post of watchman in the 4th respondent and 5th respondent college and quash the same and consequently direct the respondents to absorb/ratify the service of the petitioner in the post of Watchman or in any other Class-IV post in a clear aided vacancy who was brought into aided post of Watchman in the 4th and 5th respondent college.

It is the case of the petitioner that initially in the year 1997 he was appointed as an Attender in the respondent No.4-college. Though the College was initially unaided one, but subsequently the College was brought into grant-in-aid. It is the case of the petitioner that by virtue of order dated 29.10.2001 of the Selection Committee, he was promoted as Watchman, vide proceedings in Ref.No.763/F158/2002, dated 29.11.2002. Subsequently, he was brought into aided post in the clear aided vacant post of Watchman through resolution, dated 06.11.2004. It is his further case that the services of other employees, whose names were reflected in the above resolution, have been absorbed and they were getting the

Pay Scales from time to time, whereas he has been paid consolidated amount. *In spite* of several requests made by the College as well as the petitioner, he was not absorbed and admitted into grant-in-aid post of Watchman. The learned Single Judge, after going through the entire record, has allowed the writ petition, and directed the respondents to absorb the petitioner in the post of Watchman, or on any other Class IV post in a clear aided vacant post, and to extend him the benefits of pay-scale and all the eligible service benefits from the date of such absorption. Aggrieved by the Order of the learned Single Judge, the respondents 1 to 3 have filed the present appeal, assailing the order mainly on the ground that the petitioner was an employee of the college, and he was appointed without following the due procedure, or calling for any applications from all the eligible candidates, and that a direction ought not to have been given to regularize the services of an unaided staff appointed by the management into a grant-in-aid post.

Heard the learned Government Pleader appearing for the appellants, and Sri S. Rajeswara Reddy, the learned Counsel for the writ petitioner-respondent No.1.

The learned Government Pleader has vehemently argued that the initial appointment of the writ petitioner itself is illegal as there was no advertisement made for filling up the posts, nor the management has taken any permission from the government for filling up the vacancy. Moreover, the services of the employees appointed by the management themselves without following the

procedure laid down cannot be regularized. Thus, the employee cannot be admitted to grant-in-aid.

It is an admitted fact that the petitioner is working in the respondent-college since 1997 in an unaided post, even though he was subsequently shown against the clear vacant post of watchman and admitted to grant-in-aid, his services were not regularized. It is not the case of the appellant that the petitioner was either ineligible or that he was not qualified to hold the post of watchman. The government, from time to time, has issued various Government Orders to regularize the services of persons who were appointed by the different managements to grant-in-aid while relaxing the ban which was then in force. The record clearly reveals that right from 1990, the Government has been relaxing the rules, and regularizing the services of various contingent employees, who were appointed by the various private managements without following the procedure laid down, and admitted the said persons to grant-in-aid posts.

The contention of the learned Government Pleader that these illegal appointments cannot be regularized is belied by the various Government Orders issued by the government in relaxation of the ban imposed by the government itself from time to time in favour of different employees. There is absolutely no reason as to why the same benefit cannot be extended to the petitioner, when the government itself had relaxed the rules and issued orders for regularization of the services and admitted into grant-in-aid.

The Hon'ble Supreme Court in SECY., STATE OF KARNATAKA V. UMA DEVI¹ held as under:

There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa, (AIR 1967 SC 1071), R.N.Nanjundappa (1972) 5 SCC 409) and B.N.Nagarajan (1979) 4 SCC 507) and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular requirements are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the consequential requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

In view of the law laid down by the Hon'ble Supreme Court, there is absolutely no reason as to why in the present case also the services of the petitioner cannot be regularized. This is more so, when the services of other employees, whose names are reflected in the resolution, dated 06.11.2004 of the college, have been regularized, and they were absorbed into grant-in-aid posts. Hence, the direction issued by the learned Single Judge to the

¹ [(2006) 4 SCC 1]

authorities to regularize the services of the petitioner does not suffer from any infirmity. As such, the Writ Appeal filed by the appellants is devoid of merits and is hereby dismissed.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

A.ABHISHEK REDDY, J

23rd September, 2019
smr

