

**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY
WRIT APPEAL Nos. 214 AND 217 OF 2020**

COMMON JUDGMENT:

Aggrieved by the order, dated 29.01.2020, passed by a learned Single Judge, in Writ Petition Nos. 13698 & 14370 of 2019 and Batch, whereby the learned Single Judge has dismissed the writ petitions filed by the appellant-petitioners, both these appeals, namely Writ Appeal No. 214 of 2020, and Writ Appeal No. 217 of 2020 have been filed before this Court.

Since both the appeals emanate from the same impugned order, since the legal issues and the arguments are common, both these appeals are being decided by this common judgment. The facts are being taken from Writ Appeal No. 214 of 2020. For the sake of convenience, the parties shall be referred to as arrayed in the writ petitions.

Briefly, the facts of the case are that a series of writ petitions were filed before the learned Single Judge challenging the guidelines of the Commissioner of Intermediate Education, dated 25.07.2018, and challenging the memo issued by the Commissioner of Intermediate Education, and guidelines notified vide proceedings dated 29.06.2019.

The petitioners were Guest Faculty Members who were teaching in different Intermediate Government Junior Colleges. According to the petitioners, prior to academic year 2018-2019, the renewal of Guest Faculty Members was an automatic one. However, for the academic year 2018-2019, by Guidelines dated

25.07.2018 a different method of selection was adopted, whereby the assessment of merit was strictly on the basis of the marks obtained by a candidate in his/her P.G. examination, as the factor for selecting the Guest Faculty Members. The introduction of the assessment of the merit caused a grave threat to the continuation of the Guest Faculty Members, for competitors from the open market would equally vie for the posts of guest faculty. The said Guidelines were challenged before this Court in W. P. No. 13698 of 2020 and batch. However, by order dated 29.1.2020, a learned Single Judge dismissed the writ petition and upheld the validity of the said Guidelines.

Moreover, according to the petitioners, while on earlier occasions, a preference was given to the teaching experience of the candidate, but under the new guidelines, dated 18.06.2019, for the academic year 2019-2020, the teaching experience was given up as a criterion for selection. Henceforth, the selection of Guest Faculty lecturers was to be on the basis of the marks scored by the candidate in his /her P. G. Examination. The Government further directed that the Guest Faculty should be selected purely on the basis of merit. Furthermore, the Government has changed the composition of the Selection Committee: earlier the Principals of the Government Junior Colleges were heading the Selection Committee. However, according to the guidelines notified on 29.06.2019, the Selection Committee was to be headed by the District Collector as the Chairman, the Joint Collector as the Member, and the Principal of a Government Junior College as another Member of the Committee. Thus, according to the petitioners, these changes virtually ruled out their continuation as

Guest Faculty Members in the Government Junior Colleges. Hence, the series of writ petitions were filed before the learned Single Judge.

Due to the order dated 16.07.2019 passed by the learned Single Judge in I.A. No. 1 of 2019 in W.P. No.13698 of 2019, the respondents were directed to follow the same procedure for selection of the Guest Faculty Lecturers for the academic year 2018-2019 and 2019-2020 as per the procedure for employment of Contract Lecturers. Hence, the petitioners were continued as Guest Faculty Members during the pendency of the writ petitions.

However, by the impugned order dated 29.01.2020, the learned Single Judge has dismissed the writ petitions. Hence, these two appeals before this Court.

Mr. Arjun Kumar, the learned counsel for the appellants in Writ Appeal No. 214 of 2020, has raised the following contentions before this Court:-

Firstly, the petitioners have already put in more than seven years of teaching experience at the Intermediate Government Junior Colleges. Therefore, some weightage should be given to their teaching experience.

Secondly, according to the Memo dated 29.06.2019, no preference is to be given for the previous teaching experience. In fact, the entire selection should be based on the P.G. marks in each subject of the P.G. Examination secured by the candidate. The change in the eligibility requirement has exposed the petitioners to the danger of having to compete with the candidates

from the open market. Hence, the experienced teachers are being pitted against the fresh graduates from the colleges. This creates an unfair competition between two different groups. Hence, the change in the eligibility criteria violates the equality clause contained in Articles 14 and 16 of the Constitution of India.

Similarly, Mr. M. Srinivas Rao, the learned counsel for the appellants in Writ Appeal No. 217 of 2020, has raised the following contentions:-

Firstly, relying on the cases of **Mohd Abdul Khadir v. Director General of Police, Assam**¹ and **Hargurpratap Singh v. State of Punjab**², the learned counsel submits that the Guest Faculty Members were appointed on a temporary basis. Therefore, the respondents are not justified in replacing one group of temporary employees with another set of temporary employees. Therefore, the present group of Guest Faculty Members deserves to be continued on their post as Guest Faculty lecturers.

Secondly, having taught in the Government Junior Colleges for the last seven years, the petitioners have a legitimate expectation that they will be continued even in the future as Guest Faculty Members.

Thirdly, while earlier the eligibility requirement included preference being given to the past teaching experience, according to the impugned guidelines and memo, the merit is, now, to be restricted only to the marks secured by a candidate in his P.G.

¹ (2009) 6 SCC 611

² (2007) 13 SCC 292

Examination. According to the learned counsel, the eligibility criteria being prescribed are arbitrary, unfair and unreasonable. For, such criteria ignore the teaching experience of a candidate. Moreover, the imposition of such criteria would deprive the students of experienced teachers, as fresh candidates from the open market, who have no teaching experience, would be selected on the basis of the marks in their P.G. Examination. According to the learned counsel, it is the teaching experience which should be given preference, and should be taken as a paramount factor for selection of the Guest Faculty Members.

Lastly, the respondents had consistently followed the practice of giving preference to the teaching experience as revealed by the Memo dated 15.06.2017, which was issued for the academic year 2017-2018, and the Memo dated 25.07.2018 issued for the academic year 2018-2019. Therefore, the same practice should have been followed even in the impugned guidelines dated 29.06.2019. Hence, the narrowing of the eligibility criteria, and limiting it to the marks in the P.G. Examination is violative of Article 14 and 16 of the Constitution of India. According to the learned counsel, these issues, although raised before the learned Single Judge, have been ignored by the learned Single Judge. Hence, the impugned order deserves to be set aside by this Court.

Heard the learned counsel for the parties, and perused the impugned order, and considered the case law cited at the Bar.

Before delving into the merits and demerits of the impugned order, it is relevant to keep in mind certain settled principles of service jurisprudence:-

1. A person who is appointed on a temporary basis does not have a lien on the post to which he/she may be appointed to.
2. Since the appointment is a temporary one, the fact that the appointment is, indeed, for a limited time period, is well known to the temporary employee.
3. Even if a temporary employee has continued to serve the organization/employer, he/she cannot claim that he/she has a legitimate expectation of being continued on the temporary post. The argument of a legitimate expectation has already been rejected by the Hon'ble Supreme Court in the case of **State of Karnataka and others Vs. Umadevi (3) and others**³.
4. It is within the power of an employer to choose the right person to do the right job. Hence, it is within the power of employer to prescribe the eligibility and suitability criteria for selecting an employee.
5. Such eligibility requirements, being based on the advice of expert bodies, and being part of a policy decision, should not be disturbed by the Court under its power of judicial review. Therefore, the scope of interference by the Court is an extremely limited one. Such policy decision can be disturbed if and only if the policy violates the fundamental rights of an employee, or is contrary to a provision of law. But,

³ (2006) 4 SCC 1

while dealing with the policy decision, the High Court under its writ jurisdiction under Article 226 of the Constitution of India cannot act as an appellate court. Since the High Court is not equipped to deal with the academic policy decisions, it cannot, and should not, replace the decision of academic bodies with its own decision. To do so, the High Court would be overstepping its jurisdiction. Therefore, any such order passed by the High Court would be *ultra vires* its jurisdiction.

6. The temporary employee cannot claim, as a matter of right, that weightage or preference should be given for their prior service. To give or not to give weightage or preference is discretion of the employer. The Court cannot direct an employer to give weightage or preference to the earlier experience gained in the service. [**Ref. to Raju Mudigiri & Ors v The State of Telangana and Ors. [2017 (2) ALT 146 (D.B.)]**]

Admittedly, in the present case, the petitioners are temporary employees, who were appointed as Guest Faculty Members for a given academic year. They were paid on hourly basis for the classes taken by them. Hence, they have no lien over the said post. Thus, they cannot claim, by way of a right, that they should be continued as Guest Faculty Members in perpetuity, or even for the next academic year. Undoubtedly, the contract of service came to an end with the afflux of time, as they are appointed for a single academic year.

Since the petitioners were well aware of the fact, that their appointment is for a single academic year, even if they were continued for number of years, they cannot claim the right of legitimate expectation. As pointed out above, the said argument was raised before the Apex Court in the case of **Umadevi (3)** (supra). The said argument was duly rejected by the Apex Court. Therefore, the contention raised by the learned counsel for the appellants that having taught for seven or more years, the petitioners had a legitimate expectation that their services would be continued for the future academic years, is an unacceptable argument. Hence, rejected.

In the case of **Gridco Ltd. v. Sadananda Doloi**⁴, the Hon'ble Supreme Court had clearly opined that *"it is the right of the employer to choose right person to do the right job"*. Moreover, the Apex Court opined that *"the 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. The renewal is at the sole discretion of the employer. Therefore, the petitioners cannot seek a mandamus in exercise of its powers under judicial review for renewal of contract. When the relationship is determined by a contract, no mandamus can be issued to compel a party, to a contract, to renew the contract."*

Even in the present case, the employment is based on a contract entered between the petitioners and the respondents. Since the contract has come to an end with the afflux of time, at

⁴ AIR 2012 SC 729

the end of the academic year, the petitioners are unjustified in praying that a writ of mandamus be issued to the respondents to continue them on the post of Guest Faculty Members.

In the case of **P.U. Joshi v. Accountant General, Ahmedabad**⁵, the Apex Court has opined as under:-

We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State.

Furthermore, the Hon'ble Supreme Court observed as under:-

There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

Moreover, in the case of **State of Jharkhand v. Ashok Kumar Dangi**⁶, the Apex Court has observed as under:-

In framing of the policy, various inputs are required and it is neither desirable nor advisable for a

⁵ (2003) 2 SCC 632

⁶ (2011) 13 SCC 383

Court of law to direct or summarise (sic) the Government to adopt a particular policy which it deems fit or proper. It is well settled that the State Government must have liberty and freedom in framing policy. Further, it also cannot be denied that the courts are ill-equipped to deal with competing claims and conflicting interests. Often, the Courts do not have satisfactory and effective means to decide which alternative, out of the many competing ones, is the best in the circumstances of the case.

Thus, the respondents were well within their power to change the criteria of selection process. Merely because in the previous years, the respondents had given preference to the teaching experience, the petitioners cannot claim that the same yardstick should be applied for the future selection as well. Moreover, the respondents were well within their power to change the eligibility criteria, and to reduce it to the marks obtained by a candidate in his P.G. Examination. Such decision having been taken by the respondents, cannot and should not be disturbed lightly by this Court for the reason already given by the Apex Court in the case law cited above.

A bare perusal of the impugned order, dated 29.01.2020, clearly reveals that according to the respondents, the Department had received a number of complaints with regard to the selection of Guest Faculty Members for the previous academic year. It was alleged that the Principals of the Government Junior Colleges were indulging in nepotism, and were giving preference to persons who should not have been appointed as Guest Faculty Members. It is for this reason that both the composition of the selection committee, replacing the Principal by the District Collector as the Chairman, and the change in the eligibility criteria was prescribed by the respondents. As rightly pointed out by the learned Single

Judge, if the contention raised by the petitioners were to be accepted, that neither the composition of selection committee could be changed, nor the eligibility criteria could be altered, and that the petitioners deserve to be continued as Guest Faculty Members, it would tantamount to perpetuating an illegality committed in the previous selections. Needless to say, a Court cannot be a party to the continuation of an illegality.

Although the learned counsel has relied on the cases of **Mohd Abdul Khadir** (supra) and **Hargurpratap Singh** (supra), and although the principles stated by the Hon'ble Supreme Court in these two cases cannot be doubted, simultaneously, the Hon'ble Supreme Court has not proclaimed that while hiring a set of temporary employees, the power of the employer to select a better set of temporary employees is denuded or deprived. In fact, the power to select a better set of temporary employees continues to be vested in the employer. Therefore, the respondents' hands and feet are not tied merely because on an earlier occasion the respondents had selected the petitioners as Guest Faculty Members.

Of course, the learned counsel have emphasized that fresh recruits, without any teaching experience, would adversely affect the interests of the students. However, the issue whether to recruit fresh candidates, or to continue with the petitioners who have a teaching experience, is a policy decision of the Government. Therefore, this Court would not be justified either sitting as an appellate Court over the decision of the Government, or to substitute its reasoning for the logic of the Government. As

mentioned hereinabove, to do so would be to overstep the jurisdiction bestowed upon this Court.

The learned counsel for the appellants are equally unjustified in claiming that the eligibility requirement could not have been reduced to merely the marks obtained by the candidates in the P.G. Examination. For, according to the learned Counsel two different and unequal classes of persons are being treated equally. But the said argument is unacceptable. For, all the candidates competing for the same post do not form two different classes. In fact, they form a homogenous class. Further, by reducing the eligibility criteria to just merit on the basis of marks obtained in the P. G. Examination, the respondents are creating an even-level playing field for all the candidates to compete for the post of Guest Faculty Members. Since the same yardstick is being applied across the board to all the candidates, the learned counsel for the appellants are unjustified in claiming that Article 14 and 16 of the Constitution of India is being violated.

While relying on its previous judgments, in **V.K. Sood v Secretary, Civil Aviation and Ors. [1993 Supp (3) SCC 9]**, the Hon'ble Supreme Court held as under:

*In **General Manager, S. Rly, v. Rangachari and Another [AIR 1962 SC 36]** Constitution Bench held that equality of opportunity need not be confused with absolute equality as such. What is guaranteed is the equality of opportunity and nothing more. Article 16 (1) or 16 (2) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office or post. Any provision as to the qualifications for the employment or appointment to an office or post reasonably fixed and applicable to all citizens would certainly be consistent with the doctrine of the equality of opportunity. In **State of Mysore v P. Narasing Rao [AIR 1968 SC 349]** this Court held that the provisions of Article 14 or Article 16 do not exclude the laying*

down of selective tests, or do they preclude the Government from laying down qualifications for the post in question.

Similarly, in the present case Articles 14 or 16 of the Constitution of India would not prevent the respondent from prescribing a qualification, especially when the qualification is being applied to all the candidates competing for being appointed as Guest Faculty Members. Hence, the argument raised by the learned Counsel is clearly untenable.

The importance of education cannot be doubted. Education is the bedrock for the growth and prosperity of any country. For, education transforms a person from a brute animal to a noble soul. By opening up the minds, not only the personality and character of a person is changed, but the person is also inspired to be inventive and creative in his/her life. Therefore education propels the country, as a whole, towards both material and spiritual progress. A country without a strong educational system would continue to live in the dark ages with a population with a closed mind, with festering biases and prejudices. Such a population, like a colony of crabs, would continue to fight amongst themselves; pulling, tugging, and tearing each other apart. But, this is not what the Founding Fathers of our country had envisaged when they drafted the Constitution of India. Education has been given a prominent place in the Preamble. For, there is freedom of expression; there cannot be a freedom of speech and expression without education. Moreover, even Article 21-A of the Constitution of India makes education compulsory for the children. Furthermore, Part-IV of the Constitution of India enjoins upon the State to better the lifestyle, to look after the intellectual growth of the people. Even,

Article 51-A of the Constitution of India, which prescribes the fundamental duties of the people, prescribes that it is the duty of the every citizen “...to develop the scientific temper, humanism and the spirit of inquiry and reform; to value and preserve the rich heritage of our composite culture; to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women; to safeguard public property and to abjure violence; to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement”. However, none of these fundamental duties can be performed in the absence of education. Thus, it is imperative that the State should not only protect and promote, but also strengthen the education system within the State.

Considering the fact that the Telangana is a new State of the Union, the State is required to pay close attention to laying the foundation of a great tradition of education. It is with this view that this Court has repeatedly directed the State to ensure that the practice of having teaching staff, on a contractual basis, or as a Guest Faculty, should be given up. And the State should initiate regular selection of teaching faculty in the Junior Colleges, and in other State educational institutions. These directions, issued by this Court, were in consonance with the judgment of the Hon’ble Supreme Court in the case of **Umadevi (3)** (supra). This Court has emphasised that a regular faculty needs to be recruited for the benefit of the student fraternity, and for the better performance and goodwill of the educational institutions. Since education has

to be taken to the masses, the Government Junior Colleges must be manned by the finest of the intellectuals. For, unless and until children coming from the middle and lower middle classes are well-equipped with intellectual curiosity, and vision, progress of the State will continue to be tardy and troublesome. Therefore, it is hoped that the respondents will take their constitutional duty of creating a firm, a strong, and a vibrant educational institutions across the State by selecting the best candidates available in the country. Of course, the regular selection must be in accordance with law.

For the reasons stated above, this Court does not find any merit in these two writ appeals. Therefore, they are, hereby, dismissed. The respondents are directed to implement the directions issued by the learned Single Judge. No order as to costs.

Miscellaneous Applications, pending if any, shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, CJ)

(B. VIJAYSEN REDDY, J)

June 29, 2020

Tsr

**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY**



WRIT APPEAL Nos. 214 AND 217 OF 2020

29.06.2020