

HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

Interlocutory Application Nos.1 and 2 of 2019

in

I.A.No.1 of 2018

in / and

Writ Petition No.38763 of 2018

and

Contempt Case No.642 of 2019

COMMON ORDER :

The petitioners, who are 116 in number, are working as Post Graduate Teachers, Trained Graduate Teachers, Physical Education Teachers and as Staff Nurses in the residential schools run by Telangana State Residential Educational Institutions Society (for short, 'the Society'), which is an autonomous body created by the erstwhile Government of Andhra Pradesh vide G.O.Ms.No.629, Education Department, dt.25.03.1972. It is registered under the A.P. (Telangana Area) Public Societies Registration Act, 1350 Fasli.

2. The 1st respondent in the Writ Petition is the State of Telangana represented by its Principal Secretary, Education Department. The 2nd respondent in the Writ Petition is the said Society, the 3rd respondent and 4th respondent in the Writ Petition are its Vice-Chairman and Secretary, respectively.

3. According to petitioners, notifications had been issued from time to time by the 2nd respondent for appointment to posts of Post

Graduate Teachers, Trained Graduate Teachers, Physical Education Teachers and Staff Nurses and some of the said notifications are dt.19.09.2002, dt.14.11.2003, dt.10.05.2005 and also in 2006. Petitioners contend that they applied for the said posts, and after due process of selection, since they were fully qualified and eligible they were appointed to the said posts, though *on contract basis* and were made to sign on contracts to work till the end of the academic year before entering into service. It was mentioned in the notifications itself that their appointments are liable to be terminated at any time without any notice on the appointment / promotion of regular staff. According to the petitioners, the 2nd respondent also followed the rule of reservation while giving them appointments on contract basis and the petitioners have been working in the posts in which they were appointed for more than 16 years.

4. Petitioners contend that though they were selected through a regular process of selection, they were appointed to work in the schools for ten months of the year; that for two months the schools are closed due to summer vacation; that the respondents were terminating their contracts after every ten months in an academic year when the schools are closed for summer vacation and making the petitioners sign fresh contracts after the two-month summer vacation ends; that they were being paid salaries only for ten months; that other duties were being assigned to them during summer vacation, but they were not granted the benefit of continuous service though they were

discharging the same duties as regular employees, and were being paid only fixed remuneration which was enhanced from time to time. According to petitioners, as on the date of filing of the Writ Petition they were paid Rs.24,100/- (Post Graduate Teachers), Rs.22,200/- (Trained Graduate Teachers), and Rs.16,350/- (Physical Education Teachers and Staff Nurses).

5. Petitioners contend that as per the decision of the Supreme Court in **State of Punjab vs. Jagjit Singh¹**, persons working on temporary / ad hoc / contract basis are entitled to minimum of time-scale attached to the post; that a Division Bench of this Court in **P. Khadar Basha and others vs. State of Andhra Pradesh and others²** held that such persons are also entitled to increments from time to time in the minimum time-scale, though they are not entitled to other allowances which a regular employee is entitled.

6. Petitioners therefore contend that the action of the respondents in not granting to them minimum of time-scale of pay attached to the said posts in which they are working along with increments, as revised from time to time, even though they were selected in the duly sanctioned posts after regular process of selection and had put in more than 16 years of service is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India and seek a direction to the respondents to immediately grant to them minimum of time-scale of

¹ (2017) 1 S.C.C. 148

² 2017 (6) ALD 638 (D.B.)

pay attached to the posts in which they are working along with increments.

7. They also filed I.A.No.1 of 2018 in the said Writ Petition to direct the respondents to consider their case for grant of minimum time-scale of pay attached to the posts in which they were working along with increments as revised from time to time pending disposal of the Writ Petition.

8. On 30.10.2018, this Court passed the following order in I.A.No.1 of 2018 :

“Having regard to the law declared by the Supreme Court in State of Punjab and others vs. Jagjit Singh and others and a Division Bench of this Court in P. Khadar Basha and others vs. State of A.P. and others, the respondents are directed to pay to the petitioners wages on par with minimum of pay scales of regularly engaged Teachers in Residential Schools, as well as the periodical increments as revised from time to time.”

9. I.A.No.1 of 2019 is filed by the 4th respondent and I.A.No.2 of 2019 is filed by respondent nos.1 and 3 in the Writ Petition to vacate the said order.

10. The petitioners filed C.C.No.642 of 2019 on 29.04.2019 alleging that the respondents have willfully disobeyed the order dt.30.10.2018 in I.A.No.1 of 2018 in W.P.No.38763 of 2018 and therefore, they should be punished for willful disobedience of the said order passed by this Court.

11. In the I.A.Nos.1 and 2 of 2019, it is the stand of the respondents that the Government allowed residential schools operated by the 2nd respondent-Society to engage teachers *on contract basis* only; that even the notification issued for making such appointments mentioned the same; and on the basis of marks obtained, the 4th respondent entered into agreement with them. It was however denied that the petitioners were working since 2000. It was also denied that petitioners were appointed by following due process of selection against sanctioned posts and it is stated that there was no regular recruitment and the petitioners were engaged on contract basis only.

12. A reading of the advertisements / notifications issued by the respondents from time to time which have been filed as Ex.P.1 shows that the selection of candidates like the petitioners was based on the marks obtained in the qualifying academic and professional examinations passed by the candidates duly following the zone-wise and subject-wise communal roster as per rules. Therefore, the plea of the respondents that there was no proper process of selection and the appointments of the petitioners were not against sanctioned posts cannot be accepted.

13. The list of persons appointed on contract basis in the 2nd respondent-Society was furnished under the Right to Information Act and has been filed as Ex.P.2 and shows that persons have been appointed on contract basis from 23.01.2003 and that they were working as on 15.06.2018. Thus, it is clear that the petitioners and

others have been working on such contract basis with artificial breaks for more than ten years.

14. In **Rattan Lal v. State of Haryana**³, the Supreme Court of India strongly deprecated the practice of State Governments to appoint teachers for short periods, give a gap during summer vacation and re-engage them again as in the present case. It held:

“ In all these petitions the common question which arises for decision is whether it is open to the State Government to appoint teachers on an ad hoc basis at the commencement of an academic year and terminate their services before the commencement of the next summer vacation, or earlier, to appoint them again on an ad hoc basis at the commencement of next academic year and to terminate their services before the commencement of the succeeding summer vacation or earlier and to continue to do so year after year. A substantial number of such ad hoc appointments are made in the existing vacancies which have remained unfilled for three to four years. It is the duty of the State Government to take steps to appoint teachers in those vacancies in accordance with the rules as early as possible. The State Government of Haryana has failed to discharge that duty in these cases. It has been appointing teachers for quite some time on an ad hoc basis for short periods as stated above without any justifiable reason. In some cases the appointments are made for a period of six months only and they are renewed after a break of a few days. The number of teachers in the State of Haryana who are thus appointed on such ad hoc basis is very large indeed. If the teachers had been appointed regularly, they would have been entitled to the benefits of summer vacation along with the salary and allowances payable in respect of that period and to all other privileges such as casual leave, medical leave, maternity leave etc. available to

³ (1985) 4 SCC 43

all the Government servants. These benefits are denied to these ad hoc teachers unreasonably on account of this pernicious system of appointment adopted by the State Government. These ad hoc teachers are unnecessarily subjected to an arbitrary “hiring and firing” policy. These teachers who constitute the bulk of the educated unemployed are compelled to accept these jobs on an ad hoc basis with miserable conditions of service. The Government appears to be exploiting this situation. This is not a sound personnel policy. It is bound to have serious repercussions on the educational institutions and the children studying there. The policy of “ad hocism” followed by the State Government for a long period has led to the breach of Article 14 and Article 16 of the Constitution. Such a situation cannot be permitted to last any longer. It is needless to say that the State Government is expected to function as a model employer.”

(emphasis supplied)

15. The Supreme Court in **Secretary, State of Karnataka and others vs. Umadevi (3) and others**⁴ also deprecated the practice on the part of the State and its instrumentalities not taking up regular recruitment and observed that power of a State as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily; as a sovereign Government a regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up; that *regular appointment must be the rule*; and that the Court has a duty to insist on the State to make regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. It observed that only in a contingency can an ad hoc

⁴ (2006) 4 S.C.C. 1

appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment.

16. Therefore, it is clear that the respondents, have deliberately, and *as a matter of policy*, did not make regular appointments since 2000 without any valid reason and thus violated the decision in **Umadevi** (4 supra). They have also violated the decision in **Ratanlal** (3 supra) by appointing the petitioners on contract basis for very long periods by giving them artificial breaks every ten months.

17. It is ironical that the respondents have quoted the decision in **Umadevi** (4 supra) on the aspect of regularization of petitioners' services, which is not the petitioners' plea in the present Writ Petition and their prayer is confined to payment of minimum of pay-scale with increments as is being paid to regular employees holding the same post.

18. In any event, it is stated that the 1st respondent had issued G.O.Rt.No.103, School Education (TRG.A) Department dt.17.07.2019 for payment of minimum of time-scale attached to the regular post to the petitioners, but it is stated that petitioners are not entitled to any increments.

19. This plea is also without any merit.

20. A Division Bench of this Court in **The Greater Visakhapatnam Municipal Corporation, Visakhapatnam, Rep. by**

its **Commissioner vs. K. Appa Rao and others**⁵ has considered the question whether persons appointed on daily wages in Gajuwaka Municipality are entitled to minimum time-scale as well as periodical increments. The Division Bench followed the decision of the Supreme Court in **Dharwad District PWD Literate Daily Wages Employees' Assn. Vs. State of Karnataka**⁶ and the direction issued in the said case by the Supreme Court that casual / daily rated employees appointed on or before 01.07.1984 shall be treated as monthly-rated establishment employees at the fixed pay of Rs.780 per month without any allowances w.e.f. 01.01.1990 and that *they would also be entitled to annual increment of Rs.15 till their services are regularized*. The Court held that principle of 'equal pay for equal work' is attracted and the State is obligated to make to casual employees the same payment as regular employees; that employees of municipalities and municipal corporations were being given benefit of revised pay scales and they cannot be deprived of annual grade increments when they are discharging similar work and functions as any regular employees.

21. The Division Bench in **P. Khadar Basha** (2 supra) also relied upon the definition of the term 'time-scale of pay' in ruling 31(a) of Rule 9 of the A.P. Fundamental Rules to hold that the employees of the municipalities appointed as 'NMR / daily wage workers' would be

⁵ Order dt.07.09.2011 in WP.No.5934, 6622, 8611, 9067 and 9113 of 2008 (D.B.)

⁶ (1990) 2 S.C.C. 396

entitled to minimum time-scale and also periodical increments. It held :

“time-scale of pay” means pay which subject to any condition prescribed in these rules, rises by periodical increments from a minimum to maximum. It indicates the class of pay hitherto known as progressive.”

9. *The above-extracted definition of “time scale of pay” leaves us in no doubt that the scale of pay has to change with the change of times by addition of periodical increments. Otherwise the expression “time scale” would have no meaning at all.*

10. *In the light of the above discussion, we are of the opinion that as the petitioners have been extended the minimum time scale, they are entitled to addition of increments from time to time in the minimum time scale without being entitled to all other allowances which a regular employee is entitled.”*

22. The respondents are only referring to **Jagjit Singh (1 supra)** to say that in the said decision the Supreme Court did not direct payments of annual increments, but the said decision is not the first time decision on the point. There are decisions such as the one in **Dharwad District PWD Literate Daily Wages Employees’ Assn.** (6 supra), which have held that periodical increments are also payable along with minimum of time-scale to casual / NMR / contractual employees. I follow the same as well as the Division bench decisions in **K. Appa Rao and others (5 Supra)** and **P.Khadar Basha (2 supra)** which is binding on me.

23. Therefore, I see no reason to vacate the interim order dt.30.10.2018 passed in I.A.No.1 of 2018 in WP.No.38763 of 2018 and I.A.Nos.1 and 2 of 2019 are dismissed.

24. Accordingly, the order dt.30.10.2018 passed in I.A.No.1 of 2018 in WP.No.38763 of 2018 is made absolute and the said Writ Petition is also allowed and the respondents are granted four (04) weeks time from to-day to pay to the petitioners not only the minimum time-scale but also periodical increments, apart from arrears thereof from their respective dates of appointment. No costs.

25. In view of the above reasoning, the Contempt Case is allowed and the respondents are granted four (04) weeks time from to-day to pay to the petitioners not only the minimum time-scale but also periodical increments, apart from arrears thereof from their respective dates of appointment. In default of such payment, the respondent nos.1,3 and 4 shall suffer simple imprisonment for two (02) months and shall also pay fine of Rs.2,000/- each.

26. As a sequel, miscellaneous petitions pending if any in the Contempt Case and in the Writ Petition case shall stand closed.

M.S.RAMACHANDRA RAO, J

Date: 24.01.2020
Ndr