

(2011) 12 AP CK 0023

Andhra Pradesh High Court

Case No: Writ Petition No : 3203 of 2000

Smt.

APPELLANT

Vs

Padmavathi Vs Board of
Intermediate Education, A.P. and
Sri. Magei Gkuravaiah Junior
College

RESPONDENT

Date of Decision: Dec. 30, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 226

Citation: (2012) 3 ALT 768

Hon'ble Judges: R. Kantha Rao, J

Bench: Single Bench

Advocate: K.S.V. Subba Rao, for the Appellant; T.V.R. Prabhakar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R. Kantha Rao

1. Heard learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent. None appears for the second respondent. This writ petition is filed under Article 226 of the Constitution of India seeking issuance of a writ of Mandamus declaring the action of the first respondent in cancelling the approval of appointment of the petitioner as Junior Lecturer (Commerce) in Sri Magety Guravaiah Junior College, Guntur, as arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India and consequently to direct the respondents to approve her appointment as Junior Lecturer (Commerce) and continue her as such in an aided post.

2. The following are the averments of the writ petition:

The petitioner, who secured first class degrees in B.Com., and M.Com., was initially appointed as Junior Lecturer in Commerce in the second respondent junior college basing on the interview conducted in August 1988. Subsequently, she participated in the selections to the aided Junior Lecturers held on 27.10.1994. Along with the other candidates, she was appointed as Junior Lecturer in the aided post vide orders dated 29.10.1994. The first respondent approved the appointment of the petitioner as Junior Lecturer in Commerce in an aided post on 16.4.1996 with effect from 29.10.1994 and her post was also admitted to grant-in-aid vide orders dated 28.5.1996 with effect from 29.10.1994.

3. Ever since her initial appointment, the petitioner has been working as Junior Lecturer. Subsequently, the first respondent issued a show cause notice on 16.6.1999 alleging that the second respondent did not follow the procedure while selecting the candidates as Junior Lecturers as required in G.O.Ms.No. 12, Education (CE-I-2) Department dated 10.01.1992 and asked the petitioner to submit her explanation as to why her appointment should not be cancelled. The petitioner submitted a detailed explanation within the time stipulated contending inter alia that the selection process was strictly in accordance with G.O.Ms.No. 12 and also as per the rules prescribed therefor and thus having approved the selection to the post of Junior Lecturer, the first respondent is not supposed to cancel her appointment.

4. The first respondent filed its counter and the second respondent did not file any counter.

5. In the counter-affidavit filed on behalf of the first respondent, the first respondent contended as follows:

As per rules and also as required in G.O.Ms.No. 12, Education (CE-I-2) Department dated 10.01.1992 the management has to submit the proposals for approval of the appointments within seven days from the date of selection, but in the instant case the management sent the proposals for approval of the selection of the petitioner after a lapse of three years. The management made the selections without prior approval of the Board of Intermediate Education which is also contrary to the rules. Further, the management instead of addressing the Regional Employment Exchange, Hyderabad, as per G.O.Ms.No. 12 Education (CE-I-2) Department dated 10.01.1992, addressed the University Employment Information and Guidance Bureau, Waltair, for sponsorship of the candidates which is contrary to the said G.O. and the rules.

6. Nextly, it has been contended that the management advertised the posts in two local daily newspapers instead of advertising them in two leading newspapers i.e., one national and the other local which is also contrary to G.O.Ms.No. 12 Education (CE-I-2) Department dated 10.01.1992.

7. Further it has been contended that the management did not obtain signatures of subject experts on minutes of the meeting relating to the selection. It was also

contended that after the first respondent approved the selection of the petitioner, the other junior lecturers who were selected and whose names have been included in the selected list approached the minister for Higher Education and they also have been insisting upon the first respondent to approve their names, as they approved the name of the petitioner. Thus, it is submitted by the first respondent that having found that the selection process is not in accordance with G.O.Ms.No. 12 and also in accordance with the rules framed by the first respondent, the selection of the petitioner was cancelled after issuing a show cause notice to her and therefore the writ petition is liable to be dismissed.

8. Though the first respondent contended that the name of the petitioner is forwarded for approval only three years after the said selection, no material has been placed on record in proof of the said contention. Further, admittedly the first respondent on 02.02.2000 cancelled the selection and appointment of the petitioner after issuing a show cause notice on 16.6.1999. Thus, obviously the first respondent made the cancellation of appointment of the petitioner long after its approval of the selection of the petitioner. Moreover in fact, even though the Regional Employment Exchange, Visakhapatnam, was informed about the proposed selection of the candidates and the date of interview, none approved by the Regional Employment Exchange appeared for the interview.

9. Further as rightly contended by the learned counsel appearing for the petitioner which is a national daily newspaper is not defined in clear terms anywhere. The second respondent got advertised the posts in two leading newspapers and therefore it can be said that there is substantial compliance with G.O.Ms.No. 12 Education (CE-I-2) Department dated 10.01.1992.

10. The crucial issues which arise for determination in this writ petition are that the petitioner was appointed as Junior Lecturer in aided post vide orders dated 29.10.1994 and ever since she has been working as such. The first respondent approved her appointment as Junior Lecturer in the aided post on 16.4.1996. The cancellation of her appointment was by order dated 02.02.2000 which is long after the approval made by the first respondent. The petitioner secured first class in her graduation and Post-Graduation in Commerce and it is not the case of the first respondent that she did not possess any requisite qualification for the post. There were laches on the part of the first respondent in cancelling the appointment four years after approval accorded by it for the selection and appointment made by the second respondent. There is absolutely no basis for the contention of the first respondent that the other candidates in the selection list were also insisting upon the first respondent through the Minister for Higher Education to approve their selection. The approval of the remaining candidates has nothing to do with the approval of the selection of the petitioner which had already been accorded by the first respondent. The petitioner completed six years of service by the date of cancellation order dated 02.02.2000 passed against her by the first respondent.

Now, the petitioner completed 18 years of service. After filing of the writ petition she was allowed to continue in the post and she has been continuing as such by virtue of interim order passed by this court.

11. The contentions that the proposals for approval relating to the petitioner were sent by the second respondent three years after her selection and that the signatures of the subject experts were not found in the minutes of the selection were raised for the first time in the counter and they did not find place either in the show cause notice issued to the petitioner on 16.6.1999 or in the cancellation order passed on 02.02.2000. There is no dispute about the fact that the selection Board was properly constituted and it consisted of nominee of Director of Intermediate Education and nominee of Board of Intermediate Education. Therefore, it is not open for the first respondent to contend either that the signatures of the subject experts were not obtained in the minutes of the selection or that the Board was not properly constituted.

12. In Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, the Supreme Court held as follows:

When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.

In the instant case the grounds urged by the first respondent viz., that the name of the petitioner was sent for approval three years after her selection and that the signatures of the subject experts were not obtained in the minutes of the selection, were raised for the first time in the counter and they are not part of the show cause notice or the cancellation order. The first respondent while earlier according approval to the selection of the petitioner, was aware of the grounds which are now urged and now it cannot turn round and say that the selection was not in accordance with the procedure prescribed as per G.O.Ms.No. 12 dated 10.01.1992 and as per the rules framed by the Board of Intermediate Education. Having accorded approval, the first respondent is not supposed to cancel the approval on technical grounds after a lapse of three years. Further there is substantial compliance with G.O.Ms.No. 12 Education (CE-I-2) Department dated 10.01.1992 and also the rules and therefore the selection of the petitioner by the second respondent and the approval accorded by the first respondent cannot be said to be vitiated for not following the prescribed procedure.

For the reasons aforementioned, the writ petition succeeds and the same is allowed. The action of the first respondent in cancelling the approval of appointment of the petitioner as Junior Lecturer in aided post in the second respondent college vide Proceedings Rc.No. 811/E1-1/97 dated 02.02.2000 is declared illegal being violative

of Articles 14 and 16 of the Constitution of India. The first respondent is directed to approve the appointment of the petitioner as Junior Lecturer in the second respondent college and to continue the petitioner as Junior Lecturer in Commerce in the aided post. No costs.