

(2001) 10 AP CK 0038

Andhra Pradesh High Court

Case No: Writ Appeal No. 229 of 2000

Singavar Apu Seshasri

APPELLANT

Vs

Govt. of A.P. and Others

RESPONDENT

Date of Decision: Oct. 5, 2001**Acts Referred:**

- Constitution of India, 1950 - Article 15, 16

Hon'ble Judges: S.B. Sinha, C.J; N.V. Ramana, J**Bench:** Division Bench**Advocate:** M. Sudhir Kumar, for the Appellant; GP for School Education, for the Respondent**Final Decision:** Allowed

Judgement

S.B. Sinha, C.J.

This appeal arises out of a judgment and order dated 18.11.1999 passed by a learned single Judge of this Court.

2. The appointment of the appellant who is working as a lecturer in biological sciences from 24.1.1989 was approved by the Andhra University with effect from 24.1.1989. By reason of G.O.Ms. No. 254, dated 5.7.1995, six posts of lecturers are admitted to grant-in-aid. The appellant made a representation to the 2nd respondent requesting to admit the post of lecturer in biological science to grant-in-aid and when no order was passed thereon, she filed writ petition marked as writ petition No.19768 of 1997 which she withdrew on an oral assurance given by the respondents that they would consider her case. However, when she was not admitted to the grant-in-aid, she filed the present writ petition.

3. The learned single Judge dismissed the writ petition rejecting the contention of the appellant to the effect that an aided post of a lecturer is meant for a lecturer in biological science as G.O.Ms. No. 254, dated 5.7.1995 does not state that any unaided post to be admitted to aid is required to be filled up with a lecturer in

particular subject and the same is contrary to the said Government order. The learned single Judge dismissed the writ petition also on the grounds that (1) this Court in Writ Petition No. 16499 of 1996, dated 3.2.1999 did not direct to accord sanction of any separate post of grant-in-aid but merely directed to reconsider the decision by way of modification of G.O.Ms. No. 254; and (2) the earlier writ petition having been withdrawn and her case having not been recommended subsequently, the same disentitles the appellant to seek any relief.

By reason of G.O.Ms. No. 254 the D.N.R. College of Education in which the appellant has been working is admitted to grant-in-aid which reads thus:

....

Government further direct that the D.N.R. College of Education, Bhimavaram, W.G. district be admitted to grant-in-aid w.e.f. the date indicated against each post in the statement below:

...

2. Lecturers Six (6) 1.4.1994

4. The 3rd respondent herein is admitted to grant-in-aid post by reason of G.O.Ms. No. 67, dated 8.10.1999 which reads as under:

...

The Government have examined the matter carefully keeping in view of the direction of High Court in this regard and also proposal submitted by Commissioner and Director of School Education as well as the report from the management and accordingly it is hereby ordered that the appointment of Dr P.J. Kutumba Rao considered against the roster point No.2 reserved for Scheduled Caste candidates and he shall be entitled for grant-in-aid post under University Grants Commission scale subject to the condition that the grant-in-aid posts approved for college should not exceed the prescribed limit i.e ., 6 (six) posts.

5. The learned counsel appearing on behalf of the appellant inter alia submitted that the learned single Judge committed an error inasmuch as he proceeded on a wrong factual premise. A bare perusal of the order passed in Writ Petition No. 19768 of 1997 would clearly show that liberty had been granted to the appellant to file another writ petition. The principle of reservation is available only at the stage of appointment and promotion and not at the stage of consideration for grant-in-aid. The learned counsel appearing on behalf of the State on the other hand submitted that only six posts were advertised for the purpose of conferring grant-in-aid provision. As grant-in-aid, so far as the post of lecturer is concerned, is directed having regard to the necessity of the college, the appellant cannot claim any right thereunder. Already a recommendation has been made in favour of the appellant.

6. Having regard to the order proposed to be passed by us it may not be necessary to delve deep into the matter. It appears that the name of the appellant was proposed. The Andhra University was requested to grant approval by the college. Separate proposals had also been sent for admitting the appellant to grant-in-aid to the post of the lecturer in biological science wherein the name of the appellant as also the post he held was specifically mentioned in the order dated 25.3.1996. The Andhra University also approved the candidature of the appellant in terms of its letter dated 17.5.1996. The 2nd respondent had also been requested to approve his appointment as lecturer in biological science for admitting to grant-in-aid.

7. The 2nd respondent, despite a representation made by the appellant had not considered that aspect of the matter at all. As noticed hereinabove, a writ petition was filed by the appellant for issuance of a writ of or in the nature of mandamus directing the concerned respondents to admit her to grant-in-aid as the Andhra University had already approved her appointment in terms of letter dated 14.5.1996 with effect from 25.9.1995. According to the appellant the said writ petition was withdrawn as the respondent had assured her orally that she would get the reliefs. The order of this court in the aforementioned writ petition is as follows:

8. Learned counsel for the petitioner seeks permission to withdraw this petition. Permission granted. The petition is dismissed as withdrawn reserving liberty to the petitioner to file again if required.

9. It, therefore, is evident that liberty had been granted to the appellant to file a writ petition again if required and as such the writ petition could not have been dismissed on that ground.

10. The 3rd respondent herein had filed a writ petition which was marked as Writ Petition No. 16499 of 1996. By an order dated 3.2.1999 the said writ petition was disposed of directing:

For the aforesaid reasons and in view of the policy decision of the Government to provide for reservations in teaching and non-teaching staff in private educational institutions, I consider it appropriate to direct the 1st respondent to reconsider its decision in G.O.Ms.No.254 dated 5.7.1995 and pass an appropriate order admitting the post held by the petitioner also into grant-in-aid w.e.f. the same date as in the case of other lecturers vide G.O.Ms.No.254 dated 5.7.1995. An appropriate decision in this regard shall be taken by the respondents within three months from the date of receipt of a copy of this order.

11. Only pursuant to or in furtherance of the said order, G.O. Ms. No. 254 appears to have been reconsidered without considering the intent and purport of G.O.Ms. No. 67.

12. As regards the applicability of Articles 15 and 16 of the Constitution the learned counsel for the appellant at the stage of admission has raised a question which also

requires serious consideration.

13. It does not appear that the questions had been considered from these angles and thus the matter requires a fresh consideration at the hands of the appropriate Bench. We have noticed earlier that the learned counsel for the State has also very fairly stated that the appellant's case has also been recommended and the same is awaiting a final order.

14. There appears to be a controversy as to whether in recommending the name of the appellant, a mistake had been committed. A further question would arise that even if such a mistake had been committed, whether the appellant would be entitled to an opportunity of being heard or not.

15. The further submission of the learned counsel for the appellant to the effect that grant-in-aid has got nothing to do with implementation of the reservation policy and therefore the necessity of the college must have a primacy also, in our considered opinion, requires consideration.

16. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The writ petition is admitted. The respondents may file counter-affidavit within two weeks. Reply thereto, if any, should be filed within one week thereafter. The parties shall be at liberty to mention the matter before the appropriate Bench for early hearing and early disposal.