

(2014) 06 AP CK 0034

Andhra Pradesh High Court

Case No: Writ Appeal No. 1380 of 2013 and WAMP No. 110 of 2014

The Government of Andhra
Pradesh

APPELLANT

Vs

Arun Prakash

RESPONDENT

Date of Decision: June 5, 2014

Acts Referred:

- Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994 - Section 7

Citation: (2015) 2 ALD 29 : (2014) 6 ALT 279

Hon'ble Judges: L.N. Reddy, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: Shyam S. Agrawal, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

Respondent No. 1 joined as an Attender in respondent No. 2 private educational institution on 06.04.1985. The institution was admitted to grant-in-aid in the year 1994. The Government issued G.O.Ms. No. 212 (FW-PC-III) Department, dated 22.04.1994 providing for regularization of temporary employees in various departments. Claiming the benefit under G.O.Ms. No. 212, dated 22.04.1994, and other relevant orders, respondent No. 1 filed W.P. No. 933 of 2001 with a prayer to direct respondent No. 2 and the appellants herein to absorb him against an aided vacancy. The writ petition was disposed of on 20.08.2001. In compliance with the direction issued therein, appellant No. 1 issued G.O.Rt. No. 374, dated 25.03.2004, regularizing the services of respondent No. 1 against an aided vacancy.

2. Claiming that he is entitled to be regularized from the date on which he completed five years of service, respondent No. 1 filed W.P. No. 9165 of 2006. The

writ petition was disposed of on 14.03.2007, leaving it open to respondent No. 1 to make a representation. He filed W.P. No. 11815 of 2011 complaining that his case was not considered and claimed the relief of regularization of service with effect from the date on which he completed five years of service. The writ petition was allowed through order, dated 04.04.2012, directing that the services of respondent No. 1 shall be regularized with retrospective effect from 22.04.1994 in terms of G.O.Ms. No. 212, dated 22.04.1994. Hence, this writ appeal.

3. Sri K.G. Krishna Murthy, learned Additional Advocate General for the appellants, submits that the order passed by the learned Single Judge is contrary to law and opposed to settled principles. He contends that G.O.Ms. No. 212, dated 22.04.1994, has only provided for certain guidelines and the implementation thereof would depend upon several factors, such as the manner in which a candidate has been appointed, availability of vacancies and the existing claims of other similarly-situated employees. He submits that even if the Court found that there was any lapse in implementation of G.O.Ms. No. 212, the only direction that could have been issued was, to consider the matter afresh, duly pointing out the lapse; and issuance of a specific direction to regularize the services of respondent No. 1, with effect from a particular date, cannot be sustained in law.

4. Sri Shyam S Agrawal, learned counsel for respondent No. 1, on the other hand, submits that the Government issued G.O.Ms. No. 212, dated 22.04.1994, providing for regularization of the services of temporary employees, subject to certain conditions and it is only on finding that respondent No. 1 fulfilled those conditions, that G.O.Rt. No. 373, dated 25.03.2004, was issued. He contends that once it was found that respondent No. 1 was eligible to be regularized, the regularization ought to have been made with effect from the date on which he completed five years of service. Learned counsel contends that the benefit as per law to respondent No. 1 was not extended. He submits that the direction issued by the learned Single Judge accords with G.O.Ms. No. 212, dated 22.04.1994, and other relevant provisions.

5. A perfect mechanism and well-designed process of selection and appointment to various posts in the service of Government and its agencies was kept aside and in the name of pruning the establishment. Recourse was taken to ad hocism and indiscriminate appointments were made bypassing the selection process. Though such arrangements were meant to be for a specific period and till the regular appointments are made, lobbying worked in such a way that the back door entries became the only source of employment into the Government service. One after the other, the Government Orders came to be issued providing for regularization of service of the employees who gained entry without any process of selection or competition. G.O.Ms. No. 212, dated 22.04.1994 is one such attempt.

6. Respondent No. 1 joined a private educational institution as an Attender. The appointment was not the result of any selection procedure. By the time he entered the service, the institution was not admitted to grant-in-aid. Claiming the benefit

under G.O.Ms. No. 212, dated 22.04.1994, he approached this Court and an innocuous direction was issued to consider his case in terms of the said G.O. On finding that respondent No. 1 was entitled to be extended the benefit under G.O.Ms. No. 212, dated 22.04.1994, G.O.Rt. No. 373, dated 25.03.2004, was issued regularizing the services of respondent No. 1. From that date onwards, he came to be absorbed against an aided vacancy.

7. Respondent No. 1, however, was not satisfied with that. He insisted that the regularization of his services must be with effect from the date on which G.O.Ms. No. 212, dated 22.04.1994, was issued. The basis therefor was not at all revealed. The G.O. itself makes it abundantly clear that the regularization shall be subject to availability of vacancy, the claims of seniors, etc. Respondent No. 1 reeled under the impression that he is entitled to be regularized from the date on which he completed five years of service and latest from the date of G.O.Ms. No. 212, dated 22.04.1994, because the facility was not available by the time he completed five years of service. There was not even a pleading in the affidavit or in his representation that there existed vacancies by the time the institution was admitted to grant-in-aid or that, there did not exist any seniors to him, Further, in the order of rejection, dated 09.06.2010, respondent No. 1 made it clear that the Government issued a memo, dated 01.09.1997, stipulating the procedure for implementation of the scheme under G.O.Ms. No. 212, dated 22.04.1994, and that the same has been followed.

8. Naturally, any regularization shall be only prospective in effect unless any provision of law requires it to be otherwise. Added to that, a Division Bench of this Court in W.P. No. 30408 of 2011 took the view that the regularization under G.O.Ms. No. 212, dated 22.04.1994, cannot be with retrospective effect. Section 7 of the A.P. (Regulation of Appointments to Public Services and Regulation of Staff Pattern and Pay Structure) Act, 1994 mandates that regularization can be only against a substantive vacancy.

9. The learned Single Judge proceeded on the assumption that an employee is entitled to be regularized with effect from the date on which he completed five years of service or at least, from the date of G.O.Ms. No. 212, dated 22.04.1994, if the completion of five years is earlier to that date. Neither any statute is referred to nor any other basis is indicated.

10. Apart from the reasons indicated in the preceding paragraphs, we find serious error in the order of the learned Single Judge. Assuming that respondent No. 1 was entitled to be regularized with effect from any date anterior to the one indicated in G.O.Rt. No. 373, dated 25.03.2004, the only course open was to direct the appellants herein to consider the plea of respondent No1, duly pointing out the relevant provisions of law. However, straightaway a direction was issued to the effect that the services of respondent No1 shall be regularized with effect from the date of GO.Ms. No. 212, dated 22.04.1994. Such a direction is clearly outside the scope of

the writ jurisdiction.

11. We, therefore, allow the writ appeal and set aside the order of the learned Single Judge. There shall be no order as to costs.

12. The miscellaneous petition filed in this writ appeal shall also stand disposed of.