

(2014) 11 AP CK 0042

Andhra Pradesh High Court

Case No: Writ Appeal No. 1421 of 2014

State of Andhra Pradesh

APPELLANT

Vs

Boda Suresh Babu

RESPONDENT

Date of Decision: Nov. 11, 2014

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

Bench: Division Bench

Advocate: S. Sreeram Chandra Murthy, P.B. Vijay Kumar and S. Rajan, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.

This writ appeal is filed against the order, dated 09.04.2014 in W.P. No. 23567 of 2001. Incidentally, C.C. No. 48 of 2014, which arose out of the writ petition, was also disposed of through the same order.

2. The 2nd respondent i.e. A.V.N. College, Visakhapatnam is a private educational institution admitted to grant-in-aid. The recruitment to the posts that were admitted to grant-in-aid is taking place from time to time. By the year 1999, there existed some backlog vacancies of the posts of Lecturer in Commerce, which were reserved in favour of S.C. candidates. An advertisement was issued inviting applications for such backlog vacancies. At the relevant point of time, there was sub-classification within the S.Cs. Out of 3 posts, two were reserved in favour of woman candidates and one was left unreserved and made available to S.C. candidates in general. A corrigendum was also issued in that behalf.

3. The 1st respondent is said to have been appointed as Part-time Lecturer in Commerce in the 2nd respondent institution in the year 1998. He approached this Court on earlier occasion, with a prayer that he must be absorbed without the process of selection. However, it did not fructify.

4. The 1st respondent, respondents No. 3 and quite large number of candidates applied in response to the notification. The selection committee, constituted in

accordance with the Rules placed the 3rd respondent at serial No. 2 and the 1st respondent at serial No. 14, in the list of selected candidates against the one vacancy. It appears that no applications were received for the posts that were reserved in favour of woman.

5. The 1st respondent filed W.P. No. 23567 of 2001 at a time when the selection process was yet to take place. His contention was that being a Part-time Lecturer, he must be absorbed. Since the selection process has been completed, during the pendency of the writ petition, he got amended the prayer in the writ petition, bringing in its fold, the challenge to the selection of the 3rd respondent. The selection process however was not stayed and the 3rd respondent was appointed. The appointment was also approved by the competent authority. Certain interim orders were granted in favour of the 1st respondent enabling him to continue as Part-time Lecturer. The writ petition was ultimately allowed, directing that the 1st respondent be absorbed against the other available S.C. backlog vacancy, not treating it as a precedent. Hence, this appeal.

6. Heard learned counsel for the appellants and learned counsel for the respondents.

7. The appointment of Teachers in the private aided degree or junior colleges is governed by the Rules framed by the Government in this behalf. In the context of filling the aided vacancies, two procedures are followed. If in the same institution, an individual was appointed as a Lecturer against an unaided vacancy and the same was approved by the competent authority, he can straight away be absorbed against aided vacancy, as and when it arises. If on the other hand, no such internal candidate is available, the post has to be advertised and the procedure prescribed under G.O.Ms. No. 12 dated 10.01.1992 has to be followed. The G.O. contemplates constitution of selection committee, wherein the representatives of the Government, Management of the institution and subject experts are required to be present. Before a vacancy is notified, the permission of the Government is required to be obtained. In the instant case, the 2nd respondent issued advertisement after obtaining permission of the Government. Though the 1st respondent made an effort to stall the process of selection, it did not fructify and ultimately he too made an application in response to the advertisement. The selection committee constituted in accordance with G.O.Ms. No. 12 placed the 3rd respondent at serial No. 2 and the petitioner at serial No. 14 in the list of selected candidates. Since the candidate at serial No. 1 did not join, the 3rd respondent has been appointed and the appointment was approved.

8. In the writ petition, no finding was recorded to the effect that the selection and appointment of the 3rd respondent is contrary to law. Once the challenge to the selection and appointment of the 3rd respondent has failed, there is no way the 1st respondent could have been granted any relief. Even according to him, he must be accommodated in the vacancy, that arises after the selection of the 3rd respondent

is set aside.

9. Assuming that there exist vacancies, apart from the one against which the 3rd respondent was appointed, the institution is required to follow the prescribed procedure. An advertisement has to be issued and the prescribed procedure has to be followed. The 1st respondent did not even plead that his appointment was in accordance with the procedure prescribed under G.O.Ms. 12. Therefore, the whole basis, on which the learned Single Judge granted the relief, ceases to exist.

10. Hence, we allow the writ appeal and set aside the order of the learned Single Judge.

11. It is brought to our notice that the 2nd respondent-institution has submitted proposals for absorption of the 1st respondent against an existing vacancy. If that is so, the appellants shall consider the same on its own merits and pass appropriate orders, within three months.

12. The miscellaneous petition filed in this writ appeal shall also stand disposed of. There shall be no order as to costs.