

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**W.P. No. 34089 of 2013****Between:****Dr. C. Jayalakshmi and another****... Petitioners****And****The Government of A.P and Another****... Respondents****JUDGMENT PRONOUNCED ON: 05.06.2023****THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

- 1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?**
- 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes**
- 3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes**

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 34089 of 2013

% 05.06.2023

Between:

Dr. C. Jayalakshmi and another

..... Petitioners

And

\$ The Government of A.P and Another

... Respondents

< Gist:

> Head Note:

! Counsel for the Petitioner : Mrs. A. Padma

^ Standing Counsel for Respondent No.2: Mr. Deepak Bhattacharjee

Counsel for Respondent : G.P for Higher Education

? Cases Referred:

1. (2010) 4 SCC 785

HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 34089 of 2013****ORDER:**

Heard the Learned Counsel for the Petitioners, learned Government Pleader for Higher Education and M/s. Deepak Battacharjee, Learned standing counsel appearing for Respondent No.2.

2. This Writ Petition is filed praying to issue a Writ of Mandamus, declaring the action of the 2nd respondent for regularizing the petitioners service instead of initial appointment regularized on 25.02.2006 and rejecting the petitioners representation and issued an impugned order no.MR.682/132/2009/Admn.I-1, dated 31.10.2013 as illegal, improper, arbitrary and consequentially direct the respondent to regularize with effect from the date of initial appointment i.e., from 23.06.1989 of the 1st petitioner and 12.10.1991 of the 2nd petitioner and pay all the consequential benefits.

3. The case of the Petitioner, in brief, is as follows:

a. The Petitioners herein were appointed as Adhoc lecturers for Statistic Department and Mathematics

Department 1989& 1991 respectively in the 2nd respondent university and their appointments were extended from time to time by the 2nd respondent university.

b) Along with the similarly situated Lecturers, the petitioners herein had filed a Writ Petition and sought for regularizing their services and also to direct the 2nd respondent not to appoint any part time lecturers. The same has been allowed as prayed for in terms of the Supreme Court judgment in AIR 1997 (SE) 1628.

c) The Respondent university had filed an appeal against the judgment of the learned single judge and the same were dismissed, directing the respondent university to regularize the services of the petitioner.

d) Respondent university, after receiving the permission from the 1st respondent, and the same being approved by the Executive Council had regularized the services of the petitioner vide proceedings vide No.MR-64/2/2003/Admn.III, dated 25.02.2006 with effect from 25.02.2006 without considering the past services of 17 (Seventeen) years, which

would disqualify the petitioners from getting the benefits of pension as per the old scheme for granting pension.

f) By virtue of the past experience, the 1st petitioner was promoted under a career advancement scheme vide the 2nd respondents proceedings No.MR-812/89/2006/Admn.II-1 dated 25.05.2007 and fixing the pay scale (Senior Scale) as an Assistant Professor and the 1st petitioner was further promoted to Associated Professor through respondent university's proceedings vide No.MR-12/147/2007/Admn.II-1, dated 01.02.2010 and granted 2 (Two) annual grade increments.

g) The 1st Petitioner made a representation to the 2nd respondent on 02.01.2008 to consider the regularization of the services of the 1st petitioner from the date of initial appointment and to implement Career Advancement Scheme from the date of eligibility.

h) The 2nd petitioner too by virtue of past experience, was promoted as Assistant Professor under the Career Advancement Scheme by the 2nd respondent university vide proceeding No.MIR-810/87/2006/Admn.II-1, dated 25.05.2007 and was further promoted to the post of

Associated Professor by 2nd respondent vide proceeding No.MR-213/147/2007/Admn.I-1 dated 29.11.2008.

i) The 2nd respondent, Vide Proceeding No. MR-125/147/2007/Admn.II-1, dated 27.10.2009 also granted 2 (Two) Annual Grade Increments to the 2nd Petitioner **and the 2nd petitioner made a representation to the 2nd respondent on 31.12.2007, to consider the regularization of the services of the 2nd petitioner from the date of initial appointment and also to implement Career Advancement Scheme from the date of eligibility.**

j) But even after the representations of the 1st and the 2nd petitioner, the 2nd respondent has neither rejected nor considered the representations of the petitioners and aggrieved by the same, the petitioners herein filed Writ Petition No. 5339 of 2010 and the court vide its order on 14.08.2013 had directed the respondents to consider the representations of the Petitioner.

k) **After the receipt of the order, the 2nd respondent had issued proceedings No. 682/132/2009/Admn.1-I dated 31.10.2013 to the petitioners stating that the**

regularization of the petitioners services from the date of their initial appointment is not possible. The 2nd respondent without application of mind had simply rejected the representations of the petitioners without passing any independent decision applying its mind independently. Hence, the Writ Petition.

4. PERUSED THE RECORD

I) Orders in W.P. No. 4614 of 2010 dated 26.02.2010 is extracted hereunder:

"ORDER

Petitioners were appointed as Adhoc Lecturers in the respondent University on 12-10-1991. Thereafter, after prolonged litigation, this Court directed to regularize the services of the petitioners. As per the direction of this Court, their services are to be regularized with effect from the date of their initial appointment, but their services were regularized with effect from 25-02-2006. Hence, petitioners approached the authorities and gave a number representations right from 2006. The said representations are dated 21-09-2006; 02-01-2008 and 28-08-2008. However, as no action has been initiated so far, they approached this Court and filed the present Writ Petition.

2. Heard learned counsel appearing for the petitioners and the learned standing counsel for Osmania University appearing for the respondent.

3. When once the said services of the petitioners are directed to be regularized and they claim that the said services should be regularized not with effect from 25-02-2006 but from 12-10-1991 i.e. from the date of their initial appointment, respondent should have considered the said representations and passed appropriate orders.

4. Accordingly, Writ Petition is disposed of with a direction to the respondent to consider the said representations of the petitioners and pass appropriate orders, in accordance with the rules, within a period of six weeks from the date of receipt of a copy of this order. There shall be no order as to costs."

II) Impugned Order vide No.MR 682/132/2009/ Admn.I-1, dated 31.10.2013 issued by the 2nd respondent university to the petitioners, read as under:

"With reference to your representation cited, for regularization of your services from the date of initial appointment in compliance of the directions of the Hon'ble High Court in W.P. No. 5339 of 2010, I am to inform that the university has placed the matter if regularization of the services of the petitioners in W.P.

No. 4614 of 2010 by including your name also before the Executive Council for consideration.

The Executive Council at its 129th meeting held on 02.07.2013 has resolved as under:-

"Resolved that the regularization of the services of the following five Assistant Professors with effect from the date of initial appointment as per the court orders in W.P. No. 4614 of 2010, be not agreed to."

| S. No | Name | Department | Date of Appointment |
|-------|-----------------------------|-------------|---------------------|
| 1 | Dr. C. Jayalakshmi | Statistics | 23.06.1989 |
| 2 | Dr. S. Narender Reddy | Physics | 09.01.1991 |
| 3 | Dr. M. Chenna Krishna Reddy | Mathematics | 12.10.1991 |
| 4 | Dr. N. Kishan | Mathematics | 12.10.1991 |
| 5 | Dr. (Mrs.) G. Kamala | Mathematics | 18.10.1991 |

III) Para 6 and 7 of the counter Affidavit filed on behalf of Respondent no. 2, read as under:

"Later, their request for their regularization of the services with effect from the date of initial appointment as per Court Orders dated 26.02.2010 in WP No. 4614 of 2010 was placed before the Executive Council for consideration. As the matter for consideration of the above and the present Writ Petitioners is same, their names were also included. The Executive Council at its meetings held on 19.03.2013 and 02.07.2013 has considered the matter and resolved as under:-

"RESOLVED that the regularization of the services of the five Assistant Professors with effect from the date of initial appointment as per the Court Orders dated 26.02.2010 in WP No. 4614 of 2010, be not agreed to".

"Further, Resolved that the University may go for appeal on the judgment be approved".

The Hon'ble High Court has disposed of the WP No. 5339/2010 by orders dated 14.08.2013 as: -

"To consider representations of the petitioners' dated 02.01.2008 and 31.12.2007 respectively and dispose of the same within six weeks from the date of receipt of copy of the order".

As the matter was already discussed by the Executive Council and a decision in case of the Writ Petitioners was taken, before the Hon'ble High Court disposing of their WP, the University have thought it fit to communicate the decision of the Executive Council, without referring it to the Executive Council again. Hence, they were communicated the Executive Council decision vide letter No. MR-682/132/2009/Adm. 1- 1, dated 31.10.2013."

DISCUSSION AND CONCLUSION

5. A bare perusal of the order impugned dated 31.10.2013 passed by the 2nd respondent clearly indicates that no reasons are assigned in rejecting the

petitioner's request for consideration of petitioner's representation dated 02.01.2008 on merits as per the directions of the Court dated 14.08.2013 passed in W.P.No.5339 of 2010. The relevant portion of the order reads as under:

"Accordingly, this writ petition is ordered directing the respondent to consider the representations of the petitioners dated 02.01.2008 and 31.12.2007 respectively and dispose of the same within six weeks from the date of receipt of a copy of this order. No costs."

6. The representation of the petitioners dated 02.01.2008 and 31.12.2007 respectively pertains to consideration of the case of the petitioners working as Assistant Professor for regularization with effect from the date of their respective appointments i.e. on 23.06.1989 and 12.10.1991 respectively.

7. A bare perusal of the order impugned extracted above of the 2nd respondent herein dated 31.10.2013 vide order No. MR.682/132/2009/Admn.I-1, clearly indicates that the representation of the petitioners dated 02.01.2008 had been considered at the 129th

meeting held on 02.07.2013 and it was resolved to reject the request of the petitioners for regularization of service with effect from the date of initial appointment. Admittedly it is borne on the face of record that the orders of this Court dated 14.08.2013 passed in W.P.No.5339 of 2010 had not been implemented in its true spirit and the exercise of consideration of petitioners representations dated 02.01.2008 and 31.12.200 respectively and to dispose of the same within a period of six weeks from the date of receipt of copy of the order have not been carried out at all in view of the fact that the order impugned dated 31.08.2013 refers to a resolution dated 02.07.2013 of the Executive Council at its 129th Meeting and the same is much prior to the date of the orders of the High Court dated 14.08.2014.passed in W.P.No.5339 of 2010 and moreover the order impugned of the 2nd respondent does not assign any reason except referring to the resolution that the regularization of the service of the petitioners with

effect from the date of initial appointment as per the Court orders in W.P.No.4614 of 2010 be not agreed to.

8. A bare perusal of the relevant portion of the counter affidavit extracted above clearly indicates that the 2nd respondent opined that as the matter was already discussed by the Executive Council and decision in the case of the petitioners was taken before the High Court disposed of the writ petition, University have thought it fit to communicate the decision of the Executive Council, without referring it to the Executive Council again. Hence, they were communicated the Executive Council decision vide letter No. MR-682/132/2009/Adm. 1- 1, dated 31.10.2013. This Court opines that the 2nd respondent failed to understand and comply with the orders of this Court dated 14.08.2013 passed in W.P.No.5339 of 2010 and passed the impugned orders mechanically without application of mind and without assigning any reasons unilaterally and totally contrary to the spirit of the earlier orders of this Court.

9. In Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota v. Shukla and Brothers, reported in (2010) 4 SCC 785, the Hon'ble Supreme Court has held as under :

"....while exercising the power of judicial review on administrative action and more particularly the judgment of Courts in appeal before the higher Court, providing of reasons can never be dispensed with. The Doctrine of Audi Alteram Partem has three basic essentials. Firstly a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the authority concerned to provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order.

A litigant who approaches the Court with any grievance in accordance with law is entitled to know the reasons for grant or his rejection of his prayer. Reasons are the soul of orders. Non recording of reasons could lead to dual infirmities, firstly, it may cause prejudice to affected party and secondly, more particularly hamper the proper administration of justice. These principles are not only applicable

to administrative or executive actions, but they apply with equal force and in fact, with a greater degree of precision to judicial pronouncements”.

10. Taking into consideration the view taken by the Apex Court in **Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota v. Shukla and Brothers**, reported in (2010) 4 SCC 785 referred to and extracted above, the writ petition is allowed setting aside the impugned order No. MR.682/132/2009/Admn.I-1, dated 31.10.2013 passed by the 2nd respondent university and the matter is remitted back to the 2nd respondent for passing fresh orders in accordance to law re-considering the petitioner's representation dated 02.01.2008 afresh duly taking into consideration the spirit of the orders of this Court dated 14.08.2013 passed in W.P.No.5339 of 2010, (referred to and extracted above), as expeditiously as possible preferably within a period of six weeks from the date of receipt of copy of the order, duly communicating the decision to the petitioner. It is needless to observe that before passing any orders, the

petitioners shall be put on notice and afforded reasonable opportunity of hearing, duly following the principles of natural justice. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 05.06.2023

Note: L.R. copy to be marked

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