

A. Durga Vs. Commissioner of Collegiate Education, Andhra Pradesh, Hyderabad and Others

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Court : Andhra Pradesh

Decided On : Sep-21-1999

Reported in : 1999(6)ALD109; 1999(6)ALT449

Judge : Goda Raghuram, J.

Acts : [Constitution of India](#) - Article 226; Andhra Pradesh Education Act, 1982 - Sections 89(1); Service Commission Act

Appeal No. : WP Nos. 16949 of 1994 and 16767 of 1996

Appellant : A. Durga

Respondent : Commissioner of Collegiate Education, Andhra Pradesh, Hyderabad and Others

Advocate for Def. : Government Pleader for Higher Education, ;Mr. V. Ravinder Rao and ;Mr. M. Surender Rao, Advs.

Advocate for Pet/Ap. : Mr. S. Venkateswara Rao, Adv.

Judgement :

ORDER

1. Inter-connected mutually dependent facts and common application of law arise in these two writ petitions, which are, therefore, heard and decided by this common judgment.

The Facts :

(a) On 4-3-1982 Saptagiri Degree College, a unit of Saptagiri Educational Society, Vijayawada, affiliated to Nagrjuna University, advertised and invited applications for the posts of Lecturers, inter alia in Economics.

(b) In the consequent selections held on 8-6-1982 so far as the subject of Economics is concerned Kum. C.S. Padmavathi was selected for appointment to the post and the petitioner (in both these writ petitions) has been selected to be appointed for only that year against a SC vacancy. By proceedings dated 20-7-1982 of the college, orders have been issued appointing the petitioner as Lecturer in Economics temporarily for one year and pursuant thereto the petitioner submitted a joining report and joined duly on 2-8-1982.

(c) While so, as second advertisement was issued on 2-7-1983 calling for applications, inter alia, for one O.C. post of Lecturer in Economics in the college. The petitioner applied pursuant to this advertisement. Selections were held on 7-1-1984 and minutes of the Selection Committee recorded that for the post of Lecturer in Economics one Mr. B. Meghanath Rao (R-5 in WP. 16767 of 1996) is appointed as O.C. candidate, as advertised and the petitioner is appointed till the end of the academic year against a BC-C vacancy, since a BC-C candidate has not applied. The said proceedings also recorded that the 'Promotional Selection Committee' being the same selection committee, it has found Mr. A. Venkateswarlu (R4 in WP No. 16767 of 1996), who is a Junior Lecturer in Economics, suitable for promotion as Lecturer in Economics in the Degree College and accordingly that he is selected and placed next to the 5th respondent. Pursuant to the said selection proceedings, proceedings dated 7-1-1984 have been issued by the management Stating that the petitioner who has been working since 2-8-1982 is appointed as Lecturer in Economic w.e.f. 7-1-1984 temporarily till the end of the academic year. Quoting the above proceedings of the management, the petitioner submitted a joining report dated 8-1-1984 reporting to

duty on 8-1-1984. By another proceedings dated 17-6-1984, the management permitted the petitioner to continue as Lecturer in Economics temporarily until further selection is made.

(d) By a letter dated 11-3-1985 the petitioner addressed the Principal and Correspondent of the College. In this letter, the petitioner admitted her temporary selection to continue in service for 2 years only, that this fact is clearly recorded in the Selection Committee meeting dated 8-6-1982, that she is working as a Lecturer in Economics temporarily from 8-6-1982, that since there was no regular Lecturer in the Economics Department the management called for fresh selection and that in such selection held on 7-1-1984 two candidates were selected as Lecturers in Economics and her name was placed in the 3rd post under BC-C temporarily for one academic year. By this letter the petitioner, citing the vacancy position in the college and her continuous service temporarily for 3 years requested conversion of the BC-C post in the Economics Department to a general vacancy and to absorb her in such vacancy on a permanent basis.

(e) In response to a letter dated 6-2-1985 of the Principal and Correspondent of the College, the Director of Higher Education (D.H.E.) by the proceedings dated 22-2-1985, directed that 4th respondent be treated as the first member in the Department of Economics. Presumably this proceedings was issued in the context of G.O. Ms. No.677 Education Department, dated 18-7-1979 and a Government memo dated 22-9-1980 whereby the Government has directed that out of every four vacancies of Lecturers arising in each Department of a private Degree College the first, second and third vacancies shall be filled up by promotion of Junior Lecturers working under the same management and the fourth vacancy by direct recruitment. Consequent on the above proceedings of the D.H.E., the management of the college issued orders dated 8-3-1985 declaring the seniority of Lecturers in the Department of Economics in the college whereby the 4th respondent and 5th respondent were declared as the first and second members of the Department and the petitioner, who is temporarily appointed in the Department, as a third member. This declaration of seniority' is stated to have been issued by the management pursuant to the above proceedings of the D.H.E.

(f) By the letter dated 24-2-1988 the Correspondent of the College addressed the Registrar of Nagarjuna University, seeking ratification of posts. In the said letter it is stated that in the first batch of recruitments dated 8-6-1982, ten persons were appointed in various subjects of which 5 left the service, that the petitioner and another were appointed temporarily against S.C. vacancies for one academic year, that Kum C.S. Padmavathi appointed in the OC vacancy in the Economics Department, did not join and that excluding the above 8 candidates the selection of 2 candidates one in Commerce and the other in History are to be ratified.

2. It is further stated that in the 2nd batch of selections dated 7-1-1984, 8 candidates were appointed, of which one left the college, one did not join, one was selected against Physically Handicaped vacancy for one academic year, the petitioner selected for one academic year against BC-C vacancy and thus the names of the 4 candidates (including the petitioner) need not be regularised. Consequently it is stated that selections of four persons had to be regularised. The letter, in conclusion, requested regularisation of the selection of six candidates excluding the petitioner but including respondents 4 and 5.

(g) In response to the above request of the management, Nagarjuna University addressed a letter dated 21-10-1989 to the college stating that the University at the Executive Council meeting dated 5-10-1989 approved the appointments of seven teaching staff specified therein w.e.f. the dates noted against each. In the said letter the petitioner figures at Sl. No.3 with the date of appointment/joining shown as 8-6-1982 while the respondents 4 and 5 are shown at Sl. Nos.4 and 5 with the date 7-1-1984 for both. Respondent No.5 appears to have made a representation dated 26-10-1989 and in response thereto the University addressed a letter dated 21-2-1990 to the college that in partial modification of its earlier orders dated 21-10-1989, the Executive Council has ordered that the appointment of the petitioner as Lecturer in Economics in the college made by the governing body in its meeting held on 10-7-1982 and 22-8-1984 be approved.

(h) The General Secretary and Correspondent of the College by proceedings dated 31-7-1991 purported to fix the seniority of the staff of the college wherein the petitioner is shown at Sl. No.3 and respondents 4 and 5 at Sl. Nos.6 and 7

respectively. By another proceedings dated 31-8-1991 the General Secretary and Correspondent of the college in a cryptic and non-speaking order rejected the representations submitted by respondents 4 and 5 and reiterated the seniority position reflected in the proceedings dated 31-7-1991.

(i) By his representation dated 11-9-1991 addressed to the Secretary and Correspondent of the College, the 4th respondent complained against the proceedings dated 31-7-1991, the rejection of the representation dated 31-8-1991 and after referring to the nature and quality of the petitioner's appointment, the proceedings of the Selection Committee dated 8-6-1982, the D.H.E. order dated 22-2-1985, and thef consequent orders of the management placing himself and the 5th respondent above the petitioner, requested that the petitioner cannot be treated as senior to them and that the irregularity and anamoly should be rectified.

(j) On 29-1-1992 at an emergency meeting of the Executive Committee of the college a resolution was passed stating that the proceedings of the Secretary -and Correspondent dated 31-7-1991 fixing the seniority of the staff was neither represented nor discussed or decided in the meeting, that the Executive Committee in its sitting on the day i.e., 29-1-1992 has resolved to maintain status quo of the seniority fixed by the D.H.E. in his earlier proceedings dated 22-2-1985 and the consequent Executive Council resolution dated 8-3-1985. In view of this proceedings, the earlier proceedings of the Secretary and Correspondent dated 31-7-1991 and 31-8-1991 are impliedly overborne.

(k) The petitioner appears to have instituted an appeal before the Regional Joint Director (RJD) of Higher Education and competent authority, Rajahmundry, against the fixation of her seniority in the Economics Department. By his proceedings dated 27-9-1994 the RJD allowed the petitioner's appeal and declared her as the first memberin the Department of Economics in the college and directed the management to revise the seniority of Lecturers as set out in the said proceedings. By the said order the seniority list prepared in the proceedings of the General Secretary and Correspondent dated 31-7-1991 was declared as valid. Asset out in he said proceedings the petitioner was placed at Sl. No.1 with the date 2-8-1982 and the respondents 4 and 5 are placed at Sl NOs.2 and 3 with

the date 7-1-1984. Aggrieved thereby the respondents 4 and 5 preferred a revision to the State Government.

(I) In G.O. Rt. No.787, Education Department, dated 12-7-1996 the State Government allowed the revisions and set aside the orders of the RJD dated 27-9-1994. These orders were issued on the basis of the following analysis, by the Principal Secretary to the Government:

(i) That initially pursuant to the orders dated 20-7-1982 the petitioner was appointed temporarily as a Lecturer in Economics for one year which was continued further temporarily pursuant to the proceedings of the Special Officer of the college dated 1-8-1983. The other candidate Kum. C.S. Padmavathi, did not report for duty and the selection made for all the posts were ratified in the proceedings of the first meeting of the governing body of the college on 16-7-1982 including the appointment of Mr. R. V. Hamimanth Reddy as Special Officer of the college.

(ii) That while so the Selection Committee met again on 7-1-1984 and made selections including for Economics and in the said selection the 5th respondent is appointed in the OC vacancy and the petitioner till the end of the academic year against BC-C vacancy, in view of the absence of any application by a reserved candidate; that by the same proceedings the Selection Committee found the R4 fit for promotion and appointed him as a Lecturer and placed him next to R5. This selection was ratified by the governing body of the college on 22-8-1984. Pursuant to the said selection the petitioner was appointed temporarily and by further orders promoted to continue temporarily.

(iii) that pursuant to the proceedings of the D.H.E. dated 22-2-1985 the R4 was declared as the first member of the Department, R5 as the 2nd and the petitioner, a temporary appointee, as the 3rd, in the management's proceedings dated 8-3-1985, that the Executive Committee of the college also appointed R4 as the in-charge Principal of the college. This action was ratified by the governing body in a proceedings dated 3-8-1985.

3. G.O. Rt. No,787 after setting out the above facts, chronicled the various events already set out earlier in the judgment including the proceedings dated 31-7-1991 and 29-9-1992. The petitioner's representation dated 18-3-1994 to the RJD and the contents therein were also extracted. The GO found that the RJD proceedings do not disclose that the said authority has taken into consideration the appeal petitions of the respondents 4 and 5.

4. Analysing the facis the Government held that the appeals of the respondents 4 and 5 against the management's orders dated 31-7-1991 were maintainable but have not been considered by the RJD, which has dealt only with the representation of the petitioner dated 18-3-1994. The RJD's clarification dated 1-2-1995 to the effect that his orders dated 27-9-1994 were in respect of the appeals of the petitioner and the respondents 4 and 5 have been considered and, however, rejected by the Government on the ground that the order of RJD did not deal with the contentions contained in the appeals of respondents 4 and 5 and consequently the RJD's order was held as invalid and improper.

5. Analysing the factual scenario and considering the orders of the Executive Committee dated 21-9-1992 invalidating the Correspondent's proceedings dated 31-7-1991 and holding that no appeal had been preferred against the Executive Committee's orders dated 21-9-1992 by the petitioner under Section 89(1) of the A.P. Education Act, 1982 (for short 'the Act'), the Government held that the RJD's orders are not valid. The petitioner's appointment in 1982 and 1984 and the nature and the tenure was considered as also the 4th respondent's appointment by promotion entitling him to the 1st ranking in the Department and on a rational analysis the orders held that the petitioner cannot claim seniority over 4th respondent despite her continuance as Lecturer temporarily since 1982. It was also noted that the Commissioner of Collegiate Education by proceedings dated 6-8-1990 while sanctioning the grant-in-aid to all the teaching and non-teaching posts of the college has shown the name of the petitioner below respondents 4 and 5.

6. On an analysis of the various facts including the contentions of the petitioner, the Government set aside the orders of the RJD dated 27-9-1994 both on the

ground of a legal infirmity in not considering the appeals of the respondents 4 and 5 and the Executive Committee's order dated 21-9-1992 as well as on the facts on record and on an analysis of the respective claims of the petitioner and respondents 4 and 5. It is these proceedings that are assailed in WP No.16767 of 1996.

7. Sri V.S.R. Anjaneyulu, learned Counsel for the petitioner after relating the sequence of events which have already been adverted to urged that in view of the continuous service of the petitioner since 1982 she should be treated as senior to respondents 4 and 5. On the date of hearing of the writ petition i.e., 9-9-1999, Sri Anjaneyulu filed what is stated to be a compilation of all the pleadings in both the writ petitions. At page 36 of the compilation is a proceeding dated 19-6-1990 purportedly issued by the General Secretary and Correspondent of the college. This proceeding states that an examination of the available records disclose that teaching staff members have been appointed on various dates and are continuing on temporary basis and some of them despite having been appointed for one year are being continued with or without written orders, some of them have been shown as selected later for a specified period, but are, however, continued, that the status of such persons is not specified. On a realistic view, the said proceedings state the status of all the Lecturers is to be decided to avoid confusion. Consequently by this proceeding they were regularised, placed inter se on the basis of their respective dates of joining, and probation declared in alleged conformity with general Rule 31. In this proceeding the petitioner is shown at SI No.3 and respondents 4 and 5 at SI.Nos.6 and 7. This proceeding bearing no signature is annexed at pages 36 and 38 of the compilation filed into the Court on 9-9-1999. On a careful scrutiny this Court has been unable to locate this proceeding dated 19-6-1990 in any of the material papers filed into the Court by any of the parties. This proceeding is also not referred to in any representations made either to the management, to the RJD or the State Government by the petitioner or by the respondents 4 and 5. There is no mention of this proceeding in the writ petition either. In the circumstances, this Court is not inclined to give any credence whatsoever to the alleged proceeding of the management dated 19-6-1990 despite the strong urging on behalf of the petitioner. Be that as it may, the petitioner having been temporarily appointed w.e.f. 2-8-1992 pursuant to the

proceedings dated 20-7-1982 chose to apply again for the recruitment pursuant to the advertisement dated 2-7-1983. Pursuant to the 2nd selection dated 7-1-1984 and pursuant to the second proceedings of appointment dated 7-1-1984 the petitioner again reported to duty by her joining report dated 8-1-1984. Her application for the 2nd selection discloses that she was a M.A. Economics, pursuing her Ph.D. course. Such circumstances do not warrant any inference that she was ignorant of the legal consequences of applying afresh for such selection. What is more, by her letter dated 11-3-1985 addressed to the Principal and Correspondent the petitioner clearly admitted the temporary nature of her appointment, knowledge of the contents of the Selection Committee minutes dated 8-6-1982, knowledge about the status of her appointment in the selection dated 7-1-1984 and the fact that she was placed below respondents 4 and 5 and categorised as a temporary appointee for one academic year. On these factual admissions the petitioner also requested conversion of the reserved vacancy in the Economics Department to a OC vacancy and her absorption on a permanent basis. All these facts demonstrate the petitioner's irrevocable acquiescence and resignation to the fact of her fresh appointment w.e.f. 8-1-1984 pursuant to the selection dated 7-1-1984 and her relinquishment of any rights consequent on her earlier temporary appointment and tenure w.e.f. 2-8-1982. This record estops the petitioner from claiming any seniority qua her initial temporary appointment w.e.f. 2-8-1982 pursuant to the selection dated 8-6-1982 notwithstanding her continuous service since then.

8. Another factor is equally relevant. Prior to 7-1-1984 the petitioner had no service relation with respondents 4 and 5. As on and w.e.f. 7-1-1984, the date of second selection process, the petitioner and respondents 4 and 5-R4 Junior Lecturer in the same management and R5 a fresh candidate, together appeared for selection held on 7-1-1984 pursuant to the advertisement dated 2-7-1983. In such selection respondents 4 and 5 were placed above the petitioner and what is more while they were appointed regularly the petitioner was appointed only for one academic year in a vacancy allocable to a BC-C candidate. Having by her own volition and fully conscious of the consequences, the petitioner applied for being considered for the second selection along with respondents 4 and 5 and having in such selection been ranked junior to the other respondents, the petitioner cannot in law resile

from the consequences of the selection and reprobate the position of her juniority to the said respondents and endeavour to steal a march over them by retracing her origins to her earlier temporary appointment w.e.f. 2-8-1982 pursuant to the advertisement dated 4-3-1982. It would be inequitable conduct on the part of the petitioner to do so.

9. On the above analysis the orders of the Government dated 12-7-1996 in G.O. Rt. No.787 cannot be held to be vitiated either by any error in the application of law or by any perverse exercise of discretion. The entire gamut of relevant facts and legal consequences operative thereon have been considered by the Government within the plenitude of revisional power available under Section 90 of the Act.

10. In the result there are no merits in the Writ Petition 16767 of 1996, which accordingly fails and is dismissed. No costs.

WP No. 16949 of 1994:

The Commissioner of Collegiate Education issued proceedings Roc No.4091/ PCI-4/94-2, dated 7-9-1994. This proceedings stated that the petitioner, a Lecturer in Economics in Saptagiri Degree College, Vijayawada, is identified as a surplus Lecturer and it is proposed to shift her to SLNS College, Bhongir, Nalgonda District, and that if the management of the present college or the college to which she is proposed to be shifted or the petitioner have any objections/suggestions in this regard, they are requested to intimate the same to the Commissioner of Collegiate Education, in the meeting for that purpose scheduled to be held on 14-9-1994 and if there are no objections to the proposal they need not attend the meeting. This proceedings has been assailed in this writ petition.

11. In respect of the challenge, the petitioner stated her service particulars and other facts which have already been adverted to and consequently claimed invalidation of the proceedings dated 7-9-1994 in particular on the ground that since being senior to respondents 4 and 5 as per the seniority list dated 31-7-1991 it was not open to the Commissioner of Collegiate Education to declare her as the juniormost and identify her as a surplus lecturer. The petitioner also pleaded that

her husband is working as Lecturer in Commerce in the same college and in the circumstances shifting her to Nalgonda will disrupt the family life. The petitioner further urged that the Commissioner of Collegiate Education has no jurisdiction at all to transfer lecturers working in private aided colleges and that neither the Education Act nor the grant-in-aid Code vest any power on the Commissioner to transfer lecturers from one private aided Degree College to another. Curiously the petitioner also pleaded that the impugned proceedings (which demonstrably offer an opportunity inter alia to the petitioner to make any objections/ suggestions) are vitiated being contrary to principles of natural justice and without any notice or opportunity to her.

12. The proceedings impugned called for objections and suggestions from the respective managements and the petitioner and cannot, therefore, be assailed as violating the audi alterem partem principle. The contention regarding the petitioner's personal problems and the likely consequence of disruption of family life, is a grievance that is common to many an employee and cannot be a ground to legitimately seek continuance in Saptagiri Degree College at Vijayawada. Having regard, however, to the fact that the impugned proceedings have been stayed by this Court and the petitioner is continuing in service and a period of nearly 5 years has passed since the issuance of the impugned proceedings, the official respondents may consider if it is administratively feasible to accommodate her in the same college or in any other nearby college, subject to administrative exigencies.

13. Regarding the substantive contention urged by the petitioner viz., her grievance relating to her being treated as the junior most lecturer, this aspect of the matter has already been analysed and determined against the petitioner in WP No.16767 of 1996 herein and neither on principle or authority nor on account of the Government Orders in G.O. Rt. No.787, dated 12-7-1996 is the petitioner entitled to claim being the first member of the Economics Department in Saptagiri Degree College, Vijayawada. This contention is thus without substance.

14. Now coming to the other contention that the Commissioner of Collegiate Education has no jurisdiction to transfer lecturers from one private aided college to

another and accordingly the order dated 7-9-1994 identifying the petitioner as surplus lecturer and proposing her adjustment in SLNS College, Bhongir, Nalgonda District, the position would be as under:

(A) As per the decision of the State Government in G.O. Rt. No.787, dated 12-7-1996, which has been upheld herein, the petitioner is the junior most lecturer in the Economics Department of Saptagiri Degree College, Vijayawada, junior to respondents 4 and 5.

(B) If the college is unable to accommodate a third lecturer in Economics for any of the relevant administrative considerations, the petitioner could rightly be treated as a surplus lecturer.

(C) By orders dated 7-9-1994 of the Commissioner of Collegiate Education, the petitioner has been so treated and proposed for adjustment by way of transfer to SLNS College, Bhongir. The treatment of the petitioner as the surplus lecturer is a valid consequence of her juniority vis-a-vis respondents 4 and 5. So far as her transfer is concerned, prima facie, this Court is unable to locate any power in the Commissioner of Collegiate Education to effect transfer of a lecturer of a private aided college from one such institution to another. Each private aided college is a distinct unit with no integrity of management as between two such institutions. No legal foundation is shown to posit any jurisdiction in the Commissioner of Collegiate Education to effect any such transfer. The Supreme Court in *Om Prakash Rana v. Swamp Singh Tomar*, : [1986]3SCR1, in an analogous situation declared as under:

'As is clear by now, the fundamental basis of the contention that the power of transfer under the Education Act and its Regulations continues in force even after the enactment of the Service Commission Act rests on the assumption that the power of appointment does not include the power of transfer. In our opinion, the assumption is unsustainable.

The scheme under the Education Act envisages the appointment of a Principal in relation to a specific College. The appointment is in relation to that College and to no other. Moreover, different Colleges may be owned by different bodies or

organisations, so that each Principal serves a different employer. Therefore, on filling the office of a Principal to a College a new contract of employment with a particular employer comes into existence. There is no State-level service to which Principals are appointed. Had that been so, it would have been possible to say that when a Principal is transferred from one College to another no fresh appointment is involved. But when a Principal is appointed in respect of a particular College and is thereafter transferred as a Principal of another College it can hardly be doubted that a new appointment comes into existence. Although the process of transfer may be governed by considerations and move through a machinery different from the considerations governing the appointment of a person ab initio as Principal, the nature of the transaction is the same, namely, that of appointment and that is so whether the appointment be through direct recruitment, through promotion from the teaching staff of the same institution or by transfer from another institution.'

The above observations appear equally applicable to the legal environment obtaining under the A.P. Education Act, 1982, in respect of private aided colleges. In the absence, however, of any full fledged debate on this aspect of the matter this Court declines to pronounce on this question.

(D) The order dated 7-9-1994, impugned in WP No. 16949 of 1994, merely solicits objections and suggestions from the respective management and the petitioner with regard to the proposal to adjust the petitioner in SENS College, Bhongir, Nalgonda District. There could be no fundamental infirmity with such a process, warranting interference under Article 226 of the Constitution. The consideration pursuant to this impugned order, which has been suspended by the interim orders of this Court in WPMP No.21015 of 1994, dated 25-9-1994, may now be proceeded with, if the circumstances still so warrant. On a consideration of any objections and suggestions that may be submitted, the Commissioner of Collegiate Education may make such determination as is proper. The petitioner would be at liberty to assail the jurisdictional aspect if any such determination goes against her. However, it needs to be noticed that if the petitioner cannot be transferred by the Commissioner of Collegiate Education, then and in the said eventuality, the management would be at liberty to disengage the petitioner from

service on the ground of want of vacancy, in accordance with law.

15. In the circumstances and on theaforementioned analysis, the impugned proceedings suffer from no infirmity. The writ petition is thus dismissed with the above observation.

16. In the result, both the writ petitions WP Nos.16949 of 1994 and 16767 of 1996 are dismissed. No costs.

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