

Mohammed and anr. Vs. Correspondent, Asafia High School and ors.

Mohammed and anr. Vs. Correspondent, Asafia High School and ors.

SooperKanoon Citation : sooperkanoon.com/443452

Court : Andhra Pradesh

Decided On : Jul-15-2002

Reported in : 2002(5)ALD609

Judge : Ghulam Mohammed, J.

Acts : Andhra Pradesh Education Act, 1982 - Sections 83

Appeal No. : WP No. 14634 of 1995

Appellant : Mohammed and anr.

Respondent : Correspondent, Asafia High School and ors.

Advocate for Def. : Mirza Imamulla Baig, Adv. for Respondent No. 1 and
;Government Pleader for School Education for Respondent Nos. 2 to 5

Advocate for Pet/Ap. : K. Harinath, Adv.

Disposition : Writ petition allowed

Judgement :

ORDER

Ghulam Mohammed, J.

1. Heard learned Counsel for both sides.

2. It is averred that the 1st petitioner has been working as a Sweeper in 1st respondent- Asafia High School, Malakpet, Hyderabad from 9-6-1980 without any break in service. Likewise, the 2nd petitioner has been continuously working as Gardener-cum-Watchman with effect from 16-3-1981. Their posts were admitted to grant-in-aid and salaries are being paid to them from the matching grant received by the 1st respondent-management from the Government.

3. It is averred that the petitioners originally belonged to full time contingent staff of the High School. The State Government issued G.O. Ms. No.9, Finance and Planning (F.W. PRC-IV), Department, dated 8.1.1981 stating that all full time contingent posts which have been created under the orders of a competent authority and which have been in existence for a period of 5 years or more as on 1st April, 1981 and which are required to be continued on a permanent basis be converted into regular Government posts in the last grade service.

4. The State Government issued G.O. Ms. No.237, dated 4-4-1985 extending theaforesaid facility to the contingent staff in private schools subject to the following conditions that-

(i) The posts have been created under the orders of competent authority;

(ii) They are full-time; (iii) They are in receipt of aid and that;

(ivj) They have been in existence for a period of not less than ten years as on 1.4.1985.

It is averred that as per G.O.Ms.No.259 dated 18-6-1993 the contingent staff are eligible for conversion to class-IV employees if they have completed ten years of service as on 1-6-1991. It is stated that the 1st petitioner had completed ten years of service by 9-6-1990 and the 2nd petitioner had completed ten years of service by 16-3-1991. The posts held by them have been in existence for more than ten years by 1-6-1991, as such, they are entitled to the benefit of G.O.Ms.No.259 dated 18-6-1993.

5. It is further submitted that in the light of G.O. Ms. No.259 dated 18-6-1993, the High School submitted proposals dated 30-10-1993 to the District Educational

Officer, Hyderabad for conversion of the contingent staff of the High School to the Class-IV employees, i.e., petitioners herein, in pursuance of G.O. Ms. No.259 dated 18-6-1993. The Deputy Educational Officer, Yakutpura Zone, Hyderabad-2, recommended the proposal to the District Educational Officer, vide his letter dated 22.12.1993. However, the District Educational Officer, Hyderabad issued proceedings in Rc.No.442/ D7/Est./94 dated 26-7-1994, wrongly, rejecting the proposals stating that the incumbents, proposed for conversion to class-IV employees, do not fulfil the conditions as laid down in G.O. Ms, No.237 dated 4-4-1985.

6. The petitioners state that rejection of the said proposal of the High School is contrary to G.O.Ms.No.259 dated 18-6-1993 and in view of issuance of G.O. Ms. No.259 dated 18-6-1993, G.O.Ms.No.237 dated 4-4-1985 shall be deemed to have been superseded or modified to that extent, therefore, the District Educational Officer is not right in rejecting the proposal of the management of the High School. Thereafter, the management of the School addressed a letter dated 8-8-1994 to the Regional Joint Director bringing to his notice the wrongful rejection of the proposal by the District Educational Officer and pointed out that in view of G.O.Ms.No.259 dated 18-6-1993, the petitioners are eligible for conversion of Class-IV employees as they have completed ten years of service and requested him to pass orders for conversion to class-IV employees with effect from 9-6-1990 and 16-3-1991 respectively. It appears, no action has been taken by the concerned authority. Thereafter, the correspondent of the 1st respondent school issued the impugned proceedings dated 22-6-1995 terminating the services of the petitioners on the ground of lack of funds.

7. The petitioners aver that the conditions laid down under Section 83 of the Andhra Pradesh Education Act, 1982, (for short 'the Act'), are attracted and their services cannot be terminated since the Section 83 of the Act mandates the management to obtain prior permission from the competent authority before effecting retrenchment consequent on any change relating to the education or course of instructions or to any other matters.

8. Counter-affidavit has been filed by the District Educational Officer, Hyderabad, 2nd respondent herein, on behalf of respondents 3 and 4. It is, inter alia, stated in the counter-affidavit that the petitioners are contingent employees appointed by the 1st respondent-management on purely temporary basis depending on the work. It is also stated that the impugned orders are not contrary to Section 83 of the Act since it was passed after giving one month notice to the petitioners. Moreover, the petitioners are appointed on purely temporary basis, and they cannot claim any right.

9. It is also stated that the petitioners posts are contingent posts and are not created under orders of the Government or competent authority in terms of G.O. Ms. No. 9 dated 8-1-1981 and hence they cannot be treated on par with last grade service on conversion. The second respondent vide his orders dated 26-7-1994 informed to the first respondent-management that as per the G.O. Ms. No.237 dated 4-4-1984 four conditions have to be fulfilled for conversion to class IV and that conditions are not fulfilled.

10. It is further stated in the counter-affidavit that the management has appointed the petitioners as contingent employees on their own on purely temporary basis and terminated the petitioners due to lack of contingent budget vide orders dated 22.6.1995 and they are continuing in the service as per the interim orders dated 12-7-1995.

11. The 1st respondent- management has also filed a detailed counter-affidavit. It is stated that it is not correct to say that the petitioners' posts were admitted to grant-in-aid. These posts are contingent posts depending upon the work which is required to be met by the management. The petitioners were paid consolidated amount from the maintenance grant received by the management from the Government. But this grant has been considerably reduced by the Government since 1993-94. Due to this reason and paucity of funds available with the management, the petitioners could not be continued in their posts and as such their services were terminated duly following the principles of natural justice giving due notice.

12. It is also stated that the petitioners posts are contingent posts and were not created under the orders of the competent authority in terms of G.O. Ms. No.9 dated 8-1-1981 and hence they cannot be treated on par with last grade service. However, the management has recommended the cases of the petitioners to convert their posts into class IV posts, to the second respondent on 30-10-1993 but the proposals were rejected by him on 26-7-1994 though recommended and forwarded by the Deputy Educational Officer, Yakatpura zone, Hyderabad. It is further stated that Section 89 of the Act provides appeal to the higher authority against the orders of the 2nd respondent, and the petitioners having not availed the alternative remedy, are estopped from approaching this Court, On receipt of the rejection orders from the 2nd respondent, the management made a representation to the 4th respondent against the orders of the District Educational Officer, Hyderabad through letter dated 8-9-1994. The respondent also rejected the same.

13. The management has also stated that since the posts held by the petitioners are contingent posts and they were not converted into class IV posts and that the proposals of the management were rejected by the 2nd respondent, the management having no financial resource to meet the expenses in connection with the pay of the petitioners had no other alternative except to terminate their services with due notice.

14. Learned Counsel for the petitioners contended that the termination so effected on the ground of lack of funds is in violation of Section 83 of the Act and are impermissible under law and since the salaries are being paid from out of the matching grants received from the Government, it is not proper on the part of the management to terminate their services on the ground of lack of funds. Section 83 of the Act reads as follows:

'53. Retrenchment of employees :--Where retrenchment of any employee is rendered necessary by the management or competent authority consequent on any change relating to education or course of instruction or to any other matter, such retrenchment may be effected with the prior approval of the competent authority or the next higher authority, as the case may be.'

Learned Counsel further stated that 1st respondent school is a high school, the competent authority, being the Regional Joint Director of School Education, has not taken any steps on the proposals forwarded by the management. In support of his contention the learned Counsel has drawn my attention to the judgment of this Court rendered in *E. Uddanda Ramaiah v. The V.R.S. and Y.R.N. College and another*, 1995 (2) ALD 364, and judgment of Division Bench of this Court reported in *Dr. Mohd, Ishaq v. Osmania University*, 1990 (1) ALT 35 (DB)}. Learned Counsel also relied on an unreported judgment of this Court in W.P.No.3027 of 1996 dated 5-8-1999.

15. Learned Government Pleader, however, contended that Section 83 of the Act is not applicable. He further contended that in the instant case G.O.Ms.No.237 dated 4-4-1985 is applicable and that the District Educational Officer, Hyderabad has rightly rejected the proposal for conversion into class-IV employees, therefore the writ petition merits no consideration.

16. I have considered the rival contentions made by the learned Counsel for the petitioners and the learned Government Pleader for the School Education.

17. In *E. Uddana Ramaiah's* case (supra), this Court while considering the scope of Section 83 of the Act has held as follows :

'Section 83 aims at affording a minimal guarantee of security of tenure to the employee of educational institutions 'by eschewing the passing of mala fide orders in the garb of retrenchment'. It confers limited jurisdiction on the competent authority to examine whether, in cases where retrenchment is stated to have become necessary it has in fact become so. The statutory authority under Section 83 is entitled to refuse approval if it considers that the action proposed is against the principles of natural justice or contrary to the rules and regulations adopted by the management itself. In the circumstances, Section 83 cannot be held to be bad on the ground it confers unguided and arbitrary powers.

.....It is too late in the day for the management to swear by the policy of hire and fire on the basis that those appointed in unaided posts in the college do not have any right to continue in service and that the management of the college could

remove such employees at its whim. It is to meet this situation that Section 83 of the Act provides safeguard to the employees of Educational Institutions. That provision required that where retrenchment of any employee is rendered necessary by the management, such retrenchment may be effect with the prior approval of the competent authority. This provision has received judicial interpretation in several decisions and its ambit, scope and operation are no longer in doubt.'

It was also held by the learned single Judge as follows:

'The rule that before invoking extraordinary jurisdiction of the High Court under Article 226 alternative remedy should be exhausted is a rule of convenience and discretion and not a rule of law and that this rule has no application if the impugned act is without jurisdiction. Whether the writ petition was admitted on merits and the matter is taken up after several years for final hearing it is not just and proper exercise of discretion to non-suit the petitioner on the ground of not availing the alternative remedy.'

In *Dr. Mohd. Ishaq v. Osmania University*, 1990 (1) ALT 35 (DB), a Division Bench of this Court, after analysing various rulings, has held as follows :

' ... even when the appointment is made ad hoc, the action of the authorities prejudicially affecting the interests of the appointees, in exercise of their power, after a lapse of considerable time, cannot but be held to be arbitrary.'

18. In *Vasavi College of Engineering v. A. Suryanarayana*, : 1991(3)ALT335 (DB), another Division Bench of this Court has held that Section 83 'is in the nature of a residuary provision which comprehends termination of service of any employee consequent on any change relating to education or course of instruction or any other matter' and that 'in case of any termination of service other than those covered by Section 79 of the Act, prior approval of such competent authority or the next higher authority is made a condition precedent for any other termination of service under Section 83 of the Act'. The Division Bench has held also that Section 83 applies equally to regular as also temporary, non-regular employees and that it is obligatory to obtain prior approval of the competent authority as a condition

precedent for any action which the employer may take against the teaching or non-teaching employees of institutions covered by the Act other than those actions covered by Section 79. The Bench has observed that in interpreting the expression 'retrenchment', in Section 83 of the Act, the meaning given to the expression as defined in Section 2(o) of the Industrial Disputes Act cannot be of any assistance. In that case the Division Bench has also dealt with the question as to whether relief under Article 226 can be claimed by an affected employee against a private educational institution and held that the obligation cast on the private educational institutions under the Act and rules are enforceable, and that a teacher who complains of arbitrary termination of service in violation of the protective provisions of the Act and the rules, is entitled to seek appropriate remedy in this Court.

19. The school submitted proposals dated 30-10-1993 to the District Educational Officer, Hyderabad for conversion of the contingent staff of the High School to the Class-IV employees, i.e., petitioners herein, in pursuance of G.O.Ms.No.259 dated 18-6-1993. The Deputy Educational Officer, Yakutpura Zone, Hyderabad-2, recommended the proposal to the District Educational Officer, vide his letter dated 22-12-1993. However, the District Educational Officer, Hyderabad issued proceedings in Rc.No.442/ D7/Est./94 dated 26-7-1994, rejecting the proposals stating that the incumbents, proposed for conversion to class-IV employees, do not fulfil the conditions as laid down in G.O. Ms. No.237 dated 4-4-1985, which does not refer to G.O. Ms. No.259 dated 18-6-1993. In the instant case, the petitioners were appointed in the year 1990 and they have completed ten years of service. As per G.O. Ms. No.259 dated 18-6-1993 they are entitled for conversion to class IV employees, and that the Dy. Educational Officer, Hyderabad vide his letter dated 22-12-1993 has also recommended for conversion to class IV employees. The orders passed by the District Educational Officer, Hyderabad rejecting the case of the petitioners, while referring to G.O. Ms. No.237 is not correct, inasmuch later another G.O.Ms.No.259 dated 18-6-1993 was issued and that in respect of high school the Regional Joint Director of School Education is the competent authority i.e., 4th respondent herein. There is no reference in the counter-affidavit with regard to these aspects. Since the rejection order passed by the authorities is contrary to law, therefore, the contention of the learned Government Pleader

merits no consideration.

20. If the proposals are pending with the Regional Joint Director of School Education, 4th respondent herein, the Regional Joint Director of School Education is directed to pass appropriate orders within two weeks from the date of receipt of a copy of this order with regard to conversion of employees into last grade service as per G.O. Ms. No.259 dated 18-6-1993 and as per the proceedings issued by the Deputy Educational Officer, Hyderabad and communicate the same to the management within a period of four weeks thereafter.

21. Accordingly, the order passed by the District Educational Officer. Hyderabad, 2nd respondent herein, is liable to be set aside. Since the termination is effected contrary to Section 83 of the Act and that the petitioners are entitled for salary as per the pay fixed by the management, the management shall pay the same in case if the Regional Joint Director had not already passed the orders. Thus, the impugned orders passed by the 2nd respondent and also the 1st respondent-management are set aside.

22. Accordingly, the writ petition is allowed. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com