

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 121 OF 2007

BESANT TEOSPHICAL COLLEGE

Appellant (s)

VERSUS

N. ANANTHAIAH & ORS.

Respondent(s)

(With prayer for interim relief and office report)

WITH Civil Appeal NO. 123 of 2007

(With prayer for interim relief and office report)

Date: 04/04/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s) Mr. A. Subba Rao,Adv.

App. in CA123/07 &

rr in C.A.121/2007

Mr. Annam D.N. Rao, Adv.

For Respondent(s) Mr. P.s. Narasimha, Adv.

Mr. G. Giresh Kumar, Adv.

Mr. Kh. Nobin Singh,Adv.

Upon hearing counsel the Court made the following

O R D E R

The appeals are dismissed in terms of the signed judgment. No costs.

(Meenu Sethi)

(Pushap Lata Bhardwaj)

Court Master

Court Master

Signed reportable judgment is placed on the file

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 121/2007

Besant Theosophical College

...Appellant

Versus

N. Ananthaiah & Ors.

...Respondent

With

C.A.No. 123/2007

JUDGMENT

S.B.SINHA, J.

These appeals are directed against an order

dated 22.8.2006 passed by a Division Bench of the Andhra

Pradesh High Court in Writ Appeal No. 1043/2003 whereby

and whereunder the judgment and order of the learned

Single Judge of the said Court dated 23.7.2003 passed in

Writ Petition No. 44 of 1999 allowing the Writ Petition filed by

the first respondent herein was allowed.

Indisputably, the post of Lecturer fell vacant in the appellant-institution. Qualification for holding the said post, therefore, is prescribed by the State of Andhra Pradesh as the institution is a private aided one. On or about 16.11.84 G.O. Ms. No. 491 was issued by the Government of Andhra Pradesh prescribing qualification for the post of Librarian which is in the following terms:

(i) Good academic record with at least a high second class Master's Degree in a subject other than Library Science.

(ii) Master's Degree in Library Science with first or high second class.

However, the University Grants Commission issued a notification dated 20.2.1990 prescribing minimum qualification for recruitment to the post of Librarian, Deputy Librarians, Assistant Librarian, whereafter G.O. Ms. No. 12 was issued by the Government of Andhra Pradesh on 10.1.1992 which is in the following terms:

" Lectures in Library Science in Degree Colleges

Candidates who have passed P.G. Degree in any subject with 55 % marks and also P.G. Degree in Library Science with First or Second Class with 55 % marks and above.

OR

As prescribed by the Government, from time to time, shall be eligible to apply for the post of Lecturer in Library Science in Degree Colleges."

The Government of Andhra Pradesh thereafter issued

G.O. Ms.No. 208 dated 29.6.1999 following the guidelines

issued in that behalf by the University Grants Commission as

would appear from the following stipulations made therein:

" After considering the recommendations of U.G.C. and after taking into consideration the recommendation of the Five Member Committee, the Government have decided that the service conditions of Teachers like recruitment and qualifications, selection procedure career advancement, teaching days, work load, code of professional ethics, accountability etc. shall be as indicated in the Appendix to this order. The same shall be implemented by all Universities and D.C.E. with in a time frame of three months from the date of issue of this order by amending necessary Statutes, Ordinances, Rules and Regulations."

In the Appendix to the G.O.Ms. No.208,

qualifications prescribed for the post of Librarian(University)

were as under:

"(1) Librarian(University)

i) Master's Degree in Library science/ information science/ documentation with at least 55% of the marks or its equivalent grade of B in the UGC seven point scale and consistently good academic record.

ii) At least thirteen years as a Deputy Librarian in a

University Library or eighteen years experience record;

iii) Evidence of innovative library service and organisation of published work."

It is not in dispute that the first respondent herein is

holder of a Post-Graduate Degree in Political Science. He also

possesses Post-Graduate Degree in Library Science with 55

% marks. As his case has not been considered by the

appellant-institution relying on or on the basis of the

qualifications prescribed in terms of G.O. Ms.

aforementioned, he filed a writ petition. The said writ petition

was allowed in part holding as under:

" On the other hand, it is submitted that as per G.O.

Ms.No. 127 dated 7.6.1993, the post of Librarian shall be

filled by promotion from the post of Assistant Librarians,

provided they possess the qualifications prescribed by the

U.G.C. Admittedly the petitioner though possesses a Master's

Degree, has not passed with high second class and he has

passed the Master's Degree in Library Science with high

Second Class. Though the petitioner is not qualification and

not entitled for promotion to the post of Librarian, the fact

remains that the said solitary post is reserved to BC 'B'

category and it is illegal and contrary to the rule of

reservation. It cannot be said that the petitioner cannot

question the said notification which was issued to fill up the

post of Lecturer/ Librarian, reserving the same in favour of

special class. The said notification reserving the said post is

illegal and therefore, the Notification issued by the 1st

respondent is set aside. If the post is not reserved, many

more would have applied in addition to the 3rd respondent.

It is stated that the 3rd Respondent is qualified as per G.O. Ms.No. 691 dated 16.11.1984 and she belongs to BC 'B' category. Though she is qualified reserving the said post in favour of a single class is not contemplated in the rules and the Notification is quashed only on the ground that the reservation was made in favour of BC 'B' category in contravention of the rule of reservation."

An intra Court appeal preferred thereagainst has been allowed by a Division bench by reason of the impugned judgment.

Mr.Subba Rao, learned counsel appearing on behalf of the appellant would submit that having regard to the qualification prescribed by the Government of Andhra Pradesh in terms of the Circular letter dated 31.8.2000, the High Court must be held to have committed a manifest error in passing the impugned judgment.

The said letter reads thus:

" The Correspondent, Ideal College of Arts & Science, Kakinada has sought clarification with regard to the Selection procedure to be followed in view of the issue of G.O. Ms. No. 208 Education (UE.II-1) Department, dated 29.6.1999.

In this connection all the correspondents of aided colleges in the State are informed to follow the existing procedure of Selection Committee in terms of G.O. Ms. No.

12-Edn, dated 10.1.1992 until further orders."

It is not in dispute that G.O.Ms.No. 12 dated 10.1.1992 has been substituted by G.O. Ms.No. 208 dated 29.6.1999. Qualifications were prescribed for recruitment to the post of Librarian in latter G.O. The said G.O. shall, in our opinion, operates in the field.

By reason of the aforementioned Circular letter dated 31.8.2000, the Commissioner and Director of Collegiate Education merely laid down that the existing procedure in regard to the constitution or otherwise of the Selection Committee as stated in the G.O.Ms. No. 12 dated 10.1.1992 should be followed until further orders. By reason of the Circular letter neither the effect of G.O.Ms. No. 208 was taken away nor the said G.O. Ms. can be said to have been again replaced by G.O. Ms.No. 12 of 10.1.1992. At the cost of repetition, it may be stated that only the procedure laid down in the former was directed to be followed.

For the reasons aforementioned, we do not find any error in the judgment passed by the Division Bench of the High Court. These appeals are dismissed. No costs.

.....J.

[S.B. SINHA]

.....

...J.

[MARKANDEY

KATJU]

New Delhi,

April 4, 2007