

SUPREME COURT OF INDIA

R. Sulochana Devi

Vs

D.M. Sujatha

Appeal (Civil) 6478-6479 of 2004 , (Arising Out of Slp (C) Nos. 2008-2009 of 2004)

(K. G. Balakrishnan and DR. AR. Lakshmanan)

04/10/2004

JUDGMENT

DR. AR. LAKSHMANAN, J.

Leave granted.

These two appeals are directed against the common judgment passed by the High Court of Andhra Pradesh in Writ Appeal Nos. 2078-2079 of 2003 dated 23.12.2003. Writ Appeal 2078 of 2003 was filed by Smt. D.M. Sujatha, first respondent herein, against the order in Writ Petition No.4279 of 2003 dated 20.11.2003. Writ Appeal No. 2079 of 2003 was filed by the first respondent herein against the order in Writ Petition No.6362 of 2003 dated 20.11.2003. Both the appeals were heard together by the Division Bench of the High Court which ultimately allowed both the writ appeals filed by the first respondent herein and dismissed another Writ Petition No.4279 of 2003 as infructuous.

For proper appreciation of the controversy involved in the matter, it is necessary to state the few facts in brief:

The appellant-Smt. R. Sulochana Devi joined the Andhra Christian College as Demonstrator in the Department of Chemistry on 1.8.1968. She was promoted as Lecturer in an aided post on 1.8.1969 and her promotion was confirmed from the date of appointment, i.e., with effect from 1.8.1969. She was given the benefit of Career Advancement Scheme of 16 years and 21 years. She was also appointed as Vice Principal and Associate Principal and also admitted to grant in aid. The respondent- College appointed respondent No.1, Smt. D.M. Sujatha, as Lecturer in English w.e.f. 30.8.1969 and the Board of Education of the respondent-College approved the promotion of the appellant as Lecturer as also the appointment of respondent No.1 as Lecturer from the respective dates of their appointment. On 1.5.1972, Smt. D.M. Sujatha, respondent No.1, was reverted to the post of Junior Lecturer and worked in the same post for about four years up to 31.8.1974. She was again re-designated as a Lecturer in English only on 1.7.1976. By proceedings dated 11.12.1975, the Director of Higher Education directed the Director that respondent No.1 be treated as Lecturer w.e.f. 30.8.1969 by extending general protection.

The Director of Higher Education by the proceedings dated 11.12.1975 issued directions for the purpose of giving general protection to Lecturers/Junior Lecturers working in various institutions to be treated as Lecturers for the purpose of service and seniority from their respective dates of appointment as Lecturer/Junior Lecturer, if they are appointed in the grant-in-aid post prior to 1.5.1971. In the seniority, the appellant was placed at S.No.20 and respondent No.1 was placed at S.No.23. The appellant was promoted as Vice-Principal of the College by proceedings of the Manager of the Management.

One, Mr. P. Andrew was appointed as a Lecturer on 28.6.1969. The Management wanted to favour Mr. Andrew by appointing him as a Principal by superseding the appellant herein and in order to achieve this object, the Management of the College had approached the then Regional Joint Director (for short "the RJD") with a query to decide the inter se seniority between Mr. P. Andrew and the appellant- Smt. Sulochana Devi. According to the appellant, all this was behind the back of her.

The RJD, without following the principles of natural justice had given an opinion by saying that Mr. P. Andrew is senior to the appellant and that the amount to be paid to the appellant as salary in excess should be recovered. The opinion was also given on the basis that in the audit report, the appellant's promotion was not recorded and was not approved by the Department of Higher Education as per the audit report and she was only admitted as Junior Lecturer/Demonstrator in the Audit Report for the years 1973-1976 and that she was allowed only one increment treating her as Demonstrator.

According to the appellant, it was a pre-determined order passed by the RJD.

The Management of the College had resolved to promote Mr. P. Andrew as Principal pursuant to the opinion rendered by the RJD for Collegiate Education when he is senior to the appellant and Mr. P. Andrew was promoted as Principal by a Resolution of the Management Committee dated 1.2.2001. Aggrieved by the decision taken by the Management for promoting Mr. P. Andrew as Principal by ignoring the seniority of the appellant, the appellant filed a writ petition challenging the orders passed by the respondent-College Management by way of Writ Petition 1031 of 2001. The appellant also gave a representation to the Commissioner of Collegiate Education that the RJD had given a

wrong opinion behind her back to the Management and the Management was persuaded to appoint Mr. P. Andrew who is junior to the appellant as Principal.

The appellant urged the Commissioner of Collegiate Education to get the same rectified by her representation dated 1.6.2001. On 30.1.2001, the appellant assailed the Resolution of the Management to promote Mr. P. Andrew as Principal by way of filing a suit before the Junior Civil Judge, Guntur. The appellant also made another representation to the Commissioner of Collegiate Education about the discrimination meted to her and also the error committed in the audit report from 1973-1976. In view of some changed circumstances, the appellant withdrew the suit filed by her as not pressed on 23.11.2001. The appellant also withdrew Writ Petition No. 1031 of 2001 with an intention to approach the competent authority under the Andhra Pradesh Education Act, 1982 (hereinafter referred to as "the Act"). As no decision was forthcoming from the Commissioner of Collegiate Education, the appellant made another representation to the said authority and also the RJD of the Collegiate Education. On the same date, a similar representation was made to the Director of Collegiate Education. The appellant also filed the Service Registers and audit report before the concerned authorities to show that ever since her appointment, she was treated as a Lecturer for all purposes.

The RJD of Collegiate Education considered the case of the appellant and gave a clarification that the appellant must be deemed as a Lecturer with effect from 1.8.1969 under the general protection in view of the proceedings bearing RC No. 4209/K II.3/5 dated 11.12.1975. Copy of the order passed by the RJD of Collegiate Education dated 15.4.2002 is annexed as Annexure P-8. The last paragraph of the order reads thus:

"In view of the circumstances stated in the reference (4) read above and in modification of the orders issued in the reference first read above, Smt. R. Sulochana Devi, Lecturer in Chemistry, A.C. College, Guntur is treated as Lecturer w.e.f. 01.08.1969, i.e., from the date of promotion under general protection in view of the proceedings RC No.4209/KII.3/5, dated 11.12.1975 of the Director of Higher Education, Andhra Pradesh, Hyderabad." *

Respondent No.1, Smt. D.M. Sujatha, made a representation to the RJD stating that she had been ignored despite the fact that she was senior to the appellant and, therefore, she ought to have been promoted as Principal. Copy of the representation given by respondent No.1 is annexed as Annexure P-9. The RJD, by the proceedings dated 3.2.2003, passed an order saying that the appellant cannot be made the Principal because she had relinquished her right to become Principal since she did not act upon the order passed by the RJD dated 15.4.2002 by virtue of which she was Lecturer w.e.f. 1.8.1969 and, therefore, she has no right to claim seniority for the post of Principal at this juncture after the retirement of Mr. P. Andrew. Aggrieved by the order passed by the RJD, the appellant filed Writ Petition No. 4279 of 2003. The High Court granted interim suspension of the order dated 3.2.2003 issued by the RJD of Collegiate Education in an interlocutory application. The appellant, in the meantime, made a representation to the Government by stating all the facts and bringing it to the notice of the Government with regard to the mischief played by the Management and the RJD collectively in order to do a favour to Mr. P. Andrew. The Government issued an order in favour of the appellant herein by G.O.RT. No. 308 dated 22.4.2003. The relevant portion of the G.O.RT.No.308 reads thus:

"The matter has been examined in the light of the orders of the A.P. High Court, 2nd read above, keeping in view the appeal petition filed by Smt. R. Sulochana Devi, Lecturer 3rd above, and it is observed that Smt. R. Sulochana Devi was treated as Lecturer in A.C. College with effect from 1.8.1969. though she has not challenged the promotion of her junior, Sri P. Andrew as Principal, the fact remains that she was not offered the post of Principal of A.C. College and, therefore, the question of her relinquishment to the post of Principal does not arise and that she is senior to Smt. D.M. Sujatha, Lecturer." *

After a lapse of more than one year, respondent No.1 had also filed Writ Petition No. 6362 of 2002 assailing the orders passed by the RJD dated 15.4.2002 bearing proceedings LDS No. 758/B2/2002 wherein the appellant was treated as a Lecturer w.e.f. 1.8.1969, i.e., from the date of her promotion as Lecturer from that of Demonstrator under the general protection as per proceedings dated 11.12.1975 of the Director of Higher Education modifying the order passed on 15.3.2000. The first respondent also filed another Writ Petition No.7723 of 2003 assailing the order passed by the Government in G.O.Ms. No.308 dated 22.4.2003 wherein the appellant was declared as senior to the first respondent.

All the three writ petitions were heard together by the learned single Judge of the High Court. By a common judgment dated 20.11.2003, the learned single Judge allowed the writ petition bearing No. 4279 of 2003 filed by the appellant herein and dismissed the writ petitions filed by the first respondent herein. In the concluding part of the judgment, the learned single Judge observed as follows:

"I am constrained to observe that the management of the College is behind this litigation since the opinion rendered by the 3rd respondent on 15.2.2000 was at its instance and the same was reversed on 15.4.2002 pursuant to the representation of the appellant and that is the reason why the 5th respondent filed the Writ Petition after more than an year against the said order dated 15.4.2002 of the 3rd respondent passed in favour of the petitioner. Furthermore, the 5th respondent has not challenged the promotion of the petitioner as Vice- Principal on 13.01.2002 and subsequently as Associate Principal on 10.1.2003." *

Aggrieved by the above judgment, the first respondent herein filed writ appeals.

However, the first respondent has not challenged the order passed in Writ Petition No. 7723 of 2002 in which she had sought a mandamus to declare G.O.Ms. No. 308 dated 22.4.2003 as illegal. By a common judgment and order dated 23.12.2003, the Division Bench of the High Court allowed the said writ appeals. Being aggrieved by the said order, the appellant has preferred the above appeals by way of special leave petitions.

We heard Mr. T.L.V. Iyer, learned senior counsel appearing for the appellant and Mr. P.P. Rao, learned senior counsel, Ms. D. Bharathi Reddy and Mr. John Mathew, learned counsel for the respondents.

We have been taken through the entire pleadings, annexures filed along with the special leave petition and the additional documents filed by the parties with the permission of the Court.

Mr. T.L.V. Iyer, learned senior counsel, appearing for the appellant made the following submissions:

According to Mr. T.L.V. Iyer, the opinion rendered by the RJD dated 15.2.2000 is not under any of the provisions of the Act and that the Division Bench is wrong in construing that such an opinion is an order passed under the provisions of the Act. It was further submitted that the Division Bench is not right in interfering with the discretionary power that is vested with the Management to choose a Head of the Institution/Principal and, therefore, such interference is impermissible in law. This apart, the opinion dated 15.2.2000 rendered by the competent authority was given behind the back of the appellant herein without there being any notice.

He further contended that the Division Bench is not right in giving so much sanctity for the opinion dated 15.2.2000 when it is vitiated for non-adherence of the principles of natural justice and that such an order is a nullity in the eye of law and a void one being non est in law. It was further contended that the Division Bench is not correct in considering only the audit reports to hold that the appellant is a Lecturer only w.e.f. 1.4.1976 when there is ample evidence produced by the appellant to show that she is a Lecturer w.e.f. 1.8.1969. It was also contended that the first respondent herein had not chosen to challenge the order passed in Writ Petition No. 7723 of 2003 and that the Division Bench is not right in not taking this aspect of the matter into consideration to understand the conduct of the first respondent. He would further submit that the proposition propounded by the Division Bench that a quasi-judicial authority cannot review its own order unless the power to review is expressly conferred on it by the Statute can not be applied to the facts of the present case. It was further contended that the Division Bench has failed to take into consideration that the opinion of the RJD dated 15.2.2000 is non est in law since no notice had been given to the parties before passing such an order and, therefore, the subsequent order that was passed by the RJD dated 15.4.2002, after considering all the relevant documents, was the first order and cannot be termed as review at all. It was further contended that the Division Bench could not appreciate the fact that the Government of Andhra Pradesh had categorically stated in its counter that the appellant is a Lecturer with effect from the date of her promotion, i.e., from 1.8.1969 and, therefore, she is senior to the first respondent herein. This apart, the first respondent has not raised any grievance or dispute at any stage at all except in the year 2003 regarding her seniority above the appellant herein. Even when the order was passed by the RJD dated 15.4.2002, the first respondent did not raise even a little finger within time. It was then submitted that the appellant, at no point of time, has expressly or even impliedly relinquished her right to the post of Principal as per the seniority and she made several representations and also filed a suit and the writ petition complaining about the discrimination meted to her. However, the same were withdrawn since the appellant thought it would be appropriate to go through proper channel, that is, to approach the competent authority under the Act. It was also a matter of record that the appellant made several representations as can be seen from the record itself. Representations dated 1.6.2001, 22.10.2001, 10.12.2002, 10.1.2003, 5.2.2003, 10.2.2003 etc. were all in respect of the injustice that has been caused to her. Mr. T.L.V. Iyer further submitted that the Division Bench should have seen the Resolutions of the Management, minutes of the Management, proceedings of the competent authorities, the service registers, the seniority registers, the pay scale details etc. Each go to show that the appellant was never

contemplated to be deemed to be a Demonstrator and not a Lecturer and that the minutes of the Management, in unambiguous terms, show that the appellant was appointed as Demonstrator on 1.8.1969 continued as Demonstrator up to 31.7.1969 and, thereafter from 1.8.1969, she was promoted to the post of Lecturer that too in aided post. In fact, there is any amount of evidence produced by the appellant to show that she is Lecturer from 1.8.1969 whereas the Division Bench is wrong in considering only audit reports to hold that she is a Lecturer only w.e.f. 1.4.1976 which is a very hyper technical view taken by the Division Bench. Concluding his submissions, learned senior counsel submitted that the Division Bench has failed to see that the RJD gave the opinion dated 15.12.2000 without any authority under the provisions of the Act and in such an event, the opinion dated 15.12.2000 is not a valid order in the eye of law apart from being vitiated for non-adherence to the principles of natural justice. Therefore, such an opinion dated 15.12.2000 cannot be construed to be a valid order under the provisions of the Act and, therefore, such an opinion cannot even be challenged by way of an appeal before the Government for all practical purposes.

Mr. P.P. Rao, learned counsel appearing for the contesting respondent, submitted that:

1. The appellant's promotion as Lecturer in chemistry w.e.f. 01.08.1969 was not approved by the departmental authorities and it was not in consonance with the rules and her pay as Lecturer was disallowed for the years 1972-73, 1973-74, 1974-75 and 1975-76 and hence the appellant cannot reckon her seniority from 01.08.1969.
2. The appellant though questioned the proceedings dated 15.02.2000 in writ petition No. 1031 of 2001 and withdrew the same and also filed the suit claiming seniority and withdrew the same on 13.03.2000 without seeking liberty to agitate the same. The appellant having not filed any appeal against the proceedings dated 15.02.2000, the same had become final and the respondent authority has no power under the provisions of the A.P. Education Act to review the said proceeding;
3. It was further argued that the appellant was designated as a Lecturer w.e.f. 01.04.1976 consequent on the merger of the posts in terms of instructions contained in G.O.Ms. No.1072 dated 26.11.1976 and G.O.Ms. No. 748 dated 30.08.1982. It was further contended that the appellant is not entitled to the general protection contained in the proceedings of the Director of Higher Education dated 11.12.1975. having regard to the fact that the appellant is not a teacher and is not an Assistant Lecturer entitled to the benefit of the proceedings of the Director of Higher Education dated 11.12.1975.
4. He would further submit that by the proceedings dated 15.04.2002, the appellant is given seniority over the first respondent herein and in that view of the matter the first-respondent herein is entitled to notice assuming without admitting that the RJD had the power to review his order.
5. It is also submitted that the appellant was granted career advancement scheme erroneously counting her service from 01.08.1969 which was disallowed by the audit.
6. The RJD by his proceedings dated 15.02.2000 has assigned the date on 01.04.1976 to the appellant as a date from which she is eligible to be treated as Lecturer taking into account service

registers, audit report and other materials which establish that the appellant did not draw the scale of pay payable to the post of a Lecturer even though she was allegedly promoted as such.

7. No notice was issued to the first respondent herein before passing of the impugned proceedings dated 15.04.2002 as the said proceedings adversely affects the rights, interests and legitimate expectations of the first respondent. The said proceedings were passed in post-haste by RJD with an intention of conferring undue favour on the appellant and unduly affecting the right of the first respondent herein and others and that the mode and manner in which the proceedings were passed lack of arbitrariness and unfairness;

8. The order dated 15.02.2000 was appealable under Section 89 of the A.P. Education Act, 1982 and that the appellant did not prefer any appeal against the said order and, therefore, the order dated 15.02.2000 became final and conclusive so far as the seniority of the appointment in the post of Lecturer is concerned. The RJD being a quasi judicial authority could not review its orders since power of review is conferred only on the Government and a quasi judicial authority cannot review its order unless the power of review is expressly conferred on it by the statute under which it derives jurisdiction. Therefore, the order dated 15.04.2002 of the RJD which amounted to a review of the order dated 15.02.2000 is, therefore, without jurisdiction and cannot be sustained. This apart the said order was an adjudication by the RJD and not a mere opinion as to the seniority of the appellant and the same holds good so long as it is not varied or altered in accordance with law;

9. The Management of the college having entertained a doubt regarding seniority of the appellant itself sought determination of the RJD in this regard and it is, therefore, not open to the college to contend that the decision of the RJD is not binding. Commenting on the entry in the service book, Mr. P.P. Rao contended that the appellant is seeking seniority over the respondent No.1 on the basis of an alleged entry in her service book by the Management that she was promoted as Lecturer on 01.08.1969 and that the said entry on the face of it is fabricated as would be evident from various factors. Furthermore, as per established practice when the entry is made in the service book it has to be preceded by proceedings of the approving authority i.e. Director of Higher Education. However, the aforesaid entry in the service book of the appellant does not contain any proceedings number of the approving authority. Therefore, it is evident that the Management has manipulated the improper entry in the service book of the appellant in collusion with the appellant. Concluding his argument Mr. Rao submitted that the impugned judgment of the Division Bench is well-considered and well-reasoned judgment and that the present appeal is devoid of any merit and liable to be rejected.

Learned counsel appearing for the College invited our attention to the counter affidavit filed by the College in this matter. It is useful to reproduce para 5 of the counter affidavit filed by the Management which reads thus:

"It is respectfully submitted that even if seniority is taken into consideration, the Petitioner herein is senior to the 1st Respondent. The College has appointed the petitioner herein on 1.8.1968 as Demonstrator (aided) in the Department of Chemistry. On 1.8.1969 i.e. one year later the Petitioner was promoted as Lecturer in an aided post w.e.f. 1.8.1969. The 1st Respondent herein was appointed as Lecturer in English from 30.08.1969. There is a clear gap of one month between the appointment of the Petitioner and the 1st Respondent herein. It is respectfully submitted that the 1st Respondent was reverted to the post of Jr. Lecturer from 1.5.70 up to 31.8.1974.

Therefore, by no stretch of imagination the 1st Respondent can be junior to the petitioner herein. It is pertinent to mention herein that the petitioner had never suffered any reversion. Moreover, the Petitioner herein was given the benefit of career advancement scheme of 16 years and 21 years. It is respectfully submitted that because it was always felt that the Petitioner herein should be the successor to Shri P. Andrew, at the time when Shri P. Andrew was given the Principalship the Petitioner was appointed as the Vice Principal and this decision was taken by the management of the institution consciously as the management thought that in terms of seniority as also the capability and efficiency, the Petitioner herein is a better candidate. Since 13.01.2000, the petitioner herein was discharging duties as Vice-Principal of the college and proceedings to this effect have also been issued by the manager of the Andhra Evangelical Lutheran Church, Guntur." *

The learned counsel for the Government of Andhra Pradesh drew our attention to the counter affidavit filed on behalf of the State in the writ petition.

"The 6th respondent was appointed as demonstrator in Chemistry on 1-8-1968 in the 5th respondent college. Later, she was appointed as lecturer in the department of Chemistry with effect from 1-8-1969 by the principal, A.C. College Guntur vide orders dt. 1-8-1969. The Board of education of college of the education approved the appointment of the 6th respondent at its meeting on 17-4-1970 vide their minutes No. 155/22. The director of collegiate education Andhra Pradesh, Hyderabad has also submitted the 6th respondent into grant-in-aid in the audit report of the 2nd respondent for the years 1969-70 (i.e. the year of her appointment) 1970-71 and 1971-72. The 6th respondent has sufficient work load i.e. 18 hours per week, on par with the other senior lecturers for the academic years 1969-70; 1970-71; 1971-72; 1973-74; 1974-75 and 1975-76. By counting the service w.e.f. 1-8-1969; the 6th respondent was awarded selection grade scale under career advancement scheme with effect from 1-1-1986 by virtue of completing more than 16 years of service which is the pre-requisite condition in the A.P. revised scale (UGC) 1986. It is also submitted that the then special officer of A.C. College, Guntur who was also the then regional joint Director of Collegiate education, Guntur has recorded the grant-in-aid certificate in the service book of the 6th respondent to the effect that the incumbent has been working as Lecturer in the grant-in-aid post with effect from 1-8-1969. On the same analogy adopted in respect of the petitioner; the 6th respondent was entitled to the general protection as per the orders of the 2nd respondent vide Rc No. 4209/K.II.3/5, dt. 11-12-1975. Since, the 6th respondent was appointed and worked in the grant-in-aid post of Lecturer prior to 1-5-1971; the post of Lecturer of 6th respondent was protected as per general protection and she was treated as Lecturer w.e.f. 1-8-1969 vide 3rd respondent orders No.L. Dis.No. 758/B2/2002, dt. 15-4-2002.

The 6th respondent was never reverted to a lower post and she was a Lecturer since 1-8-1969. On par with the petitioner, the 6th respondent was also brought under general protection by the 3rd respondent vide L.Dis.No.758/B2/2002, and treated as lecture w.e.f. 1-8-1969 as such, the 6th respondent became senior to the petitioner." *

We have given our thoughtful consideration to the arguments advanced by the learned counsel appearing on either side with reference to the annexures and other relevant records and also the judgments of the learned single Judge and of the Division Bench.

It is not in dispute that the appellant was offered the post of Lecturer w.e.f 01.08.1969 and she accepted the same. The minutes of the Management of the respondent-College dated 06.03.1976 shows that the appellant entered into service as a Lecturer w.e.f. 01.08.1969 which was voted to confirm as of 01.01.1976. In the very same minutes, it was shown that the first-respondent herein entered into service as junior Lecturer w.e.f. 30.08.1969. Further, the seniority list of the college, the name of the appellant was shown at sl. No. 20 and it was stated that she had been working as a Lecturer in Chemistry having been joined on 01.08.1969 and prior to that, she worked as Demonstrator from 01.08.1968 to 31.07.1969. Whereas, the first respondent was shown at sl. No. 23 and stated that she had been working as a Lecturer in English w.e.f. 30.08.1969. This apart, the extract of the service book of the appellant shows that she was promoted as Lecturer w.e.f. 01.08.1969 and prior to that she worked as a Demonstrator. Further, the service book shows that the post in which the appellant was working was admitted to grant-in-aid w.e.f. 01.08.1969. It was also stated in the service book that the appellant was extended with the benefit CAS after completion of 16 years of service vide proceedings of the RJD dated 31.01.1996 and accordingly her pay was regulated in the post of Lecturer. It is also seen that 20 years of CAS benefit was also extended by the RJD through his Proceedings dated 14.09.1999 and the increments, salary etc. were regulated as such. Further, the President and the Manager of the College had issued proceedings dated 12.01.2000 appointing the appellant as Vice- Principal of the College w.e.f. 12.01.2000. At no point of time, there was any break in the service of the appellant as a Lecturer right from 01.08.1969 though there was a break in the service of the first respondent herein. As already noticed, the appellant had also challenged the proceedings of the respondents and filed writ petition questioning the appointment of Mr. Andrew and withdrew the same in view of the subsequent changed circumstances.

We have perused the proceedings dated 15.02.2000 by the RJD. It was an opinion rendered at the instance of the Correspondent of the College. Thus, it was purely an opinion rather than an administrative order and when the appellant made a representation, the same was reconsidered and a proper opinion was rendered on 15.04.2002. Thus, in our opinion, it does not amount to review. Further they are not quasi judicial orders passed in exercise of any statutory power and it does not oust the jurisdiction of the RJD to reconsider it and pass revised order. Therefore, the submission of Mr. P.P. Rao that this Court has to consider whether the RJD has power to review its own order and whether such a power is conferred on such authority has no merits and cannot be accepted. In this connection, we are in full agreement with the arguments advanced by Mr. T.L.V. Iyer on behalf of the appellant.

Much arguments were advanced by Mr. P.P. Rao that because of the audit objection the appellant was not paid the salary of the Lecturer. This contention has no merit. Admittedly, the appellant was appointed as Demonstrator w.e.f. 01.08.1969 and she had drawn her salary as a Lecturer from 01.08.1969 in an aided vacancy. It was submitted that though there was some audit objection, but no recoveries were made against the appellant and she continued as Lecturer althrough.

The argument of Mr. P.P. Rao, learned senior counsel for the first respondent that while issuing the modified order dated 15.04.2002 the RJD has not issued any notice to the first respondent, cannot be accepted, since the first respondent was nowhere in the picture at that time. In fact, the dispute as to seniority at that time was inter se the appellant and one Andrew and the first respondent did not

raise any dispute. The first respondent did not bother as to the claim of the appellant that she is senior to Mr. Andrew. If she was really concerned, she could have joined the issue and worked out her remedies. The fact remains that the first respondent did not raise any objection immediately after the order was passed on 15.04.2002 declaring the seniority of the appellant in the post of Lecturer and that it should be reckoned from 01.08.1969.

She filed writ petition only after about an year of issuance of the said order dated 15.04.2002. Further, issuing of any notice to the first respondent in the proceedings in G.O.Rt. No. 308 dated 22.04.2003 also does not arise. Since the said G.O. has not altered anybody's seniority. The said G.O. was issued, in fact, in pursuance of a representation of the appellant dated 13.03.2003. The first respondent, in our opinion, was not entitled for any relief, since her right as such either under the Proceedings dated 15.02.2000 or the Order dated 15.04.2002 of the RJD was affected. Under these circumstances, there was no necessity for the Government to issue any notice to the first respondent while issuing the said G.O. It is true that there was some audit objection but the fact remains no recoveries were made against the appellant treating her only as demonstrator and that would in our opinion categorically indicate that the appellant was although was a Lecturer in the aided vacancy right from 01.08.1969 as such she was senior to Mr. Andrew and was deprived of her right being promoted to the post of Principal on 31.01.2001 and again when the first respondent was made in charge Principal of the College w.e.f. 01.05.2003 on retirement of Mr. Andrew. thus, it is seen that the appellant has suffered humiliation in view of the wrong decision taken by the RJD earlier on 15.03.2000 which was later modified by an order dated 15.04.2002.

As rightly pointed out by Mr. T.L.V. Iyer that the opinion of the RJD dated 15.02.2000 is an opinion which is non est in law since no notice has been given to parties before passing such an order and, therefore, the subsequent order that was passed by the RJD dated 15.04.2002 after considering all the relevant documents. Mr. Iyer is also right in contending that the order dated 15.02.2000 is a nullity and, therefore, it can be ignored by the appellant and the question of filing a review by the appellant does not arise. When the order passed by an authority is not in accordance with law and no notice was communicated to the party it is a nullity and need not be challenged in a Court of law.

We see merit in the submission of Mr. Iyer that an order made in violation of natural justice is void. Mr. T.L.V. Iyer in support of his above contention relied on the judgment of this Court in Krishan Lal vs. State of J & K 9 to the effect that an order passed in violation of the principles of natural justice renders an order invalid. Likewise, an order made without hearing the party affected is also bad in law.

In the instant case, the order made in violation of natural justice is void. At the time of hearing, a dispute was raised by Mr. P.P. Rao that the appellant Sulochana Devi was not appointed as an Associate-Principal. Mr. T.L.V. Iyer, in support of his contention, that the appellant was appointed as Associate-Principal has placed before us the extract from the minutes of the meeting of the executive council of Andhra Evangelical Lutheran Church dated 10.01.2003 which reads thus:

"COMMITTEE ON ASSIGNMENTS:

A.C. College matters: Reported that the Board of College education send the panel of Two names Mrs. R. Sulochana Devi and Mrs. D.M. Sujatha for the appointment of Associate Principal for A.C. College, Guntur as Dr. P. Andrew, Principal, A.C. College is going to be retired on 30-4-2003 on superannuation. Recommended that Mrs. R. Sulochana Devi be appointed as Associate Principal with immediate effect according to the verification of their service registers. Further Mrs. R. Sulochana Devi and Mrs. D.M. Sujatha are hereby requested to submit all the relevant papers along with service registers to claim their seniority and also to seek clarification from the Commissioner for Higher Education, Andhra Pradesh, Hyderabad in connection with the appointment to the post of Principal, A.C. College. VOTED to approve the above recommendation of the Committee on Assignments." *

In our view, the **Division Bench ought not to have interfered with the discretionary power that is vested with the Management to chose the principal of its choice. It is settled by a catena of decisions of this Court that Courts shall be loathe in interfering with the choice of the Management in the selection of the Principal candidate with reference to the educational institutions under the Management of the minority institutions.** # As rightly contended by Mr. T.L.V. Iyer, the learned Judges of the Division Bench is not correct in giving so much sanctity for the opinion dated 15.02.2000 of RJD where it is a violation for non-adherence to the principles of natural justice. As already noticed, **there is abundant material and evidence produced by the appellant to show that she is a Lecturer w.e.f. 01.08.1969 and the Division Bench is wrong in considering only audit reports to hold that she is a Lecturer only w.e.f. 01.04.1976.** # The Division Bench could have avoided in taking such a hyper technical view.

The appellant had been deprived of her legal entitlement as the Principal of the College by the Management at the first instance in order to favour Mr. P. Andrew and accommodate him. Now, even after Mr. P. Andrew's retirement, the appellant was Principal for only a short time basing on the single Judge's judgment. However, by virtue of the order passed by the Division Bench, the Management of the College had appointed the first respondent as Principal. In our opinion, the order passed by the Division Bench is not correct and is, therefore, liable to be set aside and accordingly we do so and restore the order passed by the learned single Judge.

We were told that the appellant herein has left only about one and a half years of service before her superannuation whereas the first respondent will have some months thereafter after the appellant's superannuation. We, therefore, hold that the first respondent is not entitled to hold the post of Principal in view of our present judgment. **The appellant admittedly being senior to the first respondent is entitled to hold the post of Principal of the College in question till her date of retirement.** # We, therefore, direct the respondents herein, namely, the Government of Andhra Pradesh, the Commissioner of Collegiate Education, Andhra Pradesh, Hyderabad, the Regional Joint Director of Collegiate Education, Guntur and the Management of the College, namely, Andhra Christian College represented by its Correspondent to immediately place her as the Principal of the Andhra Christian College with immediate effect and at any rate not later than two weeks from today. Since she is deprived of her lawful claim to be the Principal of the College at the behest of the first respondent herein D.M. Sujatha, we direct her to pay the cost of Rs.5, 000/- to the appellant herein within two weeks from today failing which the Andhra Christian College Management shall pay the said amount to the appellant and adjust the same from the future salary payable to the first respondent - D.M. Sujatha.

For the foregoing reasons, the appeal is thus disposed of.