

ANDHRA PRADESH HIGH COURT

B. Gopalaiah

Vs.

Government of Andhra Pradesh

Writ Petn. No. 14 of 1965

(Chinnappa Reddy, J.)

26.12.1967

ORDER

Chinnappa Reddy, J.

1. The several petitioners were previously employed as teachers in various Aided Elementary Schools run by private management within the limits of Cuddapah Municipality. In accordance with the provisions of the Andhra Educational Institutions (Requisitioning and Acquisition) Act of 1956 the Government decided to take over privately managed Elementary Schools in Cuddapah and East Godabari Districts. G. O. Ms. No. 2730 Education dated, 13-8-1959 contains the scheme for taking over the management of these schools. Sub-clause (5) of Clause 2 of the G. O. provides:

"The teachers in the schools so transferred shall be treated as a separate unit in the District Board or the Municipality as the case may be, for purposes of appointment, transfer, seniority, promotion and retrenchment. They shall be governed by the rules laid down for other teachers in the District Board or the Municipal Council in regard to discipline, punishments, and appeals, grant of leave etc. The status of the teachers will be the status which the teacher was having on the date of this order."

Subsequently it was thought desirable that the distinction between the staff of the schools taken over by the Government and handed over to local bodies and the staff of school always run by Local Bodies should be removed. The Government accordingly issued G. O. Ms. No. 1079, dated 16-4-1962 integrating the staff of the two categories of schools and directed that a common seniority list should be drawn up treating the entire service of teachers under private management as service for the purpose of reckoning seniority provided that there was adequate proof of service under private managements. While this was so, on 24-9-1963 Memo. No. 6654-12/62-11 was issued by the Education Department of the Government of Andhra Pradesh amending G. O. Ms. No. 1079 and directing that teachers who were previously working in private managed schools should "be allowed to count for weight age one year's continuous service prior to the taking over of the schools instead of their entire service under the private management. It is this

memorandum that is challenged in this Writ petition as discriminatory and as offending Articles 14 and 16 of the Constitution. It is pointed out by Mr. Gangadhararao for the petitioners that the effect of this Memorandum is to wipe out the long service of several of the petitioners and make them junior to recently appointed teachers in other Municipal Schools. Some of them who have been Head Masters are faced with reversion and other who had every prospect of being promoted as Head Masters have lost all chances of promotion. It may be mentioned here that the schools in which the several petitioners were working were not all of them taken over by the Government on the same day, but on different dates between 1-10-1959 and 1-6-1961.

2. Sri Ahmed Moinuddin, Assistant Secretary to Government, Education Department has filed a counter affidavit on behalf of the Government. Explaining the reasons for the Memorandum he states in paragraph 4 as follows :-

"Coming to the Government Memorandum No. 6654/63, Dated: 24-9-1963 issued for amending G. O. Ms. No. 1079 Education dated 16-4-1962, I state that on the representation of some of the Commissioners of the Municipalities and Teachers' Associations about the difficulties experienced regarding the deprivation of the seniority over promotions etc., in respect of the probationary Teacher in Ordinary Schools, if the common seniority was drawn up taking into account of the entire service of the Teachers of the Special Schools it was considered genuine and orders were issued in Government Memo. 6654/12/62-11, Education dated 24-9-1963 modifying previous orders that the Special Elementary School Teachers might be allowed to count for weightage of one year's continuous service prior to the taking over of the schools instead of entire service."

It is not difficult, but impossible to understand this paragraph. I requested the learned Government Pleader to explain this paragraph to me and after making a courageous attempt he confessed that he shared my inability to understand the paragraph. However, the learned Government Pleader suggested that the reason for the Memorandum might be the difficulty experienced by the Government in deciding whether the service of Teachers under private management was adequately proved or not. Whatever difficulty the Government may have experienced in that regard that can hardly justify this arbitrary method of fixing the seniority with reference to the date of taking over of the school by the Government and allowing a period of one year's service prior to that date for the purpose of reckoning seniority. It is impossible to discover any rational basis for the formula adopted by the Government. As pointed out by the Supreme Court in *D. R. Nim v. Union of India*¹, "The Government cannot pick out a date from a hat - and that is what it seems to have done in this case - and say that a period prior to that date would not be deemed to be approved by the Central Government within the second proviso." I have little doubt that the Government Memorandum is arbitrary and discriminatory and has to be struck down.

3. The learned Government Pleader, however contends that the persons who are likely to be affected if the Memorandum is struck down, namely the teachers in the other Municipal Schools are not before the court and therefore this court should not interfere. I cannot agree. This is not case of discrimination of individual against individual. This is a case where a whole class of citizens have been discriminated against and the court cannot refuse to give relief to them on the

ground that the class of persons who will be benefited

¹ Civil Appeal No. 371 of 1965 (SC)

as a result of the discrimination are not before the Court. The person who complains of discrimination cannot be expected to search the country for all persons who are likely to be benefited by its discriminatory policy. Of course, if the discrimination is in favor of an individual against an individual different considerations might arise. But this is not such a case. In my opinion, where a scheme formulated by the Government is attacked on the ground of its being discriminatory the position is precisely the same as if a statute is attacked as being discriminatory and it can never be an answer to such an attack that persons likely to be benefited by a discriminatory statute should be brought before the Court before the statute is struck down. I therefore see no force in the contention of the learned Government Pleader. The Writ petition is therefore allowed and Memorandum No. 6654-12-62-11 dt. 24-9-1963 is quashed. The petitioners are entitled to their costs. Advocate's fee Rs. 150.

Petition allowed.