

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE

&

HON'BLE MR. JUSTICE NINALA JAYASURYA

WRIT APPEAL No.213 of 2021

(Through Video-Conferencing)

Acharya N.G. Ranga Agricultural University,
Lam, Tadikonda Mandal, Guntur District,
Rep., by its Registrar.

..Appellant

Versus

Chegudi Babu, S/o Anukulu, Aged about 44 years,
D.No.3-1-73, Jamedarpet, Ward No.8, Bapatla,
Guntur District and others.

... Respondents

Counsel for the Appellant : Mr. Kasa Jagan Mohan Reddy,
for Ms. N. Anula, standing
counsel.

Counsel for respondent Nos.1 to 196: Mr. M. Pitchaiah

Date of hearing : 25.08.2021.

Date of Judgment : 21.09.2021

JUDGMENT

(Arup Kumar Goswami, CJ)

Heard Mr. Kasa Jagan Mohan Reddy, learned counsel appearing for the appellant. Also heard Mr. M. Pitchaiah, learned counsel for respondent Nos.1 to 196/writ petitioners.

2. This writ appeal is presented against the judgment and order dated 02.03.2020 passed by the learned single Judge in W.P.No.4465 of 2020 whereby, holding that the issue in the writ petition is squarely covered by

the common order in W.P.No.19361 of 2018 and batch, dated 29.08.2019, in which the judgment of a Division Bench of High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in ***U.V.S.R. Prasad and others Vs. State of Andhra Pradesh and another***, reported in ***2018(2) A.L.D 282 (D.B.)*** was relied upon, directed the respondents therein to regularize the services of the petitioners forthwith subject to the petitioners possessing other requisite qualifications.

3. Mr. Kasa Jagan Mohan Reddy submits that the learned single Judge recorded the name of Ms. S.V. Bhuvaneshwari, Advocate, representing Ms. K. Anula, who was styled as standing counsel for the 3rd respondent (appellant herein)-Acharya N.G. Ranga Agricultural University, erroneously as Ms. S.V. Bhuvaneshwari is not a counsel for the appellant and further, Ms. K. Anula had not taken charge as standing counsel of the appellant on the date when the impugned order came to be passed. He has drawn the attention of this Court to page No.78 of the writ appeal papers to contend that Ms. N. Anula had taken charge as standing counsel on 12.03.2020 F.N. Relying upon the cause-list dated 02.03.2020, it is submitted that the writ petition was listed as item No.13 on that date and neither the name of standing counsel of Acharya N.G. Ranga Agricultural University, i.e., Mr. D. Ganeswara Naidu nor the name of Ms. K. Anula, was reflected in the cause-list, and therefore, the observations made that the learned counsel appearing on behalf of the 3rd respondent did not refute the submission of the learned counsel for the petitioners that the writ petition is squarely covered by the common order of this Court in W.P.No.19361 of 2018 and batch, dated 29.08.2019, is not correct. It is submitted that the Case Details at page No.75 of the writ appeal papers

indicate that while filing date of the writ petition was 27.12.2019, registration was made on 19.02.2020 and the case was listed on 02.03.2020. On the very same day, the writ petition was disposed of, without granting opportunity to the appellant to file counter-affidavit.

4. It is submitted by Mr. Reddy that as per G.O.Ms.No.212, dated 22.04.1994, the persons who worked continuously for a minimum period of 5 years and were continuing as on 25.11.1993 are eligible for regularization, but the respondents/writ petitioners have not completed five years of service as on 25.11.1993 and therefore, they are not entitled to regularization. Mr. Reddy further submits that this case is covered by the decision of the Hon'ble Supreme Court in the case of ***A. Manjula Bhashini and others v. Managing Director, Andhra Pradesh Women's Cooperative Finance Corporation Limited and another***, reported in ***(2009)8 SCC 431***.

5. Mr. Reddy further submits that by an order dated 10.03.2020, W.P.No.3968 of 2020 was disposed of at the admission stage on the very first date of hearing, without giving any opportunity to Acharya N.G. Ranga Agricultural University and on the appeal being W.A.No.367 of 2020 preferred against the same, the Division Bench by order dated 10.02.2021, had set aside the order in the writ petition and remanded the matter to the learned single Judge for fresh consideration.

6. Accordingly, he submits that the order under challenge may be set aside and the matter may be remanded to the learned single Judge for fresh consideration.

7. Mr. M. Pitchaiah, learned counsel appearing for respondent Nos.1 to 196/writ petitioners, submits that the order of the Division Bench dated 10.02.2021 in W.A.No.367 of 2020 is not attracted in the facts and circumstances of the case as the order under challenge is a consent order and therefore, no writ appeal lies against such consent order in the first place. It is submitted that this Court ought not to go into the question as to whether Ms. S.V. Bhuvaneshwari, advocate was the counsel for the appellant or whether Ms. K. Anula was the standing counsel on the date of disposal of the writ petition as it is a matter of the judicial record, which is unquestionable. It is further submitted that the learned single Judge, who passed the order, had retired only on 05.11.2020, after about eight months of passing the order under challenge, and during the above period, no review application was filed contending that the narration of facts as recorded in the order is not correct. He relied upon the judgment of the Hon'ble Supreme Court in ***State of Maharashtra Vs. Ramdas Shrinivas Nayak & Another***, reported in ***AIR 1982 SC 1249***.

8. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

9. The case of the writ petitioners is that they had joined as workmen in the appellant-university on different dates during the period 1984 to 1993 and the fact that they have been continuing for the last so many years would itself demonstrate that the appellant-University requires their services. They are working as attenders and in farm field work i.e., cutting, sowing, gardening, watering etc., drivers and in various departments such as watch and ward, library etc. The employees, who had completed 5 years of service as on 25.11.1993, were regularized by

G.O.Ms.85, dated 28.11.2017 and though the petitioners have been placed on time-scale with effect from 08.10.2008, yet the services of the petitioners have not been regularized though they should have been regularized long back. With the aforesaid factual background, the writ petition was filed seeking a direction to regularize the services of the writ petitioners from the date of completion of 5 years of service with all consequential benefits, arrears of salary with interest @ 12% p.a., grant costs of the proceedings, etc.

10. It appears from the materials on record of the appeal that the Government of Andhra Pradesh had issued G.O.Rt.No.303, dated 14.10.2019 appointing Smt. N. Anula, Advocate as standing counsel for Acharya N.G. Ranga Agricultural University for a period of three years from the date of assumption of charge of the post or till the termination of her services, whichever is earlier. The Board of Management vide its Resolution No.10064, Dated:30.01.2020 had approved the said appointment. Following the said approval, proceedings No.908/V&LC/2020, dated 05.03.2020 were issued, wherein it was noted as follows:

"In view of the above, the following orders:

- (i) Smt. N. Anula, Advocate appointed as Standing Counsel for ANGRAU from the date of assumption of charge for a period of three years or till the termination of her services whichever is earlier, and she will be paid monthly honorarium as per the G.O.Ms.No.798, dated: 02.05.2007. The date of assumption of charge of the post by the said advocate to be informed to the Government.*

(ii) *Sri D. Ganeswara Naidu, Standing Counsel for ANGRAU services is terminated from the date of assumption of charge of Smt. N. Anula, Advocate as standing Counsel for ANGRAU. He is also requested to hand over all the court bundles to Smt.N. Anula, Advocate for further course of action.*

(iii) *Further, the services of Sri D. Ganeswara Naidu, Advocate will be continued for 2 (Two) more months from the date of assumption of charge by Smt. N. Anula as Standing Counsel for ANGRAU, so as to she acquaints the University Administration and Procedures.*

Smt. N. Anula, Advocate is informed that, if she willing to assume charge as Standing Counsel for ANGRAU, she will report to the Registrar, ANGRAU with specific fee details she expected for each case apart from the Honorarium.

These orders are issued with the consent of the Comptroller, ANGRAU."

11. By letter dated 05.05.2020, the Registrar of the appellant-University informed the Special Chief Secretary to the Government (Agriculture), that Ms. Anula, Advocate, had assumed charge on 12.03.2020 F.N.

12. It appears that the appointment order of Ms. N. Anula was approved by the appellant-University only on 05.03.2020, after passing of the order under challenge dated 02.03.2020. Perusal of the cause-list dated 02.03.2020 shows that the name of the standing counsel for Acharya N.G. Ranga Agricultural University was not reflected in the cause-

list as is required to be done so as to bring to the notice of the learned counsel of the listing of the case as well as to enable the learned counsel for the parties to represent their respective parties in the proceedings. From the letter dated 05.03.2020, it also appears that on that day i.e., on 02.03.2020, Mr. D. Ganeswara Naidu was the standing Counsel for the appellant-University. His service was to stand terminated only after two months from the date of assumption of charge by Ms. N. Anula.

13. The present case was disposed of on the very same day of listing for admission. In W.A.No.367 of 2020, the order dated 10.03.2020 passed by learned single Judge disposing of the writ petition bearing No.3968 of 2020 on the very first day of hearing directing the respondents therein to regularize the services of the writ petitioners forthwith, subject to their possessing other requisite qualifications, came to be challenged. At paragraph No.7 of the judgment in W.A.No.367 of 2020, it was observed as follows:

"7. As seen from the material placed before this Court, i.e., the case details chart of the A.P. High Court, would reveal that the Writ Petition was filed on 05.02.2020, registered on 17.02.2020, listed on 10.03.2020 and disposed of on the very same day, i.e., on the first day of hearing. In fact, the issue of Writ Petition being disposed of on the first day of its listing is not seriously disputed even by the learned counsel for the respondents-writ petitioners. But, as stated earlier, his argument is that, since the counsel for the respondents did not seek time for filing counter-affidavit, the order impugned came to be passed. But a perusal of the order impugned, does not indicate any concession being made by any of the counsel for the respondents for disposal of the Writ Petition. Further, the impugned

order does not also record the submissions made by the counsel for the respondents. An opportunity ought to have been given to the respondents in the Writ Petition, to file counter-affidavit, bringing to the notice of the Court as to how services of the respondents-writ petitioners cannot be regularized and, thereafter, Court could have passed appropriate orders, more so when no concession is made by the respondents. Merely because it has been mentioned that counsel for the petitioners as well as the counsel for the respondents were heard, in our view, may not amount to effective hearing, when the order impugned does not indicate the submissions made by the counsel for the respondents.”

14. A perusal of the aforesaid paragraph shows that the Division Bench noticed that the writ petition was disposed of on the very first day of listing. It was observed that the order did not record the submissions made by the counsel for the respondents and in that circumstance held that it did not amount to effective hearing.

15. It is to be noted that in W.A.No.367 of 2020, the appellant was the appellant herein. In the said appeal, coincidentally, the learned counsel appearing in this appeal had appeared. Both the writ petitions were disposed of on the first day of listing. The only difference between the facts in the aforesaid case and the present case is that while in W.A.No.367 of 2020, there was no indication of any concession, in the instant case, it is recorded that the counsel appearing on behalf of the 3rd respondent (appellant herein) did not refute the submission of the learned counsel for the writ petitioners as noted earlier.

16. In ***Ramdas Shrinivas Nayak*** (supra), the Hon'ble Supreme Court observed that the statement of the judges recorded in their judgments as to what transpired in court has to be accepted and the statement of the judges cannot be allowed to be contradicted by the statements at the Bar or by affidavit and other evidence. It was further observed that if the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. It is observed that if a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error, and that is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. The Court may however permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice, but, he may not call in question the very fact of making the concession as recorded in the judgment.

17. In the instant case, it is recorded in the order under challenge that Ms.S.V. Bhuvaneshwari, Advocate, representing Ms. K. Anula, Standing Counsel for the 3rd respondent (appellant herein) was heard and that she did not refute the contention of the learned counsel for the writ petitioners that the issue in the writ petition is squarely covered by the

common order of this Court in W.P.No.19361 of 2018 and batch, dated 29.08.2019. As held in **Ramdas Shrinivas Nayak** (supra), the statement of judges recorded in the judgment as to what transpired in the court, cannot be questioned and it has to be accepted.

18. While accepting the same to be the correct event as to what transpired in the court, it has to be noticed that it is nobody's case that Ms. Bhuvaneswari was the counsel for the appellant though it was projected that she was representing the 3rd respondent (appellant herein). This Court will not hazard a guess under what circumstances such submission was advanced. The learned single Judge did not even cursorily examine as to whether the judgment in **U.V.S.R. Prasad** (supra) applies to the facts of the present case. In our considered opinion, concession made by a counsel, who is not the counsel for a party, will not bind such party.

19. In the facts and circumstances as noted above, we are of the opinion that an opportunity is required to be given to the appellant to put forth its case by way of an affidavit.

20. Accordingly, we set aside the order of the learned single Judge and remand the case to the learned single Judge for fresh consideration.

21. The appellant is permitted to file counter-affidavit on or before 30.09.2021, failing which, no further time shall be granted to the appellant to file counter-affidavit and the writ petition may be decided in accordance with law.

22. Registry is directed to list W.P.No.4465 of 2020 before the learned single Judge having roster on 06.10.2021. In the attending facts and

circumstances, since regularization of workmen, who have rendered services for long years, is in question, we would request the learned single Judge to consider disposal of the writ petition as expeditiously as possible.

23. With the above directions and observations, the Writ Appeal is allowed and disposed of. No costs. All pending miscellaneous petitions shall stand closed.

ARUP KUMAR GOSWAMI, CJ

NINALA JAYASURYA, J

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HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE

&

HON'BLE MR. JUSTICE NINALA JAYASURYA

WRIT APPEAL No.213 of 2021
(per Arup Kumar Goswami, CJ)

Dt:21.09.2021

L.R. copy marked.

Nn.