

HIGH COURT OF ANDHRA PRADESH AT AMARAVATHI
WRIT PETITION Nos.12453 of 2010 & 20604 of 2020

Between:

Chukka Sarath Babu

- - - Petitioner

And

The State of Andhra Pradesh, rep. by its
Principal Secretary, Medical & Health Department,
A.P. Secretariat, Velagapudi, Amaravati,
Guntur District and 2 others

- - - Respondents

DATE OF ORDER PRONOUNCED: 04-02-2022

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals. Yes/No
3. Whether Their ladyship/Lordship wish
to see the fair copy of the Judgment? Yes/No

NAINALA JAYASURYA, J

***THE HON'BLE SRI JUSTICE NINALA JAYASURYA**

+ WRIT PETITION Nos.12453 of 2010 & 20604 of 2020

%Date : 04.02.2022

Chukka Sarath Babu - - - Petitioner

Versus

\$ The State of Andhra Pradesh, rep. by its
Principal Secretary, Medical & Health Department,
A.P. Secretariat, Velagapudi, Amaravati,
Guntur District and 2 others

- - - Respondents

! Counsel for the Petitioner : Mr.Jada Sravan Kumar

^ Counsel for Respondents : Government Pleader for
Services-III & Smt.V.Hima
Bindu

< **GIST** : --

> **HEAD NOTE** : --

? **Cases referred** : --
1) 2006 (11) SCC 464
2) (2007 (8) SCC 449

HON'BLE SRI JUSTICE NINALA JAYASURYA
WRIT PETITION Nos.12453 of 2010 and 20604 of 2020

COMMON ORDER:

1. These two Writ Petitions were filed by one Mr.Ch.Sarath Babu with regard to the post of Assistant Librarian in Government Dental College & Hospital, Vijayawada.

W.P.No.12453 of 2010 was filed with the following prayer:-

".....to issue a writ order or direction more particularly one in the nature of the writ of mandamus declaring the action of the 3rd respondent in issuing Proceedings in RC.No.GDCH/E1/2010 dated 31.05.2010 as illegal, arbitrary and violative of principles of natural justice and also suffers from malafides and consequently direction the respondents to continue the petitioner as Assistant Librarian in Government Dental College and Hospital, Vijayawada on contract basis with all consequential and incidental benefits attached to the said post, and pass such other order...."

An interim order was granted on 03.06.2010 suspending the Proceedings dated 31.05.2010 issued by the Principal, Government Dental College & Hospital, Vijayawada (hereinafter referred to as, the College), the 3rd respondent, in the above said Writ Petition. The said interim orders were subsequently extended until further orders on 30.06.2010.

2. While the said Writ Petition was pending, Mr.Ch.Sarath Babu filed the second Writ Petition i.e., W.P.No.20604 of 2020 seeking the following relief:-

"..... to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus, declaring the action of Respondent No.3 in failing to initiate any action on the representation of the petitioner dated 05.06.2020 for continuation of his service as Assistant Librarian in 3rd Respondent's office in spite of the Proc.No.Rc.No.14849/E4=B/2015, dated 24.06.2019 and Memo of 1st Respondent bearing No.1046872/A2/2019-1, dated 17.12.2019 of 1st and 2nd respondent as illegal, arbitrary, unconstitutional and against the violating of Articles 16, 19, 21 and 300-A of the Constitution of India and consequently direct the Respondent No.3 to consider the representation of the petitioner dated 05.06.2020 in the light of the orders of this Hon'ble Court passed in Writ Petition No.12453 of 2020 dated 13.06.2020 (Sic.Writ Petition No.12453 of 2010 dated 13.06.2010) for continuation of his services as Assistant Librarian in the 3rd Respondent college and to pass such other order or orders...."

At the time of admission, the following interim order was passed on 11.11.2020.

“Learned counsel for petitioner brought to the notice of this Court orders of the then High Court of Andhra Pradesh at Hyderabad in W.P.M.P.No.15705/2010 in W.P.No.12453/2010, dated 30.06.2010 whereby the earlier order dated 03.06.2010, the petitioner was directed to be continued in service and by the later order dated 30.06.2010, it was extended until further orders.

Though learned Government Pleader for Services-III referred to contractual nature of appointment of petitioner, in the light of the earlier order of the erstwhile High Court of Andhra Pradesh at Hyderabad referred to above, the respondents cannot interfere with the service and necessarily, it shall continue.

In the backdrop of the circumstances, the petitioner is directed to be continued as Assistant Librarian-3rd respondent college on contract basis subject to payment of salary, until further orders.”

3. One Mr.G.V.Chowdary claiming to be a proper and necessary party to W.P.No.20604 of 2020 filed a petition to implead him as respondent No.4, which was ordered by a separate order. As both the Writ Petitions relate to the claim of petitioner to the post of Assistant Librarian, they are taken up together and disposed of by this Common Order.

4. Heard Mr.Jada Sravan Kumar, learned counsel for the petitioner. Also heard Mr.K.Bheema Rao, learned Government Pleader for Services-III and Smt.V.Hima Bindu appearing for respondent No.4 in W.P.No.20604 of 2020.

5. A brief narrative of the Writ Petitions for better appreciation of the *//s* may be stated thus:

The petitioner passed M.A., (History) and Master of Library and Information Science (MLIS). He is fully qualified to the post of Assistant Librarian. Pursuant to the invitation of the applications for the post of

Assistant Librarian, the petitioner applied to the said post. The 3rd respondent recommended the case of the petitioner for appointment on contract basis under 300 OCS (Other Contractual Services) to the 2nd respondent vide Proceedings dated 19.05.2007. There are two sanctioned posts of Assistant Librarians. The 2nd respondent, in turn, forwarded the recommendation to the 1st respondent/Government vide letter dated 23.06.2007 with a request to issue necessary orders in the matter. Thereafter, the 1st respondent issued Memo dated 11.01.2008 according permission to the 2nd respondent for appointment of the petitioner as Assistant Librarian in the existing vacancy on contract basis for a period of one year with consolidated remuneration of Rs.6,200/- per month, after following the due procedure. In pursuance of the same as also the Proceedings of the 2nd respondent dated 31.01.2008, the 3rd respondent vide Proceedings dated 05.02.2008 addressed a communication to M/s Chaitanya Jyothi Welfare Society, Bhavanipuram, Vijayawada to provide one Assistant Librarian to the College on contract basis for a period of one year with consolidated remuneration of Rs.6,200/- per month.

6. Under the above said circumstances, the petitioner made a representation to the 1st respondent dated 02.06.2008 with a request to change method of appointment from outsourcing to 300 OCS so that he will be eligible for D.A and H.R.A, which facilitate quick drawal of salary and win the bread in time. The 1st respondent directed the 2nd respondent vide Memo dated 09.06.2008 to offer his remarks in the matter and in turn, the 2nd respondent requested the 3rd respondent to send his specific remarks for taking necessary action in the matter. As the

contract period was coming to an end, the 3rd respondent vide letter dated 03.12.2008 addressed to the 2nd respondent sought for permission to utilize the services in the vacant posts as per cadre strength through outsourcing (3rd party contract through recognized agency) or 300 OCS. The 2nd respondent referring to the relevant proceedings addressed a letter dated 28.03.2009 to the 1st respondent/Government for issuance of necessary extension orders to utilize the services/post of Assistant Librarian for further one more year in the College as requested by the Principal. In response thereto, the 1st respondent-Government through Circular Memo No.5697/H1/2009-2, dated 01.06.2009 requested the 2nd respondent to examine the proposal as per Circular Memo No.11606-B/419/A2/SMPC/2009 dated 24.04.2009 and renew the proposal afresh to the Government, for taking further action in the matter. Subsequently, the Government vide Memo dated 02.11.2009 sought information from the 2nd respondent/Director of Medical Education, as mentioned therein. In pursuance of the said Government Memo, the 3rd respondent while furnishing information through letter dated 02.02.2010 addressed to the 2nd respondent stating that the Assistant Librarian post is essential, sought necessary renewal orders to utilize the services of the Assistant Librarian on outsourcing basis for one more year i.e., from 06.02.2010 to 05.02.2011.

7. At that juncture, the petitioner filed W.P.No.10623 of 2010 seeking a direction to the respondents therein to pay salaries. Vide orders dated 30.04.2010, directions were issued to the effect that, *"if the petitioner is working as Assistant Librarian, he shall be paid salary as per Memo No.12576/H1/2007-5 dated 11.01.2008 and as extended by further*

orders, pending further orders". Subsequently, the 3rd respondent addressed a communication dated 31.05.2010 wherein M/s Chaitanya Jyothi Welfare Society/outsourcing agency was requested to stop the services of Assistant Librarian. The said communication extracted for ready reference reads thus:

"In view of non-receipt of extension orders to continue the services of the Asst. Librarian and Record Assistant, it is informed to stop the out-sourcing services of the Asst. Librarian and Record Assistant from 01.06.2010."

Aggrieved by the same, the petitioner filed W.P.No.12543 of 2010.

8. The petitioner filed the second Writ Petition i.e., W.P.No.20604 of 2020 referring, *inter alia*, to the orders passed in W.P.No.12453 of 2010 pleaded that despite the orders in the said Writ Petition, the 3rd respondent i.e., the Principal of the College was not permitting the petitioner to discharge his functions in the College and creating hurdles. It is averred that till the year 2014, the petitioner continued in the services, thereafter, the 3rd respondent asked the petitioner to stop coming to the office. While referring to the proceedings of the 1st and 2nd respondents, purportedly issued to consider and permit him to function in the office pursuant to the representations made by the petitioner, it was mentioned that even the letter of the 3rd respondent to the 2nd respondent to convert the nature of petitioner's employment from outsourcing to fresh appointment proved futile and no orders were passed. Hence, he made a representation to the respondents dated 05.06.2020 seeking continuation as Assistant Librarian in the second vacancy and for regular scale of pay. Aggrieved by the inaction on the said representation, he invoked the jurisdiction of this Court again.

9. The learned counsel for petitioner in the light of the averments made in the affidavits and the subsequent events advanced arguments. He submits that despite the interim orders passed in W.P.No.12453 of 2010 which were extended until further orders, the services of the petitioner were availed till the year 2014, though the respondents are under legal obligation to continue the same so long as the interim orders are in force and also by virtue of the Government Orders vide G.O.Ms.No.84 dated 17.04.2014 and the subsequent G.O.Ms.No.146 dated 27.06.2014 etc., extending the services of contractual/outsourcing employees from time to time. He submits that the then Principal exhibiting indifferent attitude against the petitioner, had deliberately not implemented the orders of the Hon'ble High Court as also the directions of the 1st and 2nd respondents. The learned counsel submits that number of communications were addressed to the then Principal calling upon him to take steps for continuation of the petitioner in the post of Assistant Librarian, but in utter defiance to the orders of the Hon'ble High Court and the Government, the then Principal with malafide intention to deprive the petitioner the post of Assistant Librarian had not allowed the petitioner to discharge his functions. The learned counsel submits that under the said circumstances, the petitioner was constrained to file W.P.No.20604 of 2020 and obtained interim orders. He also submits that in the earlier Writ Petition No.12453 of 2010, no counter affidavit was filed. He would further submit that as the respondents were not implementing the orders passed in favour of the petitioner in W.P.No.20604 of 2020, a Contempt Case was filed and the same is pending. Drawing the attention of this Court to the additional documents filed along with Memo and reply affidavit in W.P.No.20604 of 2020, the learned counsel submits that the report which

was obtained under the Right to Information Act would clearly disclose that the then Principal committed atrocities against the petitioner, in contravention of the provisions of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The learned counsel submits that the petitioner is dependent on the said post of Assistant Librarian, he is fully qualified and in view of the commissions and omissions on the part of the then Principal, the petitioner is deprived of his livelihood and finding it difficult to take care of his family, especially his differently abled daughter. He accordingly urges that the Writ Petitions be allowed by issuing directions to the respondents as prayed for.

10. The learned Government Pleader for Services-III on the other hand submits that the petitioner was appointed initially through an outsourcing agency i.e., M/s Chaitanya Jyothi Welfare Society for a period of one year pursuant to Memo of the Government dated 11.01.2008, that his services were continued upto 30.06.2014 and dispensed with from the said date. He submits that the material on record would clearly disclose that the appointment of the petitioner was on outsourcing basis and since the same was not extended, a letter dated 31.05.2010 was addressed to the agency which provided the services and the petitioner cannot have any grievance with regard to the same. He further submits that the petitioner has no right, much less, a valid legal right to continue on contractual or outsourcing basis and on completion of the period/term, his services can be dispensed with. He submits that one Smt.P.Naga Mani was appointed as Assistant Librarian by promotion on transfer in the year 2014 itself and contends that the petitioner had not challenged the said Proceedings nor filed any Contempt Case, on the premise that the interim orders granted

in W.P.No.12453 of 2010 were violated. He submits that the petitioner, though fully aware of the same, did not avail his remedies at the relevant point of time and therefore no reliefs as sought for can be granted at this juncture. He also submits that the Government Orders on which reliance is placed are not applicable to the facts of the present case. The learned Government Pleader further with reference to the copy of the note-file submitted during the course of arguments submits that the Government after examining the case of the petitioner decided not to continue the petitioner as there was no vacancies. However, in view of the representations received in the year 2019, remarks were called for from the 3rd respondent, but no further action was taken. He also places reliance on the judgment of the Hon'ble Supreme Court reported in **2005 (2) SCC 256**. Making the said submissions, the learned Government Pleader contends that there are no merits in the Writ Petitions and the same are liable to be dismissed.

11. Smt.V.Hima Bindu, learned counsel for the 4th respondent submits that on 13.11.2013 her client was appointed on compassionate grounds as a Junior Assistant. She further submits that in one of the posts of two Assistant Librarians, one Mr.G.Bala Krishna, who was working as Junior Assistant in the office of Director of Medical Education Department was promoted and transferred to the post of Assistant Librarian in the College in question vide proceedings dated 12.11.2013. Further, one P.Naga Mani working as Senior Assistant in the College was promoted by transfer from the post of Senior Assistant to Assistant Librarian vide Proceedings dated 26.09.2014. She submits that the said Naga Mani died in the year 2017. The learned counsel submits that the 4th respondent's services were

regularized after completion of probation period vide proceedings dated 08.02.2016. Thereafter, he was appointed as Assistant Librarian in the College on promotion w.e.f 06.07.2019. She contends that the very fact that the two posts of Assistant Librarians were filled up with regular employees, is well within the knowledge of the petitioner and without disclosing the said material facts, as also without impleading the 4th respondent, who is a proper and necessary party, the petitioner obtained orders in W.P.No.20604 of 2020. She submits that the Writ Petition filed by the petitioner is liable to be rejected on the ground of suppression of material facts.

12. The learned counsel in support of her contentions also referred to the material documents i.e., office order issued by the 3rd respondent on 30.06.2014 directing the petitioner to handover complete charge to Mr.G.Bala Krishna, Assistant Librarian of the College and the Proceedings of the 3rd respondent-Principal appointing the said Naga Mani in the post of Assistant Librarian dated 26.09.2014. In any event, learned counsel submits that even as seen from the representation dated 05.06.2020, the petitioner is seeking for continuation of his services by issuing orders to re-back the 4th respondent to the post of Junior Assistant without challenging the order appointing the 4th respondent as Assistant Librarian in the year 2019, which is not tenable. Accordingly, she urges for dismissal of the Writ Petitions.

13. This Court has considered the arguments advanced by the respective counsel for the parties and gone through the material on record. In the light of the contentions advanced, the points which fall for consideration by this Court may be summarized as follows:-

i) Whether the Proceedings dated 31.05.2010 is unjust, arbitrary and tainted with malafides as alleged by the petitioner?

ii) Whether the petitioner is entitled for continuation of his services in the post of Assistant Librarian, on contract basis and other reliefs as sought for?

iii) Whether the petitioner is disentitled to the reliefs sought for in the Writ Petitions, more particularly in view of the subsequent developments which were not disclosed, apart from delay and laches on his part?

iv) To what relief?

14. Point No.1:-

Before dealing with the contentions advanced by the learned counsel for the petitioner, it may be appropriate to note that though it is the case of petitioner that pursuant to the invitation of applications for the post of Assistant Librarian, the petitioner applied for the same, the material on record filed along with W.P.No.12453 of 2010 i.e., Ex.P.2 dated 19.05.2007 would disclose that the petitioner made a representation for appointment to the said post on contract basis under 300 OCS, which was forwarded by the Principal of the College to the Director of Medical Education. Therefore, the statement of the petitioner in the affidavit is not correct. Be that as it may.

15. A perusal of the documents filed along with the counter affidavit of the 3rd respondent in W.P.No.12453 of 2010 would go to show that proposals for engaging the services of the petitioner on outsourcing basis were sought for by the Government vide Memo No.12576/H1/2007-2, dated 24.07.2007. Pursuant to the said Memo, the Director of Medical Education, Andhra Pradesh, Hyderabad vide Proceedings dated 07.08.2007 requested the Principal of the College to furnish proposals for

engaging services on outsourcing to enable the office of the 2nd respondent to forward the same to the Government for further course of action. Thus, it is apparent from the record that the petitioner's request to the post of Assistant Librarian was processed for appointment on outsourcing basis. Ultimately, the Government accorded permission for appointment of the petitioner on contract basis for a period of one year with consolidated remuneration of Rs.6,200/- per month vide Proceedings Memo No.12576/H1/2007-5 dated 11.01.2008. The petitioner is well aware that his appointment was on outsourcing basis and in view of the same made a representation on 02.06.2008 to the 1st respondent/Government to change the method of appointment from outsourcing to 300 OCS. The record further discloses that on expiry of initial appointment for one year and for the subsequent period, proposals were sent to the Government seeking extension of the period upto 05.02.2011. The letter of the 3rd respondent dated 02.02.2010 would also disclose the said aspect. In view of the correspondence/Proceedings referred to above, the plea taken by the petitioner, that he was wrongly appointed on outsourcing basis, instead of contract basis under 300 OCS at the instance of the then Principal cannot be countenanced. Though the petitioner states that since no orders rejecting the proposals for extension of services of the petitioner were issued, the 3rd respondent instead of waiting for appropriate orders from the Government, with a malafide intention passed the order dated 31.05.2010, this Court finds no reason to find fault with the said communication. No doubt, the proposals were pending, but the same would not enure to the benefit of the petitioner or create any interest in his favour, unless the same are approved. For whatever reasons, no orders of extension were issued and Proceedings

dated 31.05.2010 came to be addressed. The petitioner alleged malafides against the then Principal of the College, but he was not made co-nomine party to the Writ Petition. Therefore, no specific conclusions with regard to malafides can be arrived at or findings be recorded, in his absence. Suffice to state that the action taken by the 3rd respondent in dispensing/not continuing the services of the petitioner due to non-receipt of extension orders from the Government cannot be viewed as illegal or arbitrary.

Point No.1 is accordingly answered against the petitioner.

16. **Point Nos.2 & 3:-**

Though in view of the above conclusion, the consequential relief in W.P.No.12453 of 2010 merits no consideration, as the relief of continuation of services as sought for which is interlinked with the interim orders granted, the matter needs further examination. It is to be noted and which is admitted in the affidavit filed by the petitioner himself in W.P.No.20604 of 2020, he is not allowed to attend duties from the year 2014. No reasons are stated in the affidavit filed in support of the said Writ Petition as to why he did not approach this Court till the year 2020. The material on record discloses crucial developments with regard to continuation of his services on contract basis upto 30.06.2014 in terms of Government Memo.1199/J1/2013-1, dated 07.05.2014, followed by the office order of the 3rd respondent dated 30.06.2014. Two persons were appointed as Assistant Librarians as pointed by the learned counsel for the 4th respondent, which obviously is well within the knowledge of the petitioner.

However, he did not chose to initiate Contempt Proceedings for disobedience of the orders passed in W.P.No.12453 of 2010 though his services were discontinued with effect from 30.06.2014 nor challenged the appointments in favour of third parties. Apparently, he kept quiet even though his term was not extended in tune with the Government Orders, on which reliance is placed, even assuming that the same are applicable. The said conduct of the petitioner amounts to acquiescence. In this regard it may be apposite to refer to the case of **U.P. Jal Nigam and another Vs. Jaswanth Singh and another**¹, wherein the Hon'ble Supreme Court in Para 12 of the judgment referred to the statement of Law summarized in Halbury's Laws of England with approval which reads as follows:-

"Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

Had the petitioner invoked the appropriate remedies on discontinuation of his services with effect from 30.06.2014, at least he might have secured some relief, however, he has not acted with promptitude. The material on record would disclose that he approached the Government sometime in the year 2019 making a representation. The petitioner appears to have invoked the other remedies, as seen from the material filed along with the reply affidavit, but neither an averment to

¹ 2006 (11) SCC 464

that effect was made nor was it pleaded that delay occurred for the said reason and the same may be condoned. It is settled law that in Service matters, the rule of delay has to be applied with great rigour. Courts can come to the aid of a person who is diligent and vigilant but unable to approach the authority or Court of law for redressal of his grievance in spite of his best efforts and reasons beyond his control, but not a person who is tardy and negligent or slept over the matter in availing the statutory or legal remedies.

17. Further, the parties who seek aid of the Court for exercising its discretionary power is expected to state correct facts. However, the petitioner as contended by the learned counsel for the Respondent No.4 had not stated/disclosed the material facts.

18. The petitioner is therefore guilty of non-disclosure of material facts. In this regard, it may be profitable to refer to the judgment of the Hon'ble Supreme Court in the case of **Prestige Lights Ltd., Vs State Bank of India**², wherein at Para 33, it was held as follows:-

"Para 33: The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equality. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter."

In the aforesaid view of the matter, Point Nos.2 and 3 are held against the petitioner.

² (2007) 8 SCC 449

19. **Point No.4:-**

In the light of the above findings and conclusions recorded supra, the petitioner is not entitled to the reliefs as prayed for in Writ Petition No.12453 of 2010 and the same is accordingly dismissed.

However, this Court hastens to add that dismissal of the Writ Petition may not be treated as imprimatur to the actions of the respondents, which are highly deprecable and contemptuous. There can be no second opinion that they are under legal obligation and bound to continue the services of the petitioner, so long as the interim orders are in force. Suffice to state, but for the indolence on the part of the petitioner, the respondents who were at the helm of affairs at the relevant point of time, would have been brought to book.

20. In so far as W.P.No.20604 of 2020 is concerned, as the interim orders were obtained without disclosing the material facts, the same are vacated. However, keeping in view the submission that the petitioner is solely dependent on the post in question, it is left open to the respondents to consider his case for appointment, in any suitable post, in any of the existing vacancies. W.P.No.20604 of 2020 is disposed of, accordingly.

21. Before parting with the matter, it may also be appropriate to refer to the report furnished to the petitioner under the Right to Information Act, on which much reliance is placed to highlight the conduct of the then Principal, which was found fault with. It is made clear that if some investigation is made against the then Principal with regard to the alleged atrocities made against the petitioner, the concerned authorities are at liberty to deal with the matters, in accordance with Law, as this Court has

not recorded any specific findings with regard to personal allegations/malafides attributed to the then Principal. Therefore shall be no order as to costs.

As a sequel, miscellaneous applications, if any, pending shall stand closed.

Date: 04.02.2022

IS

L.R. Copy

NINALA JAYASURYA, J

HON'BLE SRI JUSTICE NINALA JAYASURYA

WRIT PETITION Nos.12453 of 2010 and 20604 of 2020

Date: 04.02.2022

IS

L.R Copy