

COMMISSIONER, MUNICIPAL CORPORATION
HYDERABAD AND OTHERS

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v.

P. MARY MANORANJANI AND ANOTHER
(C.A. No. 341 of 2008)

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JANUARY 11, 2008

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Service Law – Appointment by absorption of casual workers – For the purpose of appointment exemption granted from sponsorship of the names of candidates from Employment Exchange – Employer-Corporation requiring written test, typing test and interview for recruitment – Candidate-casual worker not appearing in written and typing test, but appearing in interview – Candidate seeking regular appointment – Termination of her services as a casual worker on the ground of unauthorised absence from duty – Termination challenged – High Court directing her appointment – On appeal, held: Appointment rightly denied to the candidate – She did not have any legal right to be appointed – The Government order granted exemption only from sponsorship of the names by the Employment Exchange and not from the recruitment procedure – A public employment in derogation of constitutional scheme provided u/arts. 14 and 16 of the Constitution and statutory requirements is not permissible – Constitution of India, 1950 – Articles 12, 14 and 16 – G.O. Ms. No. 27 M.A. (Q) dated 16.1.1991.

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Respondent No. 1 had joined the services of the appellant-corporation as a Balwad: teacher (casual worker). The Corporation requested the State to grant exemption to the casual workers from requirement of sponsorship of the candidates by the Employment Exchange for appointment in the regular post. The exemption was granted by G.O. Ms. No. 27 M.A. (Q) dated 16.2.1991. The respondent, for the purpose of selection

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A in a regular post, was required to appear for interview and
written test. She appeared for interview, but did not appear
in written test and typing test. Thereafter a letter was
received by the Corporation from Welfare Association
B requesting the Corporation that the services of the
respondent be terminated since she had unauthorisedly
remained absent for long time as a casual worker.
Thereafter, respondent requested the Corporation
seeking her absorption as a typist. Corporation
terminated her services in view of the unexplained
C absence. Respondent filed writ petition, challenging the
order of termination. Single Judge of High Court allowed
the same on the ground that once the name of the
candidate appeared in the list of candidates in terms of
the G.O., appointment to her could not have been denied
D in view of G.O. Ms No. 27, on the ground that on the date
of interview she was not in actual service. Appeal of the
Corporation was dismissed by Division Bench of High
Court. Hence the present appeal.

Allowing the appeal, the Court

E HELD: 1. Constitutional scheme in regard to public
employment as enumerated in Articles 14 and 16 of the
Constitution of India is explicit. Any appointment made
by a 'State' within the meaning of Article 12 of the
Constitution of India must be subject to the constitutional
F scheme. In making appointments the State is obligated
to comply with the same as also statutory requirements,
if any. Neither the appellant nor the State could grant any
exemption in regard to compliance of the statutory
requirements. [Para 13] [635-F, G, H; 636-A]

G 2. The G.O. Ms. No. 27 M.A. (Q) dated 16.1.1991
granted only exemption from sponsorship of the names
by the Employment Exchange. Appellant did not and in
fact could not ask for grant of any exemption from its
obligation to comply with the requirements of Articles 14
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and 16 of the Constitution of India or other Statutory Rules operating in the field in this behalf. It is now a well settled principle of law that any appointment made in violation of the statute or the constitutional provision would be illegal. [Para 14] [636-A, B]

Secretary State of Karnataka and Ors. vs. Uma Devi (3) and Ors. 2006 (4) SCC 1 – relied on.

3. The G.O. is not at all applicable in a case of this nature, where a candidate not only did not appear at the written test for the purpose of recruitment to the regular post but also failed to attend to her duties for a number of years. Respondent was engaged for a particular purpose, namely – to impart education to the poor children. She failed to carry out her contractual obligations. Only when she came to learn of the fact that a complaint had been made against her, she requested either for her recruitment as a typist or grant her leave on medical ground, which ex-facie appears to be mala fide. She did not have any legal right to continue in the said post. The direction of the High Court to consider her case in the light of the G.O. is unsustainable. [Paras 15, 16 and 17] [636-C, D, E, F]

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 341 of 2008.

From the final Order dated 4.11.2004 of the High Court of Andhra Pradesh at Hyderabad in W.A. No. 1714 of 2004.

L.N. Rao, G. Ramakrishna Prasad, Suyodhan Byrapaneni, Siddharth Patnaik and G. Arun for the Appellants.

Anil Kumar Tandale for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Respondent No.1 joined the services of Appellant-Corporation as Balwadi Teacher on an honorarium of Rs.100/- per month.

A 3. The Corporation requested the State of Andhra Pradesh to grant exemption in regard to requirements of sponsorship of the candidates by the Employment Exchange for appointment in the regular posts, pursuant whereto G.O. Ms. No.27 M.A. (Q) dated 16th January, 1991 was issued, stating :-

B "The Commissioner, Municipal Corporation of Hyderabad in his letter 2nd read above has stated that the Municipal Corporation of Hyderabad has been implementing the Urban Community Development Programme since 1967 that under this programme a number of Balwadi and Sewing Centres were opened in the slum areas for the benefit of the slum Woman and Children and a grant of Rs.250/- p.m. was paid by the Municipal Corporation of Hyderabad to the Balwadi Teachers and that there is a long standing demand from these persons for absorption into posts with a regular scale of pay as most of them are working as Teachers from 10 to 15 years. Therefore, the Commissioner, Municipal Corporation of Hyderabad has requested the Government to exempt the voluntary workers from the Employment Exchange Procedure so that they may be considered for appointment in the existing and future vacancies of Municipal Corporation of Hyderabad as Lower Division Clerks, Lower Division Typists, Bill Collectors, Record Assistants or any other posts for which they are eligible.

F 2. The Government having carefully examined the proposal of the Commissioner, Municipal Corporation of Hyderabad hereby accord exempting 214 voluntary workers listed in the annexure to this order from Employment Exchange procedure so that they may be considered for appointment as LDCs, L.D. Typists, Bill Collectors, Record Assistants or any other posts for which they are eligible in the existing and future vacancies.

H 3. The Commissioner, Municipal Corporation of Hyderabad is requested to take necessary action

accordingly.”

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4. The said order clearly postulates that what was exempted was requirement of sponsorship of the candidates by the Employment Exchange and not the selection process itself.

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5. Appellant is a 'State' within the meaning of Article 12 of the Constitution of India. It was, therefore, obligated to undertake the selection process in terms of the constitutional scheme envisaged under Articles 14 and 16 of the Constitution of India.

6. Respondent, for the purpose of her selection in a regular post created by the appellant-Corporation, was thus, required to appear for a vive voce before a Selection Committee as also a written test. She appeared in the interview on 24th December, 1991. She, however, did not appear in the written test. From April, 1989 she absented herself from her duties. As she had unauthorisedly remained absent continuously for long time, a letter dated 2nd June, 1992 was received by the Corporation from Jai Prakash Nagar Welfare Association requesting the Corporation to terminate her services.

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7. Having come to learn thereabout the respondent made a request before the appellant on 12th February, 1993 that she be provided with a job of typist stating:-

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“I am to state here that I passed Higher Typewriting in English and S.S.C. passed I have attend the interview on 26.12.91, by (but) could not attend written test and Typewriting exam as I am late and there was a communication gap.

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I request you sir kindly to appoint me a typist as I am fully qualified to hold the post. My colleagues have already been appointed. If I am provided with the job, I shall ever remain grateful.”

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8. It, therefore, stands admitted that she had not appeared at the written test as also typewriting examination. She also

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A having realized that she had been absenting from her duties continuously, purported to file some medical certificates for treating her to be on leave from 1st May, 1989 to 19th February, 1993. Appellant by its letter dated 10th March, 1993 asked her to produce copies of the representations made by her during
B the period of her absence as also the acknowledgement receipts thereto to examine her case. The period of absence having not satisfactorily been explained by the respondent, her services were terminated by an order dated 24th July, 1998 stating :-

C “13. The request of Smt. Mary Manoranjani has been examined with reference to the records available and it is clearly established that she had absented from duty w.e.f. April, 1989 onwards for reasons best known to her. There is nothing on record to show that she has either submitted any leave application or any medical certificate during the
D period of her absence, until she again submitted application on 20.02.1993 requesting for permission to join today. The Balwadi/Sewing teachers have been appointed by the respective welfare associations located in slums and they were not appointed by MCH. Smt. Mary
E Manoranjani has already been communicated that her request for rejoining into duty is rejected vide this office letter 7th cited. Smt. Mary Manoranjani has not put forth any new grounds to reconsider her case.”

F 9. Aggrieved thereby she filed a writ petition before the High Court of Judicature at Andhra Pradesh in August, 1998. By a judgment and order dated 9th March, 2004 a learned Single Judge of the High Court, without entering into the merit of the matter, allowed the said petition stating :-

G “Admittedly, the Government has issued G.O.Ms. No.27 on 16.1.1991 and as per the contents of the said G.O. voluntarily workers working in the Municipal Corporation of Hyderabad should be absorbed in regular vacancies by relaxing the rules relating to employment exchange etc.,
H and from the papers produced by the learned counsel for

the petitioner, it is clear that a list of casual workers was prepared and the petitioner is placed at serial No.100. When once the petitioner is in the list of candidates and the purpose of G.O.Ms. No.27 is to give relaxation of the existing rules and for absorption of those who are working as casual workers as on the date of the G.O., it cannot be said that the petitioner's case cannot be considered simply on the ground that as on the date of interview she was not in actual service. Hence, I deem fit to direct the respondents to consider the case of the petitioner for appointment as Lower Division Typist or in any other equivalent post in terms of G.O.Ms. No.27 dated 16.1.1991." A
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10. An intra court appeal preferred by the appellant thereagainst has been dismissed by a Division Bench of the said High Court by reason of the impugned judgment. D

11. Mr. L.N. Rao, learned senior counsel appearing on behalf of the appellants, submitted that the impugned orders of the High Court are ex facie illegal as in a case of this nature the aforesaid G.O.Ms. cannot be said to have any application whatsoever. E

12. Mr. Anil Kumar Tandale, learned counsel appearing on behalf of the respondent, on the other hand, submitted that keeping in view the tenor of the order passed by the learned Single Judge which has been affirmed by the Division Bench, as a mere direction for consideration of the case of the respondent in terms of the said G.O.M. has been made, no interference therewith by this Court is warranted. F

13. Constitutional scheme in regard to public employment as enumerated in Articles 14 and 16 of the Constitution of India is explicit. Any appointment made by a 'State' within the meaning of Article 12 of the Constitution of India must be subject to the constitutional scheme. In making appointments the State is obligated to comply with the same as also statutory requirements, if any. Neither the appellant nor the State could G
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A grant any exemption in regard to compliance of the statutory requirements.

B 14. The G.O.M. granted only exemption from sponsorship of the names by the Employment Exchange. Appellant did not and in fact could not ask for grant of any exemption from its obligation to comply with the requirements of Articles 14 and 16 of the Constitution of India or other Statutory Rules operating in the field in this behalf. It is now a well settled principle of law that any appointment made in violation of the statute or the constitutional provision would be illegal. (See – *Secretary State of Karnataka and others vs. Uma Devi (3) and others* : (2006) 4 SCC 1.

D 15. G.O. Ms. No. 27 M.A. (Q) dated 16th January, 1991, therefore, is not at all applicable in a case of this nature, where a candidate not only did not appear at the written test for the purpose of recruitment to the regular post but also failed to attend to her duties for a number of years. Respondent was engaged for a particular purpose, namely – to impart education to the poor children. She failed to carry out her contractual obligations.

E 16. Only when she came to learn of the fact that a complaint had been made against her, she requested either for her recruitment as a typist or grant her leave on medical ground, which ex-facie appears to be mala fide.

F 17. We, therefore, are of the opinion that she did not have any legal right to continue in the said post. The direction of the High Court to consider her case in the light of G.O.Ms. No. 27 M.A. (Q) dated 16th January, 1991 is eminently unsustainable as the said government order would have no application to the facts and circumstances of the case.

G 18. For the reasons abovementioned the impugned judgment cannot be sustained and is set aside accordingly. The appeal is allowed. However, there shall be no order as to costs.

H K.K.T.

Appeal allowed.