

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Writ Petition No.9765 of 2005

ORDER:-

The writ petition is filed seeking the relief of grant approval without reference to the Government Memo No.12080/C&DSE/A2/2004-4, dated 20-10-2004 appointing the writ petitioner as a Craft Instructor in the 4th respondent institution – Dr.V.Malleshwar Memorial Govt.Aided Saraswathi High School, Kareemabad, Warangal.

2. In support of the petition, the writ petitioner filed the affidavit contending as under:-

The petitioner applied for the post of “Crafts Instructor” as advertised by the 4th respondent, appeared for the written test and interview conducted on 26.08.2003. She was selected and appointed as “Crafts Instructor” (Grant-in-aid) vide proceedings dated 27.08.2003, which was issued subject to the departmental approval, as required under Rule 12(8) of the Rules 1993 (A.P.Educational Institutions, Establishments, Recruitments, Administration and Control of Schools under Private Management) in G.O.Ms.No.1, Edn.01.01.1994. The petitioner joined on 28.08.2003. The Deputy Educational Officer has sent the proposal for ratification on 28.08.2003 to the 3rd respondent the District Educational Officer. The petitioner made representations on 20.07.2004 and 27.08.2004 in this regard. The 3rd respondent vide letter dated 14.09.2004 requested the 2nd respondent to pass orders of approval on the basis of proposals already submitted on 28.02.2003. But the 2nd respondent has not approved the appointment of the petitioner on the pretext that there is ban imposed by the Government vide Government Memo dated 20.10.2004.

3. On behalf of the respondents, the Joint Director of School Education, Warangal filed counter affidavit contending as under:-

He denied the contentions of the petitioner. He stated that the proposals for approval of the selections were received in the office of the 2nd respondent-Regional Joint Director of School Education, Warangal on 24.09.2004, late by one year one month, whereas, as per rule 12(8) the Educational Agency, shall inform the competent authority within one month of the selection. It is stated that Rule 12(8) speaks that all appointments in Aided or unaided shall be subject to the approval of the competent authority. Therefore, the action taken by the Management in having issued appointment orders without approval of the competent authority is against Rule 12(8), and the date of joining of the petitioner is irregular, contrary and against the rules. It is stated that the persons who were selected as SGT under the same notification were approved by the competent authority, as there were no allegations, appeals and writ petitions pending and as they have submitted the proposals within a stipulated time. But in this case no approval was obtained before appointment, and hence the petitioner is not entitled for salary from grant-in-aid, and also, the proposal of the petitioner cannot be considered in the light of the Government Memo dated 20.10.2004.

4. Subsequently, additional counter affidavit filed by the 2nd respondent with the following averments:-

The 2nd respondent stated that the Management has submitted the proposal of the petitioner for approval of her appointment to the Deputy Educational Officer (W), Warangal, in turn the Deputy Educational Officer (W), Warangal has forwarded the same to the District Educational Officer, Warangal through letter dated 10.03.2004. The District Educational Officer, Warangal in turn submitted the proposal through his letter dated 23.09.2004 to the Regional Joint Director of School Education, Warangal and the same was received on 24.09.2004. The contention of the petitioner that the Correspondent has submitted the proposal on 28.08.2003 is not correct. The 2nd respondent further stated that pursuant to the rationalization of the staff in aided schools made by the DEO, Warangal, one craft instructor by name Smt.Devamma, who was found to be surplus in the aided Venkateswara High School, Orus, Warangal was shifted to aided Dr.V.M.M.Saraswathi High School, Kareemabad, Warangal, vide proceedings dated 20.11.2005 and hence the question of

approval of selection of the petitioner would not arise.

5. Arguments on behalf of the writ petitioner and on behalf of the respondents – the Government Pleader were heard. 6. The contention of the writ petitioner is that the official respondents have not accorded the approval to appoint her as Craft Instructor basing on the impugned memo even though long prior to issuance thereof, the process for selecting and appointing the writ petitioner was completed. As a matter of fact, the writ petitioner joined 4th respondent institution in the aided post of Craft Instructor and the 4th respondent institution addressed the authorities for according the approval. The authorities have subsequently, nearly a year thereafter, issued the memo banning the recruitments that no new post of grant-in-aid would be created and issued a general ban on recruitment. Learned Counsel submits that the very same impugned memo and the act of the authorities and refusing to accord approval for appointment of the teachers in the aided posts was subject matter of several writ petitions and writ appeals before this High Court and ultimately the matter went up to the Supreme Court and in the decision reported in **Govt. of A.P. v. Sri Sevadas Vidyamandir High School** the Apex Court has categorically held that the Government and its authorities could not contend that the rationalization process which had been introduced, would also apply in respect of the private aided schools, where the process of recruitment had already been commenced pursuant to the approval granted earlier. Learned Counsel submits that the said decision of the Apex Court is squarely applicable to the facts of the present case and therefore the respondents/authorities cannot be heard saying that in view of the memo dealing with recruitments and rationalization, approval to appoint the writ petitioner as Craft Instructor could not be granted.

7. On the other hand, the learned Government Pleader submits that the proposal to approve the appointment of the writ petitioner was received more than a year thereafter and that was after the Government issued the memo and therefore the approval was not and cannot be accorded. Learned Government Pleader submits that the decision (cited supra), no doubt, clearly states that if the process of recruitment has commenced prior to issuance of the ban orders, it will not affect the recommendations already made, but in the instant case, learned Counsel Government Pleader submits that the proposal was received

long thereafter and hence it could not be acceded.

8. Having heard the submissions of the learned Counsel appearing for the writ petitioner and the learned Government Pleader, I have no hesitation in holding that in view of the decision of the Supreme Court (cited supra), the respondents authorities cannot withhold according approval to the writ petitioner for being appointed as a Craft Instructor in the 4th respondent institution which admittedly is a Government aided post. The relevant aspects are that the impugned rationalization memo for appoint and recruitment is issued admittedly on 20.10.2004. The 4th respondent institution was accorded permission to appoint a Craft Instructor in the 4th respondent institution in the proceedings in Rc.No.64/B/2003, dated 13-08-2003. These proceedings were issued by the Dy.Educational Officer (W), Warangal. After obtaining the due permission to proceed with the process of recruitment, the 4th respondent institution initiated the process, conducted written test and oral test and the Staff Selection Committee on 26-08-2003 has selected the writ petitioner for the post of Craft Instructor. Accordingly, the Secretary of the 4th respondent institution issued the proceedings in Rc.No.50/SHS/SEC/Estt./2003, dated 27.08.2003, appointing the writ petitioner as Craft Instructor with a condition that the said appointment is issued subject to the departmental approval. The writ petitioner was called upon to join duty within one month from the said date. Accordingly, on the very next day i.e., on 28-08-2003, the writ petitioner submitted joining report before the 4th respondent institution and joined duty in the forenoon of 28-08-2003. A copy of the appointment order was sent to the District Educational Officer, the Deputy Educational Officer, the Regional Joint Director of School Education, and the Deputy Inspector of School Education at Warangal. The District Educational Officer, Warangal, in proceedings Rc.No.2700/Ex.P.1/2004, dated 26.03.2004 called upon the Dy.Educational Officer (W), Warangal, to submit specific remarks on the directions of the High Court of A.P., for taking further necessary action with regard to the approval of the writ petitioner to the post of Craft Instructor. A copy thereof was also marked to the 4th respondent institution. From these proceedings, it is manifest that nearly seven months prior to the issuance of the memo banning the recruitments, the process for according approval to the proposal sent by the 4th

respondent institution appointing her as Craft Instructor was set in motion, but in view of certain writ petitions filed by the candidates, who were not selected, the matter could not be taken up. This is more than clear from the proceedings of the District Educational Officer dated 26-03-2004 referred to supra.

9. The writ petitioner previously filed W.P.No.10520 of 2003 and the respondents therein were the same as in the present writ petition. The prayer in that writ petition was to direct the 4th respondent institution to proceed with the process of recruitment in pursuance to the notification dated 18-05-2003 published by the 4th respondent institution. Pending the said writ petition, the recruitment process was taken up, written test was conducted and oral interview was held and therefore the said writ petition was dismissed as infructuous on 16-08-2004.

10. Another relevant proceeding is the letter in R.C.No.50/V.MM&HS/SEC/ESTT/2004, dated 14-09-2004, addressed to the District Educational Officer, Warangal wherein references are made not only to the writ petitions, there is also reference to the letter issued by the 4th respondent institution on 01-09-2003 seeking ratification of the appointment of the writ petitioner as Craft Instructor. This letter was issued by the 4th respondent institution requesting the authorities to accord ratification in view of disposal of the writ petitions referred to in the said letter.

11. Even at the cost of repetition, it can be stated that all these proceedings and correspondence took place prior to 20-10-2004 i.e., the date on which the Government issued the impugned memo banning recruitments on the ground of rationalization. Therefore, there is no substance in the submission of the learned Government Pleader that no proposals were received by the authorities from the 4th respondent institution for ratification of the appointment of the writ petitioner in pursuance to the notification issued in May, 2003, after obtaining the approval from the Deputy Educational Officer.

12. In view of the above circumstances and in view of the Judgment of the Supreme Court which arose out of the same Government memo impugned in the present writ petition, it is clear that the authorities cannot withhold the

ratification in view of the fact that the entire process of issuing notification, written examination, oral test, appointment order, joining report, addressing the authorities for ratification, were all done long prior to the issuance of the memo by the Government. The Supreme Court in the decision cited supra in para 18 categorically held as under:-

“Having considered the submissions made on behalf of the representative parties, we are of the view that no interference is called for with the Judgment and order of the Division Bench of the High Court. There is no dispute that the Memo dated 20-10-2004, imposing a ban on recruitment to grant-in-aid posts was issued after the schools in question had been given permission by the State authorities to fill up the vacant posts in the schools being managed and run by the writ petitioners, who are the respondents in these special leave petitions. There is also no dispute that the said memo was not given retrospective effect so as to negate the approval already given for filling up the grand-in-aid posts. **The State Government and its authorities could not, therefore, contend that the rationalisation process which had been introduced, would also apply in respect of the private aided schools, where the process of recruitment had already been commenced pursuant to the approval granted earlier.**”

13. Learned Government Pleader further submits that in the process of rationalization in the post of Craft Instructor in the 4th respondent institution one Devamma who was found to surplus in the aided Sri Venkateshwara High School, Orus, Warangal, was shifted to the 4th respondent institution by the District Educational Officer, Warangal, on 20-11-2005 and therefore the question of approving the selection of the writ petitioner to the post of Craft Instructor in the 4th respondent institution will not arise. This submission of the learned Government Pleader cannot be sustained for the reason that merely because in the process of rationalisation, a Teacher from the other school where she was found to be surplus has been transferred to the 4th respondent institution that cannot deprive the writ petitioner who has been selected after following due process of recruitment in accordance with law in the matter of her employment as such. Merely because another teacher was found to be in surplus, that cannot be taken as a ground to deny the writ petitioner of her right of appointment pursuant to the notification, the written test, oral interview,

selection and issuance of the appointment order by the 4th respondent institution. It is for the authorities to post the writ petitioner and this cannot be denied on the ground that no vacancy exists in the 4th respondent institution. The post as such in the 4th respondent institution has not been abolished. Merely because an incumbent has been transferred from other school, that cannot be a ground to deny according approval to the writ petitioner.

14. In that view of the matter, I have no hesitation to hold that the action of the respondents in not approving the selection of the petitioner and not paying the salaries for the worked period is arbitrary and without jurisdiction.

15. The writ petition is accordingly allowed. The respondents are directed to approve the selection of the petitioner as “Crafts Instructor” with effect from 27.08.2003 and pay salaries for the period worked in the 4th respondent School. If the petitioner is not given any posting orders, she shall be issued posting orders forthwith. It is made clear that the entire process will be completed within 3 (three) months from the date of receipt of a copy of this order. In the circumstances, there shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 12.2015

Dsr/Smr