

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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W.P.No.23471 of 2011

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, assails the orders of the Regional Joint Director of School Education, Kadapa vide Rc.No.2217/B2/2010 dated 11.4.2011 whereunder and whereby the 2nd respondent rejected to grant approval for appointment of the petitioner.

2. According to the petitioner, she was appointed as Sweeper-cum-Scavenger in the 3rd respondent school on daily wage basis. Subsequently, after the death of one Smt.P.Kondamma, a regular vacancy arose and the petitioner was appointed against the said vacancy. Thereafter, the 3rd respondent sent proposals for approval and according to the petitioner, the same was followed by reminder on 1.8.1999. The District Educational Officer, Kadapa vide proceedings Rc.No.15274/88/99 dated 8.12.1999, rejected the same while referring to the proceedings of the Commissioner and Director of School Education issued vide proceedings L.Dis.No.2177/D1-2/93 dated 3.1.1994. The petitioner herein challenged the said proceedings of the District Educational Officer dated 8.12.1999 by way of filing W.P.No.6196 of 2000 and the same was allowed by this Court by way of an order dated 15.7.2010, with a direction to the respondents to pass further orders. Thereafter, petitioner filed C.C.No.268 of 2011 and subsequently, the 2nd respondent passed an order vide proceedings Rc.No.2217/B2/2010 dated 11.4.2011, rejecting the proposal on the ground that the said request is not feasible for consideration, in accordance with law.

3. Calling in question, the validity and legal sustainability of the said order dated 11.4.2011 passed by the 2nd respondent-Regional Joint Director of School Education, Kadapa, the present writ petition

came to be filed.

4. On 19.8.2011, this Court while admitting the writ petition, issued rule nisi to the respondents. Responding to the rule nisi, counter affidavit deposed by the 2nd respondent has been filed on behalf of respondents 1 and 2, denying the averments in the writ affidavit and in the direction of justifying the impugned action. The 3rd respondent filed counter, practically supporting the case of the petitioner.

5. Heard Sri Kasa Jaganmohan Reddy, learned counsel for the petitioner, learned Government Pleader for Respondents and 2 and Sri O.Uday Kumar, learned counsel for Respondent No.3, apart from perusing the material available on record.

6. CONTENTIONS/SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

6.1 The questioned order dated 11.4.2011 passed by the Regional Joint Director of School Education, Kadapa-2nd respondent is highly illegal, arbitrary, unreasonable and violative of Articles 14, 16 and 21 of the Constitution of India.

6.2 The 2nd respondent ought to have seen that the District Educational Officer, by way of proceedings Rc.No.2599/A/85 dated 31.1.1986 converted three contingent posts including the post held by the petitioner in the 3rd respondent school into last grade service and absorbed the incumbents into time scale of Rs.290-425 with effect from 1.4.1985.

6.3 The impugned action is contrary to Rule 15 (4) A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools) Rules, 1988 as notified vide G.O.Ms.No.524, Education (Rules), dated 20.12.1988.

6.4 The 2nd respondent ought to have seen that one KCS Vijay

Kumar filed W.P.No.2592 of 1988 questioning the proceedings of Director of School Education, A.P., Hyderabad dated 3.1.1994 and the same was allowed by this Court on 14.7.1999.

- 6.5 Rejection of approval by the 2nd respondent after lapse of nearly 18 years is bad and contrary to Sections 7 and 8 of Children to Free and Compulsory Education Act, 2009 and Section 45 of A.P. Education Act, 1982.

7. SUBMISSIONS/CONTENTIONS OF LEARNED GOVT. PLEADER

- 7.1 The Management did not obtain prior permission from the Department and there is no provision in the Rules for filling up contingent post converted into Class-IV in aided schools by other person as the Class-IV post cease to exist whenever the person dies or retires from service as such the rejection of approval cannot be faulted.

- 7.2 The claim of the petitioner would not come under G.O.Ms.No. 237 Education dated 4.4.1985.

- 7.3 The case of Sri KCS Vijaya Kumar cannot be equated with the petitioner as he was appointed against a contingent post with effect from 20.6.1985 and later appointed on regular basis in the converted full time contingent post into Class-IV post of Watchman from 1.8.1994 in the retirement vacancy and the same was approved.

- 7.4 The petitioner is not entitled for the benefit under G.O.Ms.No.212 Finance and Planning dated 22.4.1994 as he failed to complete five years as on 21.11.1993.

8. The learned counsel for 3rd respondent has totally supported the case of the writ petitioner.

9. In the above backdrop, now the issue that boils down for

consideration of this Court is whether the order impugned in the present writ petition is tenable and the petitioner is entitled for any relief from this Court under Article 226 of the Constitution of India.

10. The information available before this Court vividly discloses that the Government of A.P. vide G.O.Ms.No.237 Education (H1) Department dated 4.4.1985 issued instructions for conversion of full time contingent posts of Watermen, Watchmen, Sweepers, Scavengers, Gardner-cum-Sweeper in private aided schools into Class-IV posts subject to the fulfillment of the following conditions:

- (1) The posts have been created under the orders of competent authority.
- (2) They are full time
- (3) They are in receipt of aid, and that
- (4) They have been in existence for a period of not less than 10 years as on 1.4.1985.

11. It is to be noted at this juncture that while permitting such conversion, the State Government also had withdrew the contingent grant of 6% on the total teaching grant paid to the aided schools.

12. In response to the proposals sent by 3rd respondent-School on 6.9.1985, the District Educational Officer, Kadapa vide proceedings Rc.No.2399.A3/85 dated 31.1.1986 ordered conversion of following three contingent staff into Class-IV with effect from 1.4.1985:

- (1) Sri R.C.Devadanam, Watchman.
- (2) Sri D.Abel, Gardner-cum-Waterman.
- (3) Sri P.Kondamma, Sweeper.

13. Smt.P.Kondamma who was admitted to grant-in-aid died on 6.5.1993 and the petitioner, who according to the counter of 3rd respondent was working on temporary basis from 1990 was appointed as Sweeper-cum-Scavenger vide orders dated 8.5.1993 in the said vacancy. Subsequently, the 3rd respondent sent proposals and the District Educational Officer, Kadapa vide proceedings dated 8.12.1999

rejected the said proposals while referring to the proceedings of the Director of School Education dated 3.1.1994. Questioning the said proceedings dated 8.12.1999, W.P.No.6196 of 2000 was filed and the said writ petition was allowed on 15.7.2010 and paragraphs 4 to 7 of the said order read as under:

“4. Learned counsel for the petitioner submitted that the petitioner is working as scavenger in the 4th respondent institution since 1993 and the proposal for absorption into regular vacancy was submitted to respondents authorities was rejected by the 1st respondent vide proceedings dated 3-1-1994 (impugned proceedings). Learned counsel also submitted that the proceedings dated. 3-1-1994 issued by the 1st respondent stating that there was no provision in the rules for filling up of the contingent posts converted to class IV category in aided schools by other persons, was set aside in W.P. No. 2592/1998 and the said judgment became final. Learned counsel further submitted that in view of the said judgment of a learned single Judge of this court, the petitioner is also entitled for absorption and requested this court to pass a similar direction.

5. Learned Government Pleader for School Education appearing on behalf of official respondents submitted that the proposals submitted by 4th respondent school were rejected based on the proceedings dated 3-1-1994, but the fact remains that the said proceedings were set aside by a learned single Judge of this Court in W.P.No. 2592 of 1998.

6. The record shows that no representation on behalf of 4th respondent even though notices are served.

7. Having heard the learned counsel for petitioner and also the Government Pleader for School Education and following the judgment in W.P. No. 2592 of 1998 dated 14-7-1999, it would suffice if the impugned order of the 1st respondent is set aside and the matter is remanded to the respondent Nos. 1 & 2 to consider the same afresh in accordance with law.”

14. Now, by virtue of the impugned proceedings dated 11.4.2011, the Regional Joint Director of School Education rejected the proposals saying that approval of appointment of the petitioner in the vacancy caused due to the death of Smt.P.Kondamma is not feasible for conversion in accordance with law.

15. At this juncture, it would be apt and appropriate to refer to the provisions of Rule 15 (4) of the A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools) Rules, 1988 as notified vide G.O.Ms.No.524, Education (Rules), dated 20.12.1988, which reads as under:

“15. Procedure for appointment of staff and disciplinary control:

(1) ...

(2) ...

(3)...

(4) (a) The Competent Authority shall not take more than three months from the date of receipt of the proposals, for the approval of the appointments made by the managements, failure of which the appointments made shall be treated as ratified, except when the candidates are otherwise ineligible for the appointment.

(b) (i) The competent authority for approval of appointments made in respect of Hindi Patasalas, Hindi Vidyalayas and Oriental Schools, shall be Director of School Education.

(ii) The competent authority for approval of appointments made in respect of Secondary Schools (High Schools) shall be the Regional Joint Director of School Education concerned.

(iii) The competent authority for the approval of the appointment made in respect of Pre-Primary, Primary and Upper-primary Schools, shall be the District Education Officer concerned.”

16. In the instant case, the material on record, in clear and unequivocal terms, discloses that the competent authority did not respond in accordance with the said provision of law. The rules did not obligate the management to obtain prior approval and on the other hand, the same requires post-ratification. It is also significant to note that earlier KCS Vijay Kumar, who is also working along with the petitioner in the same school, filed W.P.No.2592 of 1988 questioning the proceedings of Director of School Education, A.P., Hyderabad

dated 3.1.1994. By virtue of the said proceedings dated 3.1.1994, the Director of School Education clarified that there is no provision in the rules for filling up of the contingent posts converted to Class-IV category in aided schools by other persons, as the Class-IV posts ceases to exist whenever the person retired or dies from service. This Court in the above mentioned W.P.No.2592 of 1988, did set aside the proceedings of the Director of School Education and directed the respondents herein to consider the case of the petitioner for absorption into Class-IV category. It is also not in dispute that the services of Sri K.C.S. Vijay Kumar were regularized and approved. A perusal of the impugned order further discloses that the Regional Joint Director of School Education rejected the approval of the appointment of the petitioner on the ground that the petitioner did not fulfill the requirements as per G.O.Ms.No.212 dated 22.4.1994. The said stand taken by the 2nd respondent, in the considered opinion of this Court is not relevant in the light of the facts and circumstances of the case. In view of the same, this Court finds absolutely no justification on the part of the respondents in rejecting approval in favour of the petitioner.

17. For the aforesaid reasons, the writ petition is allowed, setting aside the order of the Regional Joint Director of School Education, Kadapa vide Rc.No.2217/B2/2010 dated 11.4.2011 and consequently the respondents are directed to grant approval in favour of the petitioner. This exercise shall be completed within a period of three months from the date of receipt of this order. It is also made clear that the petitioner is entitled for all monitory benefit from the date on which the proposals were sent by the 3rd respondent college. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 31.12.2015
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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W.P.No.23471 of 2011

31.12.2015

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