

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.37537 of 2012

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DATED : 24.11.2015

Between :

Ch. Bharathi

.. Petitioner

and

Government of Andhra Pradesh

Rep. By its Principal Secretary, Department of
Education, Secretariat, Hyderabad and 4 others.

.. Respondents

This court made the following :

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ORDER :

The petitioner is appointed as un-aided Grade-II Telugu pandit in 5th respondent school, which is an un-aided institution on 26.10.1997. The petitioner is claiming for appointment against aided post. The claim of petitioner was considered and vide proceedings dated 29.04.2011, the District Education Officer, West

Godavari rejected the request of petitioner for appointing her to grant-in-aid post. The reason assigned for rejection is that by way of Memo No. 12080/ COSE/ A2/2004-04 dated 20.10.2004 the Government has imposed ban on creation of new posts to grant-in-aid and filling up existing vacancies.

Batch of writ petitions are instituted in this Court challenging the imposition of ban, which resulted in not considering the claim of employees working in private management school for appointment against aided posts. A Single Judge of this Court in W.P.No.9503 of 2005 and batch, dated 30.07.2013 passed the following order:

“33. Accordingly, these writ petitions are allowed declaring that the impugned Memo in memo No.12080/COSE/A2/2004-4, issued by the Principal Secretary to Government, School Education, dated 20.10.2004 (first respondent) is illegal, arbitrary and violative of Articles 14, 21-A and 45 of the Constitution of India and direct the respondents to accord permission to the petitioners institutions to fill up the vacant grant-in-aid posts in accordance with the Rules. The petitioners have not agitated about the other reliefs sought for and the same are, consequently, not granted. There shall, however, be no order as to costs.”

Aggrieved by the said order, W.A.No.216 of 2014 is filed by the State and the said appeal is pending consideration by a Division Bench of this Court. The Division Bench of this Court by order dated 25.02.2014 made in WAMP No.663 of 2014, passed the following order:

“While considering the interim relief, we are of the view that absolute stay of operation of the impugned judgment and order of the learned trial Judge will not be permissible. The learned trial Judge has prima facie held that the ban imposed by the State is not acceptable under the Constitution. However, this decision is under scrutiny before us.

Therefore, considering the balance of convenience, we feel that the respondent-management will be free to appoint teachers and for this purpose, temporary permission must be granted within seven days from the date of receipt of this order. This factum of granting permission should not be given any weightage or advantage in favour of the respondent at the time of hearing of the appeal. Everything will abide by the result of the appeal. Once the permission is granted, the respondent-management will be free to appoint teachers in accordance with the rules and for the time being, the

salary of the teachers shall be borne by the management. It shall also be notified to the appointees that this appointment will be subject to the result of the appeal.

We pass this order keeping in view the interests of the students at large. In the event, this appeal fails and the judgment and order of the learned trial Judge is upheld, then the appellants shall pay grant-in-aid as permissible under the Rules with interest at 9% per annum from the date of passing of the judgment of the learned trial Judge. All points are kept open.”

This writ petition is taken up as covered matter, by the decision of the single Judge. Since the Division bench did not stay the operation of the judgment and only issued directions relating to pay and other allowances, this writ petition is also disposed of in terms of the order passed by the learned Single Judge, as extracted above, while duly taking note of orders of the Division Bench.

Accordingly, this writ petition is disposed of and the Government is directed to accord permission to the 5th respondent to fill up the vacant grant-in-aid posts in accordance with the Rules. Once such permission is accorded, 5th respondent-management is free to appoint the petitioner against aided post in accordance with the rules. However the salary of the petitioner in the aided post shall be borne by the management and such appointment shall be subject to the result of Writ Appeal No.216 of 2014. It is open to the petitioner to claim any other benefits after disposal of W.A.No.216 of 2014. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

_____**P.NAVEEN RAO,J**

Date: 24.11.2015

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