

HONOURABLE SRI JUSTICE S.RAVI KUMAR
+ WRIT PETITION No.12185 OF 2000

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% Dated 28th August, 2015

Between:

Ahmed Sayeed.

_____.Petitioner.

And:

\$ The Commissioner and Director of School
Education, Andhra Pradesh, Hyderabad and others.

_____.Respondents.

! Counsel for the petitioner : SRI
V.MADHUSUDAN RAO.

^ Counsel for respondents 1 and 2 : G.P. FOR
SCHOOL

EDUCATION

Counsel for respondents 3 and 4: SRI
K.MURALIDHAR REDDY

< GIST:

>HEAD NOTE:

? Cases referred:

**IN THE HIGH COURT OF JUDICATURE AT
HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

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Education, Andhra Pradesh, Hyderabad and others.

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JUDGMENT PRONOUNCED ON : 28th August, 2015

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HONOURABLE SRI JUSTICE : S.RAVI KUMAR

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1. Whether Reporters of Local : -
newspapers may be allowed to
see the Judgments?

-
2. Whether the copies of -
judgment may: be marked to
Law Reporters/Journals

-
3. Whether their -
Ladyship/Lordship: wish to see
the fair copy of the Judgment?

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

WRIT PETITION No.12185 OF 2000

ORDER:

This writ is one in nature of writ of mandamus to declare the action of first respondent in issuing proceedings in R.C.No.1987/B2-3/96, dated 11-2-2000 is illegal, improper, arbitrary, unreasonable and contrary to the earlier directions of this court and to set aside the said proceedings and direct the respondents to appoint petitioner as incharge Head Master, Urdu Upper Primary School, Shakkar Nagar, Bodhan and to further direct 3rd respondent to send proposal for absorbing the petitioner as School Assistant in aided post and to pay consequential benefits.

It is the case of the petitioner that petitioner was initially appointed as Assistant Teacher in the 3rd respondent school in 1977 and subsequently absorbed as secondary grade teacher in added post on 1-9-1985. He was discharging his duties to the utmost satisfaction of management i.e., 3rd respondent. When the petitioner was appointed in aided post, he was senior most secondary grade teacher and as such, entitled to be placed as incharge Head Master. In the year 1992, when Smt.Nusrat Zora who was working in the unaided post was placed as incharge Head Master by 3rd respondent management. Petitioner filed writ petition No.16235 of 1992 and this court by order dated 16-12-1992 directed the District Educational Officer, Nizamabad to pass appropriate orders as per the recommendations of the management within four weeks and the said order was challenged by Smt. Nusrat Zora in Writ Appeal No.122 of 1993, and Division Bench of this Court through order dated 10-2-1993 confirmed orders in writ petition No.16235 of 1992. Pursuant to the orders of this court, second respondent issued

proceedings on 4-8-1995 placing the petitioner as Incharge Head Master. Petitioner was promoted to work as Incharge Head Master from 4-8-1995 but the

3rd respondent continued to harass the petitioner for one reason or the other and he was suspended through proceedings dated 8-4-1996. Petitioner filed Writ Petition No.22070 of 1996 questioning the suspension order and this court through order dated 25-11-1996 directed for payment of full salary from the date of suspension without handing over the substantive charge of incharge Head Master and ordered for completion of enquiry within one month. In pursuance of the direction, enquiry was completed on 3-1-1997 and second respondent basing on the enquiry report issued proceedings dated 12-3-1997 directing the management to continue the petitioner as assistant teacher in stead of Incharge Head Master. Consequently, second respondent issued orders directing the petitioner to join duty on 31-8-1998. Questioning the same, petitioner filed Writ Petition No.27445 of 1998 and the order of 3rd respondent dated 31-8-1998 was suspended and directed 3rd Respondent to permit the petitioner to join him as incharge Head Master and directed the first respondent to dispose of the matter within eight weeks from the date of receipt of the order. As the first respondent has not disposed of the appeal as per the directions of this court, petitioner filed contempt case No.1753 of 1999 and during the pendency of the contempt proceedings, first respondent disposed of the appeal and issued proceedings dated 11-2-2000 holding that petitioner will be continued as Secondary Grade Teacher and he is not eligible to be incharge Head Master and challenging the said proceedings,

the present writ is filed.

According to petitioner, he got B.Ed qualification in the year 1994 and working in the aided post and he is the senior most teacher among aided teachers and all the staff members, but first respondent without verifying the record mechanically passed the impugned order dated 11-2-2000 which is contrary to the orders of this court.

Second respondent and third respondent filed counter affidavits separately and according to second respondent, Government has sanctioned four Secondary Grade Teacher posts and gave grant in aid with effect from 1-9-1985 as per guidelines issued in G.O.Ms.No.524, Education dated 20th December, 1988. The services of the petitioner were absorbed in one of the sanctioned Secondary Grade Teacher posts admitted to grant in aid with other three teachers with effect from 1.9.1985. In the pattern of Primary School and Upper Primary Schools, there is no provision for sanction of separate post of Head Master. Hence, the Management kept the petitioner as Incharge Head Master being senior among others who are working in grant in aid post and continued him as Incharge Head Master. The management suspended the petitioner on account of some financial lapses while working as incharge Head Master. The petitioner challenged the suspension orders in writ petition No.22070 of 1996 which was disposed of by directing the management to pay salary to the petitioner and to complete the enquiry within a period of one month. Deputy Educational Officer, Boddhan who was appointed as Enquiry Officer by the District Education Officer, in his report recommended to relieve the petitioner from the responsibility of incharge Head Master to avoid unpleasant atmosphere in the

school and also to protect the services of the petitioner. Considering the Enquiry report, District Educational Officer, Nizamabad issued proceedings dated 12-3-1997 and those orders were upheld by the Director of School Education. In pursuance of the proceedings by the District Education Officer dated 12-3-1997, Management issued order dated 31-8-1998. The petitioner challenged these orders in writ petition No.27445 of 1998 and this Court by order dated 26-3-1986 directed Commissioner and Director of School Education to pass appropriate orders after hearing both parties on the question, who should be placed as Incharge Head Master, while keeping in view earlier orders of this court. Accordingly, Commissioner and Director of School Education after conducting personal hearing passed orders to place senior most school assistant as Incharge Head Master for better academic performance and on that, orders were issued placing Kum. Surriya Yasem as Incharge Head Master who was working as school assistant against approved unaided post. District Education Officer, Nizamabad accorded the approval of creation of unaided post in the school and the appointment of School Assistant Grade-2 were approved by District Education Officer in respect of Kum. Surriya Yasem from 12-7-1988 and Smt. Moin Sulthana from 25-10-1998 since they have required qualifications to uphold to the post of school assistant. The appointment on unaided post of school assistant was approved by District Education Officer, Nizamabad as per G.O.Ms.No.524 Edm. dated 22-12-1988. As per the instructions issued in Directors Rc.No.2374/B1-1/86 dated 24-12-1987, Upper Primary School B.Ed. Assistant has to be appointed as Head Master and if B.Ed. Assistant post is not available, the Senior Most Secondary Grade Teacher has to be

appointed as Head Master. Expectation of the petitioner for not considering him for promotion for B.Ed.post as and when admitted to grant in aid is wrong and baseless and the orders dated 11-2-2000 are in accordance with rules and instructions received from Government from time to time and the writ petition is devoid of merits.

According to 3rd respondent, there is no sanction of Head Master post to the school and one of the teachers are placed as Incharge Head Master. The post of fourth respondent was also admitted to grand in aid on the same date on which post of petitioner was admitted to grant in aid i.e., 1.9.1985. The District Education Officer, Nizamabad has approved appointment of 4th respondent on 13-3-1990 whereas appointment of petitioner was approved on 16-3-1990, as such, fourth respondent is senior to the writ petitioner who has to be kept as Incharge Head Master and the petitioner has suppressed these material facts. The management has implemented the orders of this court and placed the petitioner as incharge Head Master though he is not senior most teacher and the petitioner started giving trouble and created every administrative problems and committed several acts of misconduct and the petitioner is solely responsible for the unhealthy atmosphere in the institution. The Commissioner and Director of School Education after conducting personal hearing, passed orders to place a Senior Most School Assistant in the school as Incharge Head Master for academic performance and accordingly as per the orders. petitioner joined as Secondary Grade School Teacher on 17.2.2000 and the management has kept Kum.Surriya Yaseem as incharge Head Master who was working as School Assistant. The claim of the

petitioner is not in accordance with the rules and the writ petition is liable to be dismissed.

Heard arguments.

Advocate for petitioner submitted that it is a long standing dispute between a teacher and the management and the writ petitioner was forced to approach this court at every stage to overcome the hurdles created by the management. He further submitted that the proceedings dated 11-2-2000 is contrary to the directions of this court in the earlier proceedings. He further submitted that the petitioner being the Senior Most has to be placed as Incharge Head Master and the contention of the respondents that only the school Assistant is entitled to hold the post of Incharge Head Master is not at all correct. He further submitted that the management and the department have colluded together and humiliated the petitioner and their action is contrary to the rules and principles of natural justice and therefore, the proceedings dated 11-2-2000 is illegal, improper, arbitrary, unreasonable and contrary to the earlier directions of this court and liable to be set aside. He submitted that respondents be directed to appoint petitioner as incharge Head Master, Urdu Upper Primary School, Shakkar Nagar, Bodhan and to further direct 3rd respondent to send proposal for absorbing the petitioner as School Assistant in aided post and to pay consequential benefits.

On the other hand, learned advocate for respondents submitted that the proceedings dated 11-2-2000 are pursuant to the enquiry report dated 12-3-1997 and the petitioner has not challenged the Enquiry Report and the findings of the enquiry Officer with reference to misconduct has become final and therefore, the objection with regard to the proceedings

dated 11-2-2000 are not at all tenable. He further submitted that Enquiry was conducted in accordance with rules and every opportunity was given to the petitioner and when the charges of misconduct are proved and the disciplinary authority recommended to relieve the petitioner from the responsibility of Incharge Head Master to avoid unpleasant atmosphere in the school and only in pursuance of such recommendation, the proceedings dated 11-2-2000 are issued. He further submitted that when the findings of misconduct and the recommendation of Disciplinary authority to relieve the petitioner from responsibility of incharge Head Master, are not challenged, the proceedings consequent to such enquiry report and recommendations, cannot be held as illegal, arbitrary and contrary to the principles of natural justice. He further submitted that there are no merits in the writ and the same is liable to be dismissed.

Now the point that would arise for my consideration in this writ petition is whether the proceedings dated 11-2-2000 is legal, correct and proper?

POINT:

Petitioner joined as Assistant Teacher in Urdu Upper Primary School in the year 1977. Admittedly, the said school is a private aided Educational Institution. It is the claim of the petitioner that he being senior most, he is entitled to hold the post of Incharge Head Master but the Management and department intentionally denied such opportunity to the petitioner and the person appointed as Incharge Head Master is junior to him. In the writ petition, the petitioner prayed for two reliefs. First relief is to direct third respondent to send proposal for absorbing the petitioner as School

Assistant in aided post and second relief is to suspend proceedings dated 11-2-2000 and allow the petitioner to continue as Incharge Head Master of third respondent school. In respect of first relief, the petitioner filed interlocutory application in W.P.M.P.No.15510 of 2000 for the very same relief. In Interlocutory application, third respondent represented to this court that proposals for absorption have been sent to the Commissioner and Director of School Education i.e., first respondent herein for absorbing aided teachers and in the said proposal, name of the petitioner also figured for absorption as School Assistant and considering the statement of the counsel for third respondent, this court closed the said application holding that no orders are necessary. This order was passed on 7-8-2002. So, the first relief for sending proposals has become infructuous as the proposal was already submitted in the year 2002 itself.

Now coming to the second relief, it is the specific contention of the petitioner that he being senior most entitled to be placed as incharge Head Master. Admittedly, the petitioner filed writs earlier and consequent upon the orders of this court, the petitioner was placed as incharge Head Master and in that capacity worked for some time. It is also not in dispute that an enquiry was ordered for alleged acts of manipulation of his service book and making false entries in the service register to cheat the management; for disobedience of lawful instructions of the management, in connection of functioning of institution for declaring holidays arbitrarily as per the choice of the petitioner, while other schools have functioned; for his failure to take proper steps for completing the syllabus as per the schedule there was

loss to the academic career of about 1100 students; for encouraging irregularities, by maintaining groupism etc., In the enquiry, conducted by the Deputy Educational Officer, Bodhan, the charges leveled against the petitioner were proved and on the recommendations of Enquiry Officer, the petitioner was relieved from responsibility of Incharge Head Master to avoid unpleasant atmosphere in the school.

In the counter affidavit filed on behalf of District Education Officer, Nizamabad, it is specifically stated that the petitioner was relieved from the post of Incharge Head Master only on the recommendations of the Enquiry Officer to avoid unpleasant atmosphere in the school and also to protect the services of the petitioner. When such a specific averment is made, no reply affidavit is filed disputing the said contention. Though petitioner contended that he is entitled to be placed as Incharge Head Master as per the rules, he failed to specifically show the relevant rule under which, he is entitled for such a relief and on the contrary, the second respondent contended in the counter that as per the instructions issued in Rc.No.2374/B1-1/86 dated 24-12-1987 where there is B.Ed. assistant, such assistant has to be appointed as Incharge Head Master and only if B.Ed. assistant post is not available, the senior most Secondary Grade Teacher has to be appointed as Incharge Head Master. Petitioner has not counteracted the proceedings of the Director of School Education dated 24-12-1987. Admittedly, petitioner is only a Secondary Grade Teacher whereas the 4th respondent who was kept as Incharge Head Master, is a B.Ed. assistant and her appointment was approved by the District Educational Officer with effect from 12-7-1988. As per the proceedings of Director of School Education, when

there is a B.Ed.Assistant, the Senior among the B.Ed.Assistant is to be appointed as Incharge Head Master and only in case of non-availability of B.Ed. assistant, placing a secondary grade teacher as incharge Head Master would arise. Here, in the present case, there are B.Ed. Assistants and 4th respondent is the Senior among the B.Ed Assistants. Further when the petitioner was relieved from the post of Incharge Head Master as a consequences of Enquiry Report, he cannot contend that the relief from the post of Incharge Head Master is contrary to the principles of natural justice.

Further as seen from the counter affidavit filed on behalf of management, the District Educational Officer, Nizamambad approved the appointment of 4th respondent with effect from 13-3-1990 whereas the appointment of petitioner was approved with effect from 16-3-1990. As the approval of the appointment of 4th respondent is prior to the approval of the petitioner, he cannot claim seniority. When the second respondent on oath stated about the approval of appointment with specific dates, there was no denial of this fact by the petitioner. So, as rightly pointed out by the advocate for respondents, the petitioner without challenging the Enquiry Report and the recommendations of the Enquiry Officer cannot question the proceedings which are issued as a consequence of the Enquiry Report.

The entire argument of advocate for petitioner is only with reference to earlier orders of this court in earlier proceedings, but those orders are prior to this enquiry report. In fact, even directions were given to expedite the enquiry also and when the petitioner has not challenged the enquiry report, the proceedings which are issued as a consequence of the enquiry

report cannot be held as illegal or arbitrary.

For these reasons, I am of the considered view that the petitioner failed to substantiate that the proceedings in R.C.No.1987/B2-3/96, dated 11-2-2000 is illegal, improper, arbitrary, unreasonable and contrary to the earlier directions of this court. Therefore, the petitioner is not entitled for the relief claimed and the writ petition is devoid of merits.

Accordingly, this Writ Petition is dismissed, in the circumstances, without costs.

As a sequel to the disposal of this writ petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE

S.RAVI KUMAR

Dated 28th August, 2015

Note:

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Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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WRIT PETITION No.12185 OF 2000

Dated 28th August, 2015

Dvs