

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
WRIT PETITION No.4624 OF 2006

ORDER:

The petitioners, who are four in number, filed the present Writ Petition seeking issuance of a writ of mandamus to declare that they are entitled for absorption of their services into grant in aid vacancies with all consequential benefits in the 5th respondent school, as illegal and arbitrary and violative of Article 14 and 16 of the Constitution of India.

The averments in the affidavit filed in support of the Writ Petition show that all the four petitioners were qualified and eligible for appointment as Drawing Teacher, Craft Teacher, Record Assistant under the 5th respondent/school, which was established in the year 1952 and was admitted to grant in aid in the year 1954. It is said that initially the 5th respondent/school was given recognition upto 7th class and subsequently upgraded upto 10th class. Since the School has large number of pupils and having regard to the representation made by the 5th respondent, the 2nd respondent (Regional Joint Director, School Education, Hyderabad) issued proceedings No.8164/SIV/96 dated 02.08.1997 stating that the Commissioner and Director of School Education (R-3) has accorded permission to create certain unaided posts of teaching and non-teaching staff in the 5th respondent school for the academic year 1996-97. Pursuant thereto, the 5th respondent issued notification dated

13.06.1999 inviting applications from the eligible candidates to fill up the unaided vacancies. The petitioners along with the others applied for the same and the selection committee constituted as per the Rules G.O.Ms. No.1 dated 01.01.1994 selected the petitioners for the posts applied by them. Thereafter, the 1st and 5th respondents sent proposals for approval to the 2nd respondent. Vide proceedings dated 26.04.2000 in R.C.No.16/B1/99, the 2nd respondent approved the appointment of the petitioners to the said posts. The same was communicated by the 1st respondent vide proceedings No.3891/B1/99-2000 dated 02.05.2000 appointing the petitioners from 27.04.2000. The 5th respondent issued proceedings dated 02.05.2000 appointing the petitioners 1 and 2 to the time scale of 3750-7650. Similarly the 3rd and 4th petitioners were appointed in the time scale of 2750-5150. It is said that since then the petitioners are working in the unaided posts without any adverse remarks.

While things stood thus, the 3rd respondent/the Commissioner & Director of School Education, issued proceedings No.RC 1121/B4-2/2002 dated 15.06.2002 directing all the D.E.Os., and R.J.Ds., of School Education in the State to forward proposals for admission of posts into grant in aid after following the instructions and Rules mentioned therein. The 5th respondent submitted a detailed representation dated 13.10.2003 and the petitioners also submitted representation for absorption of their services into

grant in aid vacancies. The 1st respondent in his proceedings dated 11.11.2003 directed the Deputy E.O., Nizamabad to send certain particulars of the 5th respondent/school. On receipt of the same, he forwarded those particulars proposing for absorption of the petitioners vide his proceedings dated 20.11.2003 to the 3rd respondent. On 12.04.2004 the 1st respondent is said to have directed the 5th respondent/school to submit proposals for admission of grant in aid to the Deputy E.O., Nizamabad duly verifying the proposals as per the check list communicated by the 3rd respondent. The 5th respondent complied with the same and later the 1st respondent through his letter No.6005/B3/2003 dated 14.08.2004 submitted the proposal for admission into grant in aid to the 3rd respondent. It is stated that though the proposals are sent no action has been initiated till date. Hence, the present Writ Petition. On 20.04.2006 this Court issued rule-nisi and called for records.

A counter dated 29.05.2006 came to be filed by respondents 1 and 2 disputing the averments made in the petition. One of the objections taken in the counter was that the grievance, if any of the petitioners, should be taken up only by the Correspondent of the institution and in the absence of any privity of contract between the petitioners and the official respondents, no Writ under Article 226 can be entertained. The second ground raised in the counter is that in view of the proceedings dated 13.12.1996 issued by the Director of School Education there shall not be any financial commitment to the Government either now or in future in respect of the

posts of Drawing Master, Craft Teacher and Record Assistant. It was also stated in the counter that the proposals were submitted to the Commissioner and Director of School Education for absorption of unaided posts into grant in aid in the month of December, 2004 and as the ban was in force by then, no new post of grant in aid could be created.

After perusing the counter which appears to have been filed in the Registry on 09.08.2006, this Court vide its order dated 15.02.2007 in W.P.M.P.5836 of 2006 passed the following order :

“There shall be a interim direction to the respondents to consider the petitioners’ proposal forwarded by the 1st respondent on 14.08.2004 for their absorption into grant in aid vacancies within a period of 2 months from the date of receipt of the copy of the order and communicate the same to the petitioners. “

Later an additional counter came to be filed on behalf of respondents 1 to 4 in the month of December, 2007 reiterating the objections raised in their earlier counter. They also filed certain documents to establish that in view of the ban, the posts were not admitted into grant in aid and that soon after the ban is lifted necessary action would be taken.

A reply came to be filed by the petitioners stating that the ban cannot be made retrospective in operation and since the proposals for absorption to grant in aid were made prior to the date of notification of ban, the petitioners cannot be denied the said benefit. They placed on record several proceedings

which were issued subsequent to the ban and also the orders of this Court in support of their plea.

As stated earlier, the main ground urged by the Government Pleader is with regard to maintainability of the writ petition by an individual who has no privity of contract with the unofficial respondents. As seen from the record, the petitioners along with the 5th respondent sent representations in the month of September and October 2003 to the respondents for their absorption into grant in aid vacancies. Thereafter, as per the request of the 1st respondent, the 5th respondent sent proposals dated 24.06.2004 for absorption into grant in aid vacancies. The 1st respondent in turn sent proposals vide his letter 14.08.2004 to the 3rd respondent for admission of the petitioners' posts into grant in aid vacancies. Though an objection was raised in the counter with regard to maintainability of the writ petition by an individual, this Hon'ble Court by its order 15.02.2007 directed the authorities to consider their case and pass orders within 2 months and communicate the same to the petitioners. In view of the above, an order dated 10.07.2007 came to be passed stating that the posts cannot be admitted into grant in aid due to the ban imposed by the Government from 20.10.2004. Therefore, it cannot be said that Writ Petition filed by an individual is not maintainable. The issue as to maintainability of the Writ Petition by an individual also came up for consideration before this Court in W.P.No.6512 of 2006. A learned single Judge of this Court while distinguishing the judgments relied upon by the learned Government Pleader in W.A.No.2407 of 2005,

which is also now sought to be relied upon, held that the Writ Petition is maintainable. The situation on hand is similar to the one in Writ Petition No.6512 of 2006 wherein an individual approached the High Court questioning the inaction of the respondents in not absorbing the petitioner therein to the vacant aided Grade-I Hindi post. Hence, it cannot be said that no Writ would lie questioning the inaction of the respondents/authority.

The next ground is urged by the Government Pleader is with regard to the ban imposed by the Government in Memo No.12080/C&DSE/A2/2004-4 dated 20.10.2004. It has been contended by the learned Government Pleader that the proposal for adopting grant in aid to the posts held by the petitioners reached the office of 3rd respondent after the issuance of G.O., imposing ban and hence the request of the petitioners could not be considered. Even otherwise he submits that since the ban is retrospective in operation, the question of admitting grant in aid to the posts held by the petitioners would not arise. The issue as to whether the said G.O., is prospective or retrospective was came up for consideration before the Apex Court in **Government of Andhra Pradesh v. Sri Sevadas Vidyamandir High School**^[1] wherein it was held that it is only prospective in operation. Answering the objection with regard to extending the benefit in spite of the imposition of ban, a learned single Judge of this court in WP No.9503 of 2005 date 30.07.2013 held as under :

“I am not able to appreciate this contention of the learned Government Pleader. The very scheme of 1993 Rules, passed through G.O.Ms.No.1, Education (P.S.2), dated 01.01.1994 was brought out to enable the private institutions to run their schools effectively charging reasonable fee from the children. It is not open for the Government to claim that despite the impugned Memo, the private schools could have filled up the vacancies with unaided staff. The impugned Memo certainly restricts the right of the private institutions to fill up the vacancies of grant-in-aid posts which ultimately tinkers with Article 21-A of the Constitution of India. Article 21-A creates an obligation on the State to provide free and compulsory education to the children between the age of 6 years and 14 years. In view of Article-45 which obligates the State to provide education till the completion of 6 years of age and in view of Article 21-A which mandates the State to provide free and compulsory education for children between the age of 6 years and 14 years, when the Government is not capable of maintaining institutions to impart education to every child, Government cannot take away the grant-in-aid that was already conferred upon some posts in the schools. What the impugned Memo has been attempting to do is withdrawing the grant-in-aid scheme slowly and step-by-step whenever an employee retired from service. I am afraid that such a step on the part of the Government is violative of Article 21-A of the Constitution of India.”

The scheme envisaged grant-in-aid through the Grand-in-Aid Act provides norms. I am afraid that the benefit of grant-in-aid conferred upon the institutions cannot be taken away by banning the filling up of grant-in-aid posts through the impugned memo. The ban usually is a temporary affair, but the ban created under the impugned Memo would appear to be a perpetual ban which is not permissible without amendment of the Act and Rules.

Ordinarily, the Government institutions cannot be compared with private institutions and lack of parity between the organs of the two institutions cannot be treated as an unreasonable clarification. However, in the present case, admittedly, Mandal Parishad and Zilla Parishad Schools also have been receiving grant-in-aid. Consequently, so far as grant-in-aid schemes are concerned, those schools stand on the same footing as private institutions. Filling up of the grant-in-aid posts in such schools and restraining the private institutions from filling up of the grant-in-aid vacancies at the same time is indeed unreasonable discrimination prohibited by Article 14 of the Constitution of India. Even on this count, I agree with the contention of the learned counsel for the petitioners that the impugned Memo is violative of Article 14 of the Constitution of India.

The upshot of the above discussion is that the benefit of grant in aid conferred upon the institutions cannot be taken

away by banning the filling up of grant in aid post. As referred to earlier, the petitioners herein were selected to the posts in unaided vacancy and which was approved by the 2nd respondent in his proceedings dated 26.04.2000. The 1st respondent issued proceedings dated 02.05.2000 appointing the petitioners from 27.04.2000 and directed the 5th respondent to permit the petitioner to join duty. Consequential proceedings dated dt:02.05.2000 came to be issued by the 5th respondent appointing the petitioners to the said posts. Vide his proceedings dated 15.06.2002 the 3rd respondent issued necessary instructions to the concerned authorities in the State to forward the proposals for admission of posts into grant in aid. After due verification the first respondent submitted his proposals in proceedings dated 12.04.2004 after complying with the guidelines laid down in the reference 1121/B4-2/2002 dated 15.06.2002. Though the proposals were sent by the 1st respondent in the month of August 2004, the 3rd respondent, instead of acting on the same, is now trying to take shelter under letter dated 20.10.2004 imposing ban. Since the 1st respondent has submitted proposal in the month of August 2004 itself, the question of taking the plea that the ban would come in the way in awarding grant in aid cannot be accepted. Even assuming for a moment that there was some delay in the proposal reaching the office of the 3rd respondent, neither the petitioners nor the 5th respondent can be attributed with the delay, since the 5th respondent submitted the proposals long prior to the date of imposition of the ban. Therefore, the

second objection taken by the Government Pleader does not stand to the test of legal scrutiny and the only impediment/alleged ban stood judicially invalidated.

Apart from that, the petitioners filed a reply showing circumstances wherein the Government issued G.Os. according permission for approval of certain cases of selection filling up the vacant posts in aided schools where the process of recruitment has already commenced prior to ban in aided schools. G.O.Ms.No.19 dated 12.03.2012 came to be issued in respect of St. Mary Fatima School, Nandyal, G.O.Ms.No.20 dated 16.03.2012 in respect of a candidate by name K.Nagaraju of YNOC High School, Karamchedu, Prakasam District. G.O.Ms.No.21 dated 19.03.2012, G.O.Ms.No.27 dated 23.04.2012 and G.O.Ms.No.53 dated 30.06.2012 came to be issued according permission for approval of 92 candidates for selection to fill-up vacant posts in aided school.

For the aforesaid reasons and having regard to the judgment of this court in W.P.No.9503 of 2005 dated 30.07.2013 wherein the impugned memo No.2080/COSC/A2/2004-4, dated 20.10.2014 was declared as illegal, arbitrary and violative of Articles 14, 19 and 45 of the Constitution of India, the Writ Petition is allowed directing the respondents to admit the petitioners to the vacant grant in aid posts in 5th respondent school, if they satisfy all other requirements. No costs. Consequently, Miscellaneous Petitions, pending if any in this Writ Petition shall stand cancelled.

**JUSTICE C. PRAVEEN
KUMAR**

Dt:09.12.2015.
Note : C.C. by next week
B/o.
GM

[\[1\]](#) (2011)9 SCC 613