

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.26244, 26378, 40155, 40167 and

40183 of 2015

-

Date: 17.12.2015

-

-

W.P.No.26244 of 2015

-

Between:

M.Kavitha D/o Chandrasekhar, 32 years, Attender,
Kasturba Gandhi Balika Vidyalaya (KGBV), Kataram,
R/o. Kataram, Karimnagar district and two others.

.....Petitioners

And

The State of Telangana represented by its Principal
Secretary, School Education Department, Secretariat,
Hyderabad and others.

.....Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

-

WRIT PETITION NOs.26244, 26378, 40155, 40167 and
40183 of 2015

-

COMMON ORDER:

In all these writ petitions, petitioners are appointed on daily wage basis by Andhra Pradesh Residential Education Institutions Society (for short, 'Society') to work in Kasturba Gandhi Balika Vidyalayas (KGBVs). Such appointments dates back to two to ten years respectively to various capacities. The daily wage allowance payable to

these petitioners are hitherto paid by the Society. By the Circular Instruction dated 01.08.2015, impugned in these writ petitions, the Society now directs payment of remuneration to the petitioners through Outsourcing Agency.

2. Heard learned counsel for the petitioners, learned standing counsel for Sarva Shiksha Abhiyan and learned standing counsel for Residential Education Institutions Society and with their consent, these writ petitions are disposed of by this common order.

3. Learned counsel for petitioners submits that earlier some of the KGBVs were entrusted to Andhra Pradesh State Residential Education Institutions Society and petitioners were appointed by the Society to work in the said Vidyalayas and they have been working all along. The employer directly employed and has been paying the remuneration to them all along until the circular instructions dated 01.08.2015 are issued and the same is assailed in these writ petitions. Learned counsel further submits that when petitioners are engaged by the Society, the question of drawing the remuneration through Outsourcing Agency does not arise. Petitioners cannot be mandated to draw their remuneration through the Outsourcing Agency and such action is *per se* illegal and that petitioners shall be continued to be paid by the Management of Vidyalayas only.

4. Learned standing counsel representing Sarva Shiksha Abhiyan submits that earlier all these Vidyalayas were kept under the control of various Societies/Organizations and only some of them were directly controlled by the Sarva Shiksha Abhiyan. In order to have better administration of these Vidyalayas, Telangana State Government has taken a decision to transfer all KGBVs to the administrative control of Sarva Shiksha Abhiyan. Accordingly, orders are issued vide G.O.Rt.No.215 School Education (Prog.I) Department, dated 05.11.2015 and w.e.f., 01.12.2015 all these KGBVs were brought under the administrative control of the Sarva Shiksha Abhiyan. He further submits as per the guidelines of the Ministry of Human Resources Development, in all the Vidyalays no resident male employee should be allowed, whereas most of Vidyalayas have earlier engaged resident male employees and that would be causing hardship. This assignment has not envisaged

proper control over them. In all the districts, the District Collectors, after following due process, identified the Outsourcing Agencies, that these Outsourcing Agencies shall be responsible for proper conduct of the employees engaged through Outsourcing Agencies. Thus, without terminating the services of the petitioners, the remuneration is directed to be paid by the Outsourcing Agency to ensure better control over the employees and to ensure compliance of the objective of the guidelines issued by the Ministry of Human Resources Development. Learned standing counsel therefore submits that the decision is taken in the larger interest of the students and there is no illegality in the said decision.

5. It is to be noted that even before the decision is taken to transfer the administrative control of KGBVs to the administrative control of Sarva Shiksha Abhiyan, the impugned circular was issued directing to make monthly salary to the petitioners through the Outsourcing Agency. It appears the Sarva Shiksha Abhiyan is adhering to said stand after the institutions are transferred to its control.

6. Shorn of details, the issue for consideration in these writ petitions is whether the petitioners can be directed to receive their remuneration through Outsourcing Agency when the agency is not their employer and they were directly employed by the Management of KGBVs. Admittedly, petitioners were engaged by the Management of KGBVs and they were under the control of Telangana State Residential Educational Institutions Society (TREIS) and they were paid their remuneration directly by the Management.

7. In the counter affidavit filed in W.P.No.26378 of 2015, justification assigned for the said decision is that the employees would have better facilities and get better remuneration for the nature of the job done by them. However, it is not explained how merely because they were asked to draw remuneration through the Outsourcing Agency, a better remuneration would be paid. In fact the Agency has to be paid certain amount for controlling and managing the affairs of the employees in addition to the wages paid to employees. It is not explained as to how the respondents can ensure proper control on the employees engaged directly by the management if remuneration is paid by the Outsourcing Agency. Fundamental flaw noticed in this exercise is, Outsourcing Agency is not the employer of the petitioners and when the

Outsourcing Agency is not an employer, there cannot be a direction to the petitioners to draw their remuneration through Outsourcing Agency. It is nothing but appointment of commission agent to distribute the remuneration payable to the petitioners. In the relationship of master and servant, the payment of remuneration is an essential requirement and until and unless the relationship is terminated, the employer cannot shirk his responsibility of paying the wages and direct the employees to receive wages from Outsourcing Agency. It would only expose these employees to the mercy of such agency.

8. Justification for such entrustment given by the learned standing counsel for Sarva Shiksha Abhiyan is, the National Report on Second National Evaluation of KGBV Programme of Government of India (para 56.8) mandates that there should be periodical safety audit of KGBVs and no resident male staff should be allowed in KGBVs. It is not known how such objective can be achieved merely by asking the petitioners to draw their remuneration through Outsourcing Agency.

9. Therefore, the direction issued in the impugned circular is not sustainable in law. I see no justification on the course adopted in the order impugned and the same is liable to be set aside and is accordingly set aside. Petitioners shall be paid their remuneration by the Management of KGBVs as long as their services are utilized. However, it is made clear that this order does not come in the way of Sarva Siksha Abhiyan regulating the employment in KGBVs by assigning priority to the safety and welfare of the girl students pursuing their education in KGBVs.

10. Accordingly, the writ petitions are allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 17.12.2015

kkm

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.26244, 26378, 40155, 40167 and

40183 of 2015

-

Date: 17.12.2015

kkm