

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

WRIT PETITION NO.2381 OF 2012

-

Between:

A.V.M.High School, Rajendranagar,
Ranga Reddy District. .. Petitioner

and

The State of Telangana, rep. by its
Principal Secretary, Education (PS)
Department, Secretariat,
Hyderabad, and another .. Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 13th NOVEMBER, 2015

SUBMITTED FOR APPROVAL:

-

-

THE HON'BLE SRI JUSTICE SANJAY KUMAR

- | | |
|--|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgment? | Yes/No |
| 2. Whether copies of the Judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether His Lordship wishes to see the fair copy of the Judgment? | Yes/No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

-

WRIT PETITION NO.2381 OF 2012

ORDER

The petitioner is a High School situated at Rajendranagar in Ranga Reddy District. It sought sanction of grant-in-aid for 21 posts in its service as per the recommendation of a High Level Committee. However, by Memo dated 25.01.2011, the Government rejected its request. Aggrieved thereby, the petitioner school filed this case. A consequential direction was sought to the authorities to consider the case of the petitioner school for admission to grant-in-aid as per the High Level Committee's recommendations, as its claim was before 20.10.2004, when a ban on recruitment was imposed.

The petitioner school was established in the year 1976-77 to impart education from Kindergarten to IV Class. Thereafter, it was upgraded to a full-

fledged High School in the year 1988-89. Out of the 32 posts in its service, only 7 were admitted to grant-in-aid. The petitioner school accordingly made a representation in the year 1999 seeking sanction of grant-in-aid for more posts. However, no orders were passed thereon. Aggrieved thereby, it filed W.P.No.7511 of 2001 before this Court. The writ petition was disposed of directing the authorities to consider the proposals filed by the petitioner school on merits and pass appropriate orders within a time frame. Pursuant to the above direction, Memo dated 09.07.2003 was issued by the authorities opining that as the petitioner school was upgraded as a High School in the year 1988-89 and as Section 3(1)(a) of the A.P. Private Educational Institutions Grant-In-Aid (Regulation) Act, 1988 (for brevity, 'the Act of 1988'), provides that no private educational institution other than a college established after 1st April, 1977 and existing on 1st September, 1985 shall be entitled to receive grant-in-aid, the petitioner school was not eligible to be admitted to grant-in-aid as the upgraded sections of the school were opened after the cut-off date, 01.09.1985. Its request for admission of the posts to grant-in-aid for Classes VIII to X was accordingly rejected. Aggrieved by this rejection, the petitioner school filed W.P.No.16086 of 2003 before this Court assailing the Memo dated 09.07.2003.

This writ petition was allowed on 20.07.2005. It was contended by the authorities before this Court that upgradation of the petitioner school was permitted under G.O.Rt.No.1838 dated 23.12.1988 subject to the condition that in future no grant-in-aid would be given. The petitioner school rebutted this contention asserting that this was not the ground on the basis of which the impugned Memo had been issued and that it was not open to the authorities to raise a new ground thereafter. This argument found favour with this Court. Similarly, the contention of the authorities that the staff for which grant-in-aid was sought was appointed through the back-door was also rejected as that ground was also not taken in the impugned Memo. As the sole basis for the impugned Memo was that the upgradation of the petitioner school after 01.09.1985 would disentitle it from seeking grant-in-aid under the Act of 1988, this Court considered that issue and held that as the petitioner school was started in the year 1977 and was in existence as on 01.09.1985, the mere upgradation in the year 1988 would not disentitle it from seeking grant-in-aid as it could not be said that it was not in existence as on the relevant date. Reliance in this regard was placed on the observations made by the Supreme Court in a similar case. This Court accordingly held that the case of the petitioner school

should have been considered in accordance with the rules and that the impugned Memo was issued mechanically without application of mind. The High Level Committee was therefore directed to pass necessary orders for admitting the posts in the petitioner school to grant-in-aid, after giving due opportunity to it.

The matter thereupon went before the High Level Committee again, which favourably recommended the case of the petitioner school for admission of 21 out of 34 posts to grant-in-aid. Eighteen (18) of these posts were teaching posts, while the remaining were non-teaching posts. Inaction on the part of the authorities in acting upon the High Level Committee's recommendations constrained the petitioner school to again file W.P.No.22707 of 2007 before this Court, which was disposed of on 01.06.2010 directing the authorities to consider the petitioner's representation dated 15.05.2007 made in the light of the High Level Committee's recommendations and pass appropriate orders thereon in accordance with rules within a time frame. After filing of contempt proceedings alleging disobedience to this order, the impugned Memo dated 25.01.2011 came to be issued.

Therein, the Government referred to the fact that in W.P.No.817 of 2004, this Court took note of the ban imposed on appointment to or filling up of aided vacancies in private aided educational institutions and dismissed the said writ petition as the matter was pending before the Supreme Court, being of the opinion that unless the ban was either lifted by the Government or set aside by a Court of law, there was no possibility to consider the case of the petitioner therein. The Government therefore stated that after careful examination of the matter, the request of the petitioner school in its representation dated 15.05.2007 was rejected.

It is relevant to note that the matter, which was stated to be pending before the Supreme Court, referred to by this Court in its order in W.P.No.817 of 2004 and adverted to by the Government in the impugned Memo dated 25.01.2011, culminated in a final decision reported in **GOVERNMENT OF ANDHRA PRADESH V/s. SRI SEVADAS VIDHYAMANDIR HIGH SCHOOL**. Therein, the Supreme Court dealt with the nature of the ban on recruitment imposed by the Government, that is, whether it was retrospective and would operate against recruitment processes which had already been initiated. As the ban was imposed by the Government only under Memo dated 20.10.2004, the Supreme Court held that the said ban was not given retrospective effect and would therefore not have application to recruitment processes which had already been initiated.

In the present case, the admitted position is that the petitioner school has been agitating the issue of grant-in-aid since the year 1999 itself and this is the third round of litigation. It cannot therefore be said that the ban introduced in the year 2004 would have any application to the case on hand. Merely because the Government dragged its feet in the matter by taking an unreasonable stand, it cannot now seek protection under the ban of 2004. That would, in effect, amount to permitting it to give retrospective effect to the ban orders in so far as the petitioner school is concerned.

Learned Government Pleader for Education again attempted to raise the bogey of the petitioner school being permitted upgradation subject to the condition that it would not seek grant-in-aid. However, this was not the ground on the basis of which the impugned Memo dated 25.01.2011 was issued. Further, this ground was raised in the earlier round of litigation and was rejected. It is therefore not open to the authorities to raise the same ground again at this late stage. It would also not be open to them to take recourse to any of the grounds which were available to them but were not taken earlier.

The Government Pleader also attempted to place reliance on Section 3(1)(b) of the Act of 1988 which states to the effect that no private educational institution other than a college which has been established after 01.09.1985 and no private college which has been established after 01.03.1985 shall be entitled to receive any grant-in-aid. This ground also was not raised by the authorities earlier or even in the impugned Memo dated 25.01.2011. The *ad hoc* approach of the authorities in this regard requires to be strongly condemned. It is not open to them to raise one ground after the other successively, in a desperate attempt to justify their obdurate stance that notwithstanding the recommendations of the High Level Committee, the petitioner school should be held disentitled for admission to grant-in-aid. As recourse was taken by the authorities themselves in the earlier round of litigation in W.P.No.16086 of 2003 only to Section 3(1)(a) of the Act of 1988, the present contention urged by the learned Government Pleader is rejected.

As matters stand, the only ground for rejection of the petitioner school's request for grant-in-aid, as is evident from a plain reading of the impugned Memo dated 25.01.2011, was the issue of the ban order being *sub judice* before the Supreme Court. As that case has culminated in a clear finding that the said ban

order would have no retrospective operation, the impugned Memo dated 25.01.2011 is set aside.

The writ petition is accordingly allowed. The respondent authorities shall consider the case of the petitioner school in terms of the recommendations of the High Level Committee for admission of 21 out of 34 posts in the petitioner school to grant-in-aid without reference to the ban order dated 20.10.2004 and the grounds which were urged by them or could have been urged by them before this Court in this writ petition and earlier writ petitions. This exercise shall be completed expeditiously and in any event, not later than three months from the date of receipt of a copy of this order. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

13th NOVEMBER, 2015

PGS