

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.21938 of 2012

Date : 28.1.2016

Between :

Arshad Ali S/o late Shaik Ali
Mozzam Jahi market, Shal Ali Banda, Hyderabad

Petitioner

And

The Director of School Education,
AP, Hyderabad and others

Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

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ORAL ORDER:

Heard the learned counsel for petitioner and learned Government

Pleader.

2. Father of the petitioner while working in the service of Girls High School, Moazzam Jahi Market, Hyderabad/5th respondent died on 20.6.2004. On considering the request of the petitioner, management of the 5th respondent school appointed the petitioner on compassionate grounds as attender by orders dated 1.8.2004. By letter dated 30.8.2004, management of 5th respondent sought approval from the District Educational Officer, Hyderabad for said appointment. No further orders are issued on the said proposal. In the meantime, Government imposed ban on appointment to aided posts on 20.10.2004.

3. Petitioner earlier filed W P No. 15621 of 2007 seeking declaration that action of the respondents 1 to 3 therein in not approving the appointment of the petitioner as attender in a grant in aid post in the 5th respondent school as illegal, arbitrary and unconstitutional. During the pendency of the writ petition, it appears the proposals submitted for appointment of the petitioner were rejected. On detailed consideration of the matter, this Court by order dated 10.2.2009 rejected the justification given by the respondent authorities that since ban is imposed on 20.10.2004, no compassionate appointment can be made. This Court further held that as the appointment and proposals for such appointment against aided post were made much prior to imposition of the ban, as such, the ban has no application. This Court held that the rejection of the proposal by the Government was illegal. Accordingly, said writ petition was disposed of with direction to the Regional Joint Director of School Education to consider the proposal sent by the District Educational officer, with regard to the approval of the petitioner's appointment as attender and pass appropriate order.

4. Taking clue from the direction to consider, the Regional Director of School Education vide proceedings dated 16.12.2010 rejected the proposal for appointment of the petitioner against aided post on the ground that though the Government has lifted the ban on compassionate appointments by the orders issued in G.O.Ms.No. 113 dated 6.10.2009, said orders are prospective and therefore are not attracted to the case of the petitioner and the claim is not valid.

5. Learned counsel for petitioner submits that impugned decision is

ex-facie illegal. G.O.Ms.No. 113 dated 6.10.2009 is relatable to orders imposing ban on 20.10.2004 and therefore the claim could not have been rejected by referring to G.O.Ms.No. 113 dated 6.10.2009. Learned counsel further submits that the decision of the Government that the orders in G O Ms No. 113 dated 6.10.2009 are prospective was considered by this Court on more than one occasion and it was held that the subsequent clarification holding the orders in G.O.Ms.No. 113 dated 6.10.2009 as prospective, as illegal. He therefore submits that having regard to the decisions of this Court, rejection on the ground that G.O.Ms. No. 113 dated 6.10.2009 is prospective is also illegal.

6. Learned Government Pleader justifies the decision to reject the claim of petitioner, since the ban on appointment to aided posts is in force.

7. The facts are not in dispute. Admittedly, petitioner was appointed prior to imposition of ban and proposals for appointment of the petitioner against aided post were submitted much prior to imposition of the ban. Be that as it may, this Court has passed orders in W P No. 15621 of 2007 holding that subsequent ban has no application and petitioner is entitled to be considered for appointment against aided post in accordance with the procedure prevailing prior to 20.10.2004. Further more, as a consequence to the orders issued in G.O.Ms.No. 113 dated 6.10.2009 the earlier ban stood lifted and there is no embargo on appointment on compassionate grounds. Though, Government subsequently introduced the compassionate appointment but the scheme of compassionate appointment was treated as prospective, this Court on more than one occasion held that subsequent clarification to say that G.O.Ms No. 13 is prospective as bad. Thus, in view of the orders of this Court in W.P. No. 15621 of 2007, the claim of the petitioner for appointment against the aided post was required to be considered. However, in the teeth of the orders passed by this Court in W P No. 15621 of 2007, which decision has become final, the order passed by the Regional Joint Director holding that the petitioner is not entitled for appointment against aided post is ex-facie illegal and violative of the orders of this Court in the above said writ petition.

8. Having regard to the same, the impugned order is set aside and the writ petition is allowed and respondents 1 to 4, 6 and 7 are directed to

approve the appointment of the petitioner against the aided post in the 5th respondent school and to grant all consequential benefits. Such exercise shall be completed within six weeks from the date of receipt of copy of this order. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

DATE:28.1.2016
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P NAVEEN RAO,J

HONOURABLE SRI JUSTICE P. NAVEEN RAO

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