

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

WRIT APPEAL No.619 of 2016

Date:28.7.2016

Between:

The Director of School Education,
Telangana, Hyderabad and five others..

.....Appellants

And:

Arshad Ali,
S/o Late Shaik Ali
and another.

....Respondents

Counsel for the appellants: GP for Education (TS)

Counsel for the respondents: Mr. V.Venkat Rami Reddy

The Court made the following:

JUDGMENT: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

The State of Telangana and its subordinate officers, including the Commissioner and Director of School Education, Telangana, filed this Writ Appeal feeling aggrieved by order, dated 28.01.2016, in Writ Petition No.21938 of 2012.

The litigation on a small issue of providing compassionate appointment to respondent No.1, in place of his deceased father, in the last grade post of Attender in respondent No.2-school is, unfortunately, hanging fire from the year 2004. The father of respondent No.1, who was working in the aided post as Attender in respondent No.2-School, died in harness. On considering the application of respondent No.1, respondent No.2 has appointed him as Attender on 01.8.2004 and sought approval from appellant No.4, who in turn, sent communication, *vide* Rc.No.20150/E1/2005, dated 27.2.2006, to the Deputy Educational Officer, Bahadurpura with certain remarks. The Deputy Educational Officer, Bahadurpura re-submitted his proposal to appellant No.4 together with necessary particulars in the correspondence. Even after lengthy intra-departmental correspondence, no decision was taken by the appellants on the request of respondent No.2 to approve the appointment of respondent No.1. Therefore, respondent No.1 was constrained to file Writ Petition No.15621 of 2007 for a *Mandamus* to declare the inaction of the appellants in approving his appointment as Attender in a grant-in-aid post of respondent No.2-School as illegal and arbitrary. On behalf of the appellants, a detailed counter-affidavit was filed, wherein the main reason put forth by them for not approving the appointment of respondent No.1 by respondent No.2 was that the State Government has returned the proposals to respondent No.2 on 29.9.2006, while referring to the proceedings, dated 26.6.2006, of appellant No.3 and also the letter of respondent No.2, by informing that the case of respondent No.1 would be considered after lifting of the ban on compassionate appointments. It was further stated that though an interim order was granted by this Court on 09.8.2007 to consider the case of respondent No.1, the said order

could not be given effect to in view of the ban order issued by the State Government, vide Memo No.12080/COSE/A2/2004-4, dated 20.10.2004.

Upon considering the respective pleadings of the parties and the relevant material, including that referred to and relied upon in the counter-affidavit of the appellants, the learned single Judge has rejected the plea of the appellants that they were constrained by the ban imposed by the State Government for approving the proposals of compassionate appointments.

It is instructive to reproduce the relevant portion of the order in Writ Petition No.15621 of 2007 hereunder:

“The issue involved in the Writ Petition is:- Whether the ban orders dated 20.10.2004 can be made applicable to the proposal sent by the fourth respondent for approval with regard to the appointment of the petitioner as Attender?

It is not in dispute that the petitioner's father worked in the fourth respondent-School as Lab Assistant and he died while in service. The petitioner made an application for compassionate appointment. **Thereupon, the fourth respondent-School considered to appoint him as Attender on 01.08.2004 and sought approval from the District Educational Officer.** The file with regard to the approval has been processed and the Deputy Educational Officer has sent the file to the Government with favourable recommendation. The Government returned the recommendation of the District Education Officer on the ground that ban has been imposed under Memo No.12080/COSE/A2 /2004-4 dated 20.10.2004. Learned counsel appearing for the petitioner, by referring to G.O.Ms.No.349 dated 01.06.1984, submits that the compassionate appointment rests within the exclusive domain of the management of the School and no prior

approval is required in such cases. He laid much emphasis on the relative operation of Memo No.12080/COSE/A2/2004-4 dated 20.10.2004, which reads as under.

“Government after careful examination of the proposal of the D.S.E. in light of the orders of the Hon’ble High Court, hereby accord permission to fill up 123 aided posts, which were already permitted by the competent authorities to the managements of various schools shown in the annexure to this order.”

It is explicit from the record that the fourth respondent appointed the petitioner on compassionate grounds as Attender as on 01.08.2004. Proposals have been sent to the District Educational Officer, Hyderabad, on 31.08.2004 for approval. The ban orders came to be imposed on 20.10.2004. The approval sought for is much prior to the imposition of the ban order. The Government is not justified in rejecting the proposal with regard to the approval of the petitioner’s appointment as Attender in fourth respondent-School.”

(Emphasis is ours)

Having recorded its conclusions as above, the following direction was issued by the Court:

“Accordingly, the Writ Petition is disposed of directing the Regional Joint Director of School Education, Hyderabad to consider the proposal sent by the third respondent with regard to the approval of the petitioner’s appointment as Attender and pass appropriate orders within a period of four {4} weeks from the date of receipt of a copy of this order.”

Purporting to consider the case of respondent No.1, as directed by this Court in the above-noted order, appellant No.3 has issued proceedings, vide Rc.3802/A1/2006, dated 16.12.2010, wherein it was *inter alia* stated that in view of the subsistence of ban orders on compassionate appointments, which were lifted only on 06.10.2009, vide G.O.Ms.No.113, Education (S.E.PS-

1) Department, and having regard to the clarification issued by the State Government that G.O.Ms.No.113, which is prospective in operation, the benefit thereunder cannot be extended to respondent No.1 as his father has expired as long back as 2004. Respondent No.1 assailed the said proceedings in Writ Petition No.21938 of 2012. The learned single Judge while allowing the said Writ Petition held that, admittedly, respondent No.1 was appointed prior to imposition of the ban on compassionate appointments and the proposal from respondent No.2 for approval of such appointment also emanated prior to such imposition of ban. He has also has taken note of the fact that this Court in Writ Petition No.15621 of 2007 held that the ban which was brought into existence with effect from 20.10.2004 did not affect the case of respondent No.1. Accordingly, the learned single Judge has declared the action of the appellants in not giving the benefit of G.O.Ms.No.113, dated 06.10.2009, to the pending application of respondent No.1 as illegal. The learned single Judge consequently, directed the appellants to appoint respondent No.1 against the aided post in respondent No.2-School.

The learned Government Pleader for Education (Telangana State) appearing for the appellants has submitted that as evident, from the material on record, respondent No.2 has appointed respondent No.1 after imposition of ban on 20.10.2004, and that, therefore, such an appointment did not deserve to be approved. We are afraid, it is too late in the day for the appellants to advance this submission.

From the above discussed facts, it is evident that this Court has rendered a categorical finding that respondent No.1 was appointed by respondent No.2 on 01.8.2004 and the proposals were sent for approval by respondent No.2 to appellant No.4 on 31.8.2004, while the ban order was issued on 20.10.2004. This finding

has, admittedly, attained finality. Therefore, it is not permissible for the appellants to raise this plea for the first time in the later round of litigation.

After carefully examining the facts of the case, as noted above, and the reasoning of the learned single Judge while allowing Writ Petition No.21938 of 2012, we do not find any error, either patent or latent, on record deserving our interference in exercise of our Letters Patent jurisdiction.

For the afore-mentioned reasons, the Writ Appeal is dismissed with compensatory costs of Rs.10,000/- (Rupees Ten thousand only).

As a sequel to dismissal of the Writ Appeal, WAMP.No.1621 of 2016 filed by the appellants for interim relief is dismissed as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

JUSTICE G.SHYAM PRASAD

*28th July 2016
DR*