

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.18871 of 2004

ORDER:

This writ petition is filed under Article 226 of Constitution of India seeking a writ of mandamus declaring the proceedings issued by the second respondent in Rc.No.368/VE-2/04, dated 26.5.2004 and the consequential proceedings issued by the fourth respondent in Rc.No.2862/B1/2003, dated 15.7.2004 as illegal, improper and in violation of principles of natural justice and by setting aside the same a consequential direction may be issued to the respondents to release the entire amount which is due to the petitioner towards Additional Charge allowance for the period he worked as Head Master (Full Additional Charge) of fifth respondent–School from 30.6.2000 to 13.6.2003.

2. The petitioner was placed as Head Master Full Additional Charge [hereafter, HM (FAC)] in fifth respondent School consequent on the retirement of G.Hanumantha Rao on 30.6.2000. The second respondent issued proceedings in Rc.No.1539/C3-3/2001 dated 09.9.2001 clarifying that the senior most School Assistants, who are placed as HM (FAC) in the schools run by Panchayat Raj department, are entitled to FAC allowance. The petitioner filed W.P. No.21676 of 2003 questioning the action of the respondents in removing him from Full Additional Charge without notice and also seeking payment of FAC allowance for the period he worked as HM (FAC). This Court, vide order dated 25.10.2003 disposed of the writ petition with a direction to the petitioner to make a detailed representation as to the eligibility of special pay and additional charge allowance as per law before the concerned authorities and on such representation, the authorities shall consider and dispose of the same within a period of three months. Accordingly, the petitioner made representation to the fourth respondent–District Educational Officer, Ongole for release of the special pay and allowances. However, the second respondent–

Director/ Commissioner of School Education rejected the same. Alleging that rejection of the representation by the second respondent, without taking into consideration the above referred proceedings amounts to violation of principles of natural justice, the present writ petition is filed.

3. The fifth respondent did not choose to file counter. The respondent Nos.1 to 4 filed counter *inter alia* contending that without prior permission of the competent authority i.e., the third respondent—the Regional Joint Director, School Education, Guntur, the fifth respondent had placed the petitioner as HM (FAC) with effect from 30.6.2000 due to *inter se* seniority dispute between K.V.Krishna Reddy and P.Joji Reddy. The third respondent had not approved the placement of petitioner as HM (FAC). However, the fifth respondent continued the petitioner as HM (FAC) till 12.6.2003 for which department is not responsible for any loss caused to the petitioner. The petitioner is not entitled to claim FAC allowance under FR 49 of A.P. Fundamental Rules and Subsidiary Rules, which is applicable to the Government employees only.

4. The contention of the learned counsel for the petitioner is two fold: (1) the Teachers who are working under Panchayat Raj department are entitled to claim FAC allowances under FR 49 in view of the proceedings issued by fourth respondent in Rc.No.1539/C3-3/2001, dated 09.9.2001; therefore, the impugned order was passed in violation of principles of natural justice, and (2) the respondent Nos.1 to 5 having availed services of the petitioner as HM (FAC), should have paid FAC allowances. ***Per contra***, learned Government Pleader submitted that the teachers working in private aided schools are not entitled to get benefit under the Fundamental Rules. He further submitted that the petitioner was placed as HM (FAC) by the fifth respondent as a stop gap arrangement even without taking prior permission of the competent authority.

5. It is not in dispute that the petitioner worked as a Teacher in fifth respondent School till he attained the age of superannuation. The fifth respondent placed the petitioner as HM (FAC) with effect from 30.6.2000 and continued him as such up to 13.6.2003 due to *inter se* seniority dispute between senior Teachers viz., K.V. Krishna Reddy and P.Joji Reddy. The fact remains that the petitioner is junior to K.V.Krishna Reddy and P.Joji Reddy. If there is no *inter se* seniority dispute between the senior Teachers, the fifth respondent might not have placed the petitioner as HM (FAC). The petitioner has been continued as HM (FAC) in view of the *status quo* order passed by this court in W.P. No.15649 of 2001 filed by K.V. Krishna Reddy. P.Joji Reddy filed W.P. No.20757 of 2001 seeking direction to implement the proceedings of the Regional Joint Director (School Education), Guntur wherein this court directed the respondents therein to implement the proceedings dated 28.6.2001. After filing of contempt case, the third respondent issued the proceedings in Rc.No.4357/A3/2000, dated 13.12.2002 declaring the seniority of P.Joji Reddy. The petitioner also filed W.P. No.21676 of 2003 challenging the orders of the third respondent removing him as HM (FAC).

6. The above factual scenario clearly indicates that fortunately the petitioner was placed as HM (FAC) on 30.6.2000 due to *inter se* seniority dispute between the senior Teachers but not by virtue of his seniority or merit. The petitioner did not choose to file the order of the fifth respondent placing him as HM (FAC). In the absence of specific order approving the placement of petitioner as HM (FAC) by the competent authority, it is not possible for this court to come to a conclusion that the order of the fifth respondent placing the petitioner as HM (FAC) confers any right on the petitioner to claim FAC allowance.

7. The respondent Nos.1 to 4, in their counter, have taken a specific plea that fifth respondent placed the petitioner without prior approval of

respondent Nos.2 and 4. This fact is not being denied by the writ petitioner. The petitioner also did not choose to challenge the action of the third respondent in not approving him as HM (FAC). Basing on the material available on record, this court can safely draw a presumption that fifth respondent placed the petitioner as HM (FAC) without following due procedure.

8. To substantiate the argument, learned counsel for the petitioner has drawn my attention to the proceedings of the third respondent—Commissioner and Director of School Education, Andhra Pradesh, Hyderabad (second respondent), which reads as follows:

PROCEEDINGS OF THE COMMISSIONER & DIRECTOR OF
SCHOOL EDUCATION : ANDHRA PRADESH : HYDERABAD

Rc.No.1539/C3-3/2001.

Dated: 09.9.2001.

Sub: A.P.E.S. – Placing the School Asssts. as
Headmasters of the School on FAC wherever HM post is
vacant and FAC and additional Allowance be given to them
– instructions issued – Reg.

Read: Minutes of the meeting held by Secretary, Education
Department, A.P., Hyderabad with Panchayat Raj Teachers
Union on 09.3.2001.

* * *

All the Regional Joint Directors of School Education in the State are informed that it was agreed in the minutes of the meeting held by Secretary Education Department, with Panchayat Raj Teachers Union on 09.3.2001 to place the senior most School Assistant as Headmaster of the School against the vacant Headmaster post on full additional Charge basis till regular Headmaster is posted and give full Additional Charge Allowance to them.

They are therefore requested to take necessary action in the matter accordingly.

P.VEERABHADRA REDDY,
For Commissioner & Director of School Education

A perusal of the above proceedings clearly shows that the Government permitted the Regional Joint Directors to place the senior most School Assistants in the schools run by Panchayat Raj department as HM (FAC) and extend the benefit of drawing FAC allowance, which benefit is available to the Government employees under FR 49. As per the above proceedings, senior most School Assistants, who are working in the schools run by Panchayat Raj department, are alone entitled for

FAC allowance. It is not the case of the petitioner that he is senior most School Assistant working in the school being run by the Panchayat Raj Department and his placement as HM (FAC) is approved by the Regional Joint Director. By any stretch of imagination, it cannot be presumed that non-granting of FAC allowance to the petitioner basing on the proceedings of the third respondent dated 09.9.2001 would amount to violation of principles of natural justice.

9. The crucial question that falls for consideration at this stage is whether the petitioner is entitled to claim FAC allowance basing on F.R.49.

F.R.49. The State Government may appoint one Government servant to hold substantively, as a temporary measure, or to officiate in not more than two independent posts at one time. In such cases, his pay is regulated as follows:-

(a) the highest pay, to which he would be entitled if his appointment to one of the posts stood alone, may be drawn on account of his tenure of that post;

(b) for the other post he draws such reasonable pay and in no case exceeding half the presumptive pay (excluding overseas pay) of that post, as the State Government may fix; and

Explanation:- For the purpose of this rule, the term independent post should be interpreted as meaning separate or distinct post, the second or the additional post not being subordinate to the first or regular post.

(c) if compensatory allowances are attached to one or more of the posts, he draws such compensatory allowances as the State Government may fix, provided that such allowances shall not exceed the total of compensatory allowances attached to all the posts.

A perusal of FR 49 clearly manifests that it applies only to State Government employees.

F.R.2. The Fundamental Rules, apply, subject to the provisions of Rule 3 to all Government Servants paid from the Consolidated Fund of the State and to any other Class of Government servants to which the Government may, by general or special order, declare them to be applicable. The Government may, in relation to the services under their administrative control other than All India Services make rules

modifying or replacing any of the Fundamental Rules:

* Provided that these rules shall not be modified or replaced by the Governor under Article 309 of the Constitution of India to the disadvantage of any person already in service except in respect of matters relating to the age of superannuation.

F.R. 2 enables the State Government to extend the provisions of Fundamental Rules to employees of any department under its control. It is not the case of the petitioner that FR 49 was made applicable even to the School Assistants working in a private aided school in view of the benefit extended by the Government by exercising power under FR 2.

10. The learned counsel for the petitioner has not drawn attention of this Court to any statutory provision which enables the petitioner to claim FAC allowance. Simply because Government being paid FAC allowance to senior most School Assistants working in the schools run by the Panchayat Raj Department, that itself does not confer right on the petitioner, who is working as School Assistant in a private aided school. It is the prerogative right of the State Government either or not to extend any benefit to any category of employees working in various departments by following Fundamental Rules. Such a policy decisions of the Government cannot be termed as violation of principles of natural justice. Suffice it to say, this court while exercising jurisdiction under Article 226 of Constitution of India, cannot direct the Government to extend any benefit enjoyed by the Government Teachers to a Teacher working in a private aided school, which ultimately affects the public exchequer. The respondent Nos.2 and 4 have passed the orders taking into consideration the scope of FR 49. The orders passed by the respondent Nos.2 and 4 cannot be termed as illegal or violative of principles of natural justice as pleaded by the petitioner. In the absence of any statutory right, the petitioner is not entitled to claim FAC allowance. Viewed from any angle, there are no merits in the writ petition and it lacks merit.

11. Accordingly, the writ petition is dismissed. Miscellaneous

petitions, if any pending in this writ petition, shall stand closed.

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T.SUNIL CHOWDARY, J.

Date: 01.7.2016.

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