

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.2272 of 2004

ORDER:

The writ petition is filed under Article 226 of the Constitution of India for declaring sub-rule (4)(a) of Rule 12 issued in G.O.Ms.No.180 dated 29.12.2000 has no application so far as absorption of unaided teachers into aided post and applying the same to the petitioner as illegal, arbitrary and consequently, direct the respondent to grant regular scale of pay from the date of absorption of the petitioner i.e. with effect from 01.03.2002 in the aided post without treating him as apprenticeship, with all consequential benefits including monetary, seniority etc.

The petitioner was appointed as Secondary Grade Teacher (SGT) in the unaided post in the 4th respondent School. The 4th respondent school was running with two SGT posts, out of 2 posts, one is aided post and another is unaided post. The teacher-cum-correspondent working in the Aided post was retired from service on 28.02.2002 and the said post fallen vacant from 01.03.2002. The case of the petitioner is that the 4th respondent management issued proceeding on 01.03.2002 absorbing him in the said aided post w.e.f.01.03.2002. But the 3rd respondent issued proceedings dated 04.06.2003 approving the absorbing of the petitioner in the said aided post with effect from 21.04.2003 on the ground that the proposals are sent on 21.04.2003. The petitioner questioned the said proceedings and he contended that he is entitled for aided salary from 01.03.2002.

In the meanwhile, the Government issued G.O.Ms.No.180 Education (PS-I) Department, dated 29.12.2000 amending Rule 12 sub-rule (4) of G.O.Ms.No.1, dated 01.01.1994. As per said amendment, every selected candidate for the aided post of the teacher shall be initially appointed as apprenticeship for a period of two years from the date of

joining duty and he shall be paid monthly stipend at a rate to be prescribed from time to time by the Government. The said principle has been adopted even for the aided managements by amending rules through G.O.Ms.No.180 dated 29.12.2000. Pursuant to the said G.O., on the directions of the 3rd respondent, the 4th respondent issued appointment order as apprentice, depriving his regular pay scale in which he has been absorbed.

The grievance of the petitioner is that the amended rule clearly says that every candidate selected for the aided post alone are to be treated as apprenticeship but not the absorbed candidates and hence applying the same and issuing appointment order as apprenticeship is bad in law. The amendment is only prospective but not retrospective. As the petitioner was appointed in the unaided post prior to the aforesaid amendment, the said amended rule is not applicable to the case of the petitioner.

The respondents filed counter denying the contentions of the petitioner. It is admitted that the petitioner has been working since 12.06.1997 in unaided post of Secondary Grade Teacher of the 4th respondent institution. It is denied that the management issued proceedings dated 01.03.2002 absorbing the petitioner from unaided post to vacant aided post with effect from 01.03.2002. The 4th respondent nowhere requested for approval of absorption of the petitioner into aided post with retrospective effect i.e. from 01.03.2002. As per instructions issued in G.O.Ms.No.100, dated 16.08.2001 and G.O.Ms.No.75, dated 23.09.2002 permission was accorded to the 4th respondent to absorb the petitioner from unaided SGT post into vacant aided SGT post in proceedings dated 15.04.2003, with instructions that as per G.O.Ms.No.100, dated 16.08.2001 the candidate shall initially be appointed as apprentice and after completion of apprenticeship period only he will be appointed on regular basis by granting regular scale of

pay. The 3rd respondent vide his proceedings dated 04.06.2003 has approved the absorption of the petitioner from unaided post to vacant aided post with effect from 21.04.2003. It is not correct to say that the apprenticeship period is not applicable to aided school teachers. In G.O.Ms.No.100, dated 16.8.2001 it is clearly ordered that the teachers in aided schools appointed by direct recruitment or on absorption shall initially be paid Rs.1200/- per month in the 1st year and Rs.1500/- be paid in the 2nd year by giving amendment to G.O.Ms.No.1, dated 01.01.1994. Pursuant to the above G.Os.the 3rd respondent approved the absorption of the petitioner with effect from 16.08.2001 with instructions that as per G.O.Ms.No.100, dated 16.08.2001 the incumbent initially be appointed as apprentice and after completion of apprenticeship period only he will be appointed on regular basis by granting regular scale of pay. The respondents have acted *bona fide* pursuant to the Government Orders, referred to above, and hence the writ petition is devoid of merit and is liable to be dismissed.

The point for consideration is as to whether the writ petitioner is entitled to be absorbed from 01-03-2002 and whether he is entitled to pay protection on being absorbed in an aided post?

The factual matrix is not in dispute. The writ petitioner was working as a teacher in the 4th respondent – Sri Hari Hara Swamy Educational Society, Pulivendula, Cuddapah District, since February, 1995. One Krupavathi was already working as a Last Grade Teacher in an unaided post and she resigned the said job. On 04-04-1997, the 4th respondent – Educational Society was permitted to fill up the post and a Selection Committee was duly constituted. Guidelines to be followed for making such selection were also laid down in the proceedings of the DEO, Cuddapah, in Rc.No.4244/A.2/97, dated 04.04.1997. On 15-05-1997, the DEO, Cuddapah, in his proceedings Rc.No.4244/A.2/97 has approved the selection made by the Selection Committee absorbing the writ

petitioner to the Selection Grade Post (unaided) and the Correspondent of the 4th respondent - Educational Society was requested to issue appointment orders to the writ petitioner with instructions to join duty immediately on the re-opening day of the school after summer vacation. The 4th respondent - Educational Society was further requested to submit a copy of the appointment order and joining report of the writ petitioner to the DEO – 3rd respondent. In pursuance thereto, the 4th respondent - Educational Society has issued the order in Rc.No.1/97, dated 19-05-1997 appointing the writ petitioner as Selection Grade Assistant (Unaided) in the time scale of Rs.1975-4010 and was directed to report to his duty immediately after summer vacation. A copy of these proceedings were also sent to the DEO, Cuddapah; Deputy Educational Officer, Proddatur; and the Mandal Educational Officer, Pulivendula.

Thereafter, the writ petitioner who was already working in the unaided Selection Grade Assistant post w.e.f., 12-06-1997 was absorbed into aided post w.e.f. 01-03-2002. The proceedings of the Correspondent of the 4th respondent - Educational Society dated 01-03-2002 informing the writ petitioner that his absorption shall come into force w.e.f., 01.03.2002 was also sent to the Mandal Educational Officer, Pulivendula and the District Educational Officer, Cuddapah – 3rd respondent.

The controversy, however, arose in view of the impugned proceedings of the DEO in Rc.No.7519/A.5/2002, dated 04.06.2003, by and under which the absorption of the writ petitioner who was already working as Selection Grade Assistant w.e.f., 21.04.2003 and the 4th respondent while approving the said absorption directed that the writ petitioner shall initially be appointed as apprentice and after completion of apprenticeship period only, he will be appointed on regular basis by granting regular scale of pay. These proceedings of the DEO – 3rd respondent are challenged on the ground that when the writ petitioner was absorbed by the 4th respondent - Educational Society and has joined

in the absorbed aided post w.e.f., 01.03.2002, the approval accorded by the DEO w.e.f., 21.04.2003 is not correct and further since the writ petitioner was already working as a Selection Grade Assistant (unaided) in the 4th respondent - Educational Society, he cannot be treated as an apprentice, thereby denying him of the Scale of Pay, which he was already drawing while working in the 4th respondent - Educational Society as a Selection Grade Assistant (unaided).

Insofar as the direction of the 3rd respondent that the writ petitioner shall be an apprentice during which he will be paid only stipend has already been considered by this Court and the learned Counsel appearing for the respondents do not deny the fact that such a direction of the 3rd respondent cannot be sustained. In identical facts and considering the same Government Orders, which were relied upon by the 3rd respondent in the instant case, a learned single Judge of our High Court in **W.P.No.805 of 2004** between **N.Sandhya Rani v. Commissioner and Director of School Education, A.P., Hyderabad and others** held as under:-

“It is to be noted that under Clause 6, the payment procedure prescribed under G.O.Ms.No.100, dated 16.08.2001 is to be applied only for those persons who were appointed directly in the vacant posts as per the recruitment procedure. No such condition was prescribed under Clause 7 for those who were already working in unaided posts and who were absorbed against the aided posts. It is also relevant to note that sub-rule (4-a) of Rule 12 of the Rules of 1993, extracted hereinbefore, clearly indicates that it has application to only those who are freshly selected and appointed. Such appointees are required to be treated as apprentices and work under the supervision of the rookies who are yet to learn the ropes. The distinction sought to be drawn between such identical situated persons basing on the date of coming into operation of Act 9 of 2000 is arbitrary and unreasonable. Such an interpretation does not find reflection in the Government’s own instructions in G.O.Ms.No.75 dated

23.09.2002. The petitioner cannot therefore be treated as an apprentice and be made to suffer a reduction in her pay consequent to her absorption in an aided post. The same is *ex facie* illegal and unsustainable.”

Aggrieved by the above orders of a learned single Judge, the State preferred **W.A.No.202 of 2012**. A Division Bench by Judgment dated 22-08-2013 upheld the orders of the learned single Judge observing as under:-

“Regarding second aspect of the matter is concerned, it is to be seen that in G.O.Ms.No.75 dated 23.09.2002, a distinction was drawn between appointments made by private aided institutions as per procedure under clause 6 and absorption of qualified unaided staff already working in such private aided institutions under clause 7. Clauses 6 and 7 of G.O.Ms.No.75 dated 23.09.2002 were extracted by the learned single Judge and discussed in detail. Under clause 6, the payment procedure prescribed under G.O.Ms.No.100 dated 16.08.2001 is to be applied only for those persons who were appointed directly in the vacant posts as per the recruitment procedure. No such condition was prescribed under clause 7 for those who were already working in unaided posts and who were absorbed against the aided posts. It is also pertinent to note that sub-rule (4-a) of Rule-12 of the Rules of 1993, which clearly indicates that it has application to only those who are freshly selected and appointed. This Rule has no application to the teacher, such as the 1st respondent herein who was already working in an unaided post from 1992. The apprenticeship is meant only for freshers who have no experience and such procedure which is applicable to the freshers cannot be made applicable to the 1st respondent herein, who is in service from 1992.”

In addition to the above, there is also another decision of a Division Bench of our High Court in W.A.No.373 of 2006 decided on 13.11.2014 reported in **STATE OF ANDHRA PRADESH v. DANTU KURAMGESWARA VENKATA KUMARA RATNAKAR (2015 (6) ALD**

216) , wherein the Division Bench of our High Court held as under in para 9 :-

“G.O.Ms.No.180, dated 29.12.2000 and G.O.Ms.No.100, dated 16.08.2001, are not clear as to whether it is only the candidates, who are selected afresh, to work against aided vacancies, that must be required to undergo the apprenticeship, or even those who were absorbed. Whether one goes by reason or logic, the question of a teacher whose appointment has already been approved and has been working on regular pay, being required to undergo apprenticeship on being absorbed against a aided vacancy, does not arise. The apprenticeship is a phenomenon, which is almost equivalent to training or probation, to be undergone by an employee at the threshold of his appointment. Obviously because the performance of the candidate is yet to be observed, the emoluments during that period are kept at a low level. In the instant case, however, the 1st respondent whose appointment has already been approved in the year 2001, has been treated as apprentice in the year 2004 on being absorbed against aided vacancy. Such a course is contrary to law.”

In view of the above authoritative pronouncement, it is held that the writ petitioner who was already working as a Selection Grade Assistant, on his absorption w.e.f., 01.03.2002 cannot be placed on apprenticeship and he cannot be denied the Scale of Pay with effect from the date of his absorption viz., 01.03.2002.

In that view of the matter, when the 4th respondent – Educational Society has informed the authorities that the writ petitioner was absorbed to the aided post w.e.f 01.03.2002 and in fact he has already joined the services into the said post, treating him to have been absorbed w.e.f., 21.04.2003 as has been directed in the impugned proceedings cannot be sustained. The point is accordingly answered.

In the result, the writ petition is allowed directing the respondents to give effect to the absorption of the petitioner in the aided SGT Post in the

fourth respondent school with effect from 01.03.2002 instead of 21.04.2003. Further, Rule-12(4-a) of the Rules of 1993 as amended by G.O.Ms.No.100 dated 16.08.2001 is held to have no application to the case of the petitioner and accordingly, the respondents are directed to pay the petitioner the regular time scale applicable to him from the date of his absorption instead of placing him on a monthly stipend. The amounts payable to the petitioner consequent to this order shall be computed and remitted within a period of three months from the date of receipt of a copy of this order. In the circumstances of the case, there shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.Jaiswal, J

1st February, 2016

Dsr/smr