

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 31273 of 2011

Order:

The petitioner-School was established on 18.07.1975 as Primary School and it was recognized by the fourth respondent for the academic year 1976-77 vide proceedings No.615/E1/77 dated 10.04.1977. It was upgraded as Upper Primary School in the year 1982 vide proceedings of the fourth respondent. It was admitted to grant-in-aid vide GO Ms. No.344 Education Department dated 22.07.1985 with the permission of the second respondent dated 09.01.1992. When the petitioner-School filed WP No.7210 of 1988 before this Court seeking a direction to the respondents for admission of posts to grant-in-aid with retrospective effect, this Court directed the petitioner to make an application before High Level Committee constituted under GO Rt.No.220, dated 24.02.1988. Accordingly, an application was made for one post of craft teacher as well as to the posts which were admitted to grant-in-aid vide GO Ms.No.344 dated 22.07.1985. The Committee examined the request of the petitioner-School and released necessary funds except for the post of one craft teacher. Later on, the petitioner-School created unaided posts of one Head Master, one B.Ed Assistant, two SGT, one PET, one Junior Assistant, two Record Assistants and one Attender after obtaining permission from the competent authority. They were appointed as per the rules prescribed in GO Ms.No.524 Education Department dated 20.12.1988 and GO Ms.No.1 Education Department dated 01.01.1994 and it was ratified by the competent authority from time to time. Thereafter the petitioner-School was bifurcated into Primary and High School vide orders of the fourth

respondent dated 23.05.1994 and granted recognition up to academic year 2019-2020. The additional sections in the Primary School were also approved by the competent authority on 16.06.1994 and 07.02.1995. Accordingly, five (5) SGT Teachers were appointed following due selection process against the un-aided posts and the same was approved by the fourth respondent. While so, the District Level Committee submitted proposals to the second respondent through the fourth respondent for admitting certain unaided posts in the petitioner-School to grant-in-aid. Later on, the Government issued GO Ms.No.75, dated 23.09.2002. When the proposals for grant-in-aid were not placed before the High Level Committee, the petitioner filed WP No.23763 of 2002 seeking a direction to the respondents to admit the nine (9) unaided teaching and non-teaching posts into grant-in-aid and release funds on par with similarly situated schools. The said writ petition was disposed of at the admission stage on 28.11.2002. In pursuance of the said orders, the fourth respondent directed the petitioner-School to furnish the proposals in the prescribed proforma vide proceedings dated 23.05.2003 and the proposal was submitted to the second respondent for placing before the High Level Committee vide letter dated 27.05.2003 of the fourth respondent. In respect of craft teacher post which was not admitted to grant-in-aid, this Court in WP No.21365 of 1994, dated 03.01.2003, directed the respondents to consider the representation of the petitioner dated 06.05.1994 in the light of the recommendations made by the Deputy Educational Officer, Nandyal in accordance with law if that post is still in existence in the petitioner-School and if it is otherwise eligible to be admitted to grant-in-aid. However, the

Government rejected the proposal in respect of craft teacher vide its Memo dated 19.02.2004 on the ground that the petitioner-School was upgraded after 01.09.1985. Challenging the said decision and the discrimination meted out to the petitioner-School though several schools which were upgraded after 01.09.1985 were admitted to grant-in-aid, the petitioner-School filed WP No.8378 of 2004. The petitioner also gave details of several cases filed by several schools wherein directions were given for consideration of their cases in respect of up-gradation of their schools after 01.09.1985. This writ petition was filed challenging the action of the first respondent in not admitting the petitioner-School to grant-in-aid in respect of five (5) Secondary Grade Teacher posts in Primary School and nine (9) unaided posts in High School in pursuance to the letter in Rc.No.1054/B4-1/2004 dated 26.04.2010 of the second respondent on par with the similarly situated schools.

2. A counter affidavit was filed stating that the petitioner-School was recognized by the competent authority with effect from 12.12.1976 vide proceedings dated 26.12.1976 of the District Educational Officer, Kurnool. It was admitted to grant-in-aid in 1981-82 and was upgraded to Upper Primary School with effect from 1980-83. The Upper Primary School was admitted to grant-in-aid with effect from 01.04.1992 vide GO Rt. No.8, Education Department, dated 03.01.1992. The Upper Primary School was upgraded to High School during the academic year 1991-92 by the Commissioner and Director of School Education, Hyderabad subject to fulfilment of conditions prescribed in GO Ms. No.524, dated 20.12.1988. Later on, the School was bifurcated into Primary and High School by

proceedings dated 23.05.1994. The High School was given temporary recognition up to 2004-05 by the Regional Joint Direction of School Education, Kadapa, vide proceedings dated 16.02.2001. It was further stated that the School was not eligible for admission of unaided post to grant-in-aid in terms of para 15(4) of GO Ms. No.524, dated 20.12.1988, as the School was not established prior to 01.09.1985. The competent authority had accorded permission for creation of seven (7) teaching and non-teaching posts in terms of pupil teacher ratio available as on that date. In pursuance of the orders of this Court in WP No.31273 of 2002, proposals of the School was submitted for admission to grant-in-aid before the High Level Committee, but the High Level Committee rejected the said proposals for want of information. It is further stated that the information furnished with regard to other schools which were admitted to grant-in-aid are different and they stand on a different footing than the petitioner-School. The Government imposed a ban in Memo dated 20.10.2004 and as per the same no new posts for grant-in-aid would be allowed. Though the said orders were challenged in the Supreme Court, the petitioner is not a party to the said SLP and, hence, the petitioner cannot take advantage of the orders of the Supreme Court dated 06.09.2011. It was further stated that the strength of the High School is very meagre for sanction of any aided post to the High School. In view of the ban orders also it is not feasible to sanction any aided post to the management of the petitioner-School.

3. It is clear from the above facts that the petitioner-School was initially recognized by the competent authority with effect from 12.12.1976 and was admitted to grant-in-

aid in 1981-82. It was upgraded as Upper Primary School with effect from 1980-83 and the upgraded Upper Primary School was admitted to grant-in-aid with effect from 01.04.1992. The upper Primary School was upgraded as High School during the academic year 1991-92 subject to fulfilment of conditions prescribed in GO Ms. No.524, dated 20.12.1988 and it was given temporary recognition up to 2004-05. The School was bifurcated into Primary and High School by proceedings of the District Educational Officer, Kurnool, dated 23.05.1994. The strength of the High School as on the date of filing of the counter affidavit in 2012 shows as follows.

"VI	-	18
VII	-	22
VIII	-	17
IX	-	20
X	-	12"

4. Now the present Writ petition is filed seeking admission of the petitioner-School into grant-in-aid in respect of five (5) Secondary Grade Teacher posts in Primary School and nine (9) unaided posts in High School. It is not clear from the averments made in the affidavit filed in support of the Writ Petition whether the High School was granted any recognition beyond 2004-05. The strength of the High School also appears to be low. Hence, the authorities have to consider the cases of the admission of five (5) Secondary Grade Teacher posts in Primary School and nine (9) unaided posts in High School separately keeping in view the eligibility of the said posts for grant-in-aid.

5. However, with regard to the objection on the ground of up-gradation of the School after the cut off period, This Court considered the issue in WP No.16086 of 2003 dated

20.07.2005 and held that the date of initial starting of the school has to be taken into consideration but not the upgradation or opening of some higher classes in order to see the eligibility for admission to grant-in-aid. This Court took into consideration Section 2(1)(a) of Act 22 of 1988 and rejected the contention of Government raised regarding ineligibility of the schools that it was upgraded after 01.09.1985.

6. Regarding the ban on recruitment, a learned single Judge of this Court in WP No.2381 of 2012 in the case of **AVM High School v State of Telangana, rep. by its Principal Secretary, Education (PS) Department, Hyderabad**^[1], held that the ban order would not have any retrospective operation and hence, the ground raised by the respondents cannot be sustained. In fact, the said memo itself was set aside by another learned single Judge in another case.

7. In view of the above, this Writ Petition is disposed of directing the first respondent to consider the case of the petitioner-School for admission of the unaided posts to grant-in-aid in accordance with law, without raising the ground of upgradation of the School after 01.09.1985 and ban on recruitment, and pass fresh order in view of the law laid down by this Court in WP No.16086 of 2003 dated 20.07.2005 and WP No.2381 of 2012, dated 13.11.2015 within a period of six (6) months from the date of receipt of a copy of this order. However, in the circumstances, no costs.

8. As a sequel thereto, the miscellaneous petitions, if any pending in this Writ Petition, shall stand closed.

A.
Date: 29.04.2016
Kvrm/Nsr

RAMALINGESWARA RAO, J

[\[1\]](#) 2016 (2) ALT 196