

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.12507 of 2010

ORDER:

The petitioner is a primary school established in 1984-85 which was upgraded as Upper Primary School in 1992-93. At the time of granting recognition, the following posts were existing:

- (i) Aided S.G. Posts – 4
- (ii) Unaided S.G. Posts – 3
- (iii) Unaided B.Ed. Posts - 2
- (iv) Unaided Grade-II T.P. - 1
- (v) Unaided Grade-II H.P. - 1

After upgradation of the school as Upper Primary School, respondent No.3 issued proceedings on 16.11.1993 for creation of the following posts without aid:

- (i) B.Ed. Post – 1
- (ii) Telugu Pandit Grade-II – 1
- (iii) Hindi Pandit Grade-II - 1

Respondent No.3 also submitted proposals on 13.01.2000 to respondent No.2 for admission of the above posts to grant-in-aid and no orders were passed. Challenging the inaction, the petitioner filed W.P. No.8235 of 1999 and the same was disposed of on 16.06.2004. In view of the admission made by respondents in the counter affidavit that the Regional Joint Director of School Education, Guntur submitted proposals on 13.01.2000 to the Commissioner and Director of School Education, Andhra Pradesh at Hyderabad, the Commissioner and Director of School Education was directed to pass appropriate orders. Challenging the inaction, the petitioner filed W.P. No.17875 of 2008 and the same was disposed of at the admission stage directing the petitioner to submit a representation to the Commissioner and Director of School Education, Andhra Pradesh, Hyderabad and the

Commissioner and Director of School Education was directed to dispose of the same within six weeks. After disposal of the said writ petition on 15.11.2008, the petitioner submitted a representation on 29.01.2009 and respondent No.2 passed the impugned order on 08.09.2009 rejecting the request of petitioner on two grounds viz., (i) the school was upgraded as Upper Primary School during the year 1992-93 and High School during 1993-94 (unaided) and hence, the unaided posts were not eligible for grant-in-aid and (ii) the Government in Memo No.12080/COSE/A2/2004-2, dated 20.10.2004, imposed a ban on recruitment except for the posts for which permission was specifically granted by the Government. Challenging the said order, the present writ petition was filed.

So far as the ground relating to the upgradation of school in 1992-93 and 1993-94 is concerned, this Court considered the issue in W.P. No.16086 of 2003 in respect of the case of petitioner only 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.

Regarding the ban on recruitment, learned single Judge of this Court in W.P. No.2381 of 2012 in the case of **A.V.M. 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 respondent No.2 in the impugned order, by relying on Government Memo dated 20.10.2004, is also not

applicable. In fact, the said Memo itself was set aside by another learned single Judge in another case.

Since the two grounds raised by respondent No.2 for rejecting the request of petitioner were unavailable, the consequence would be to set aside the impugned order, dated 08.09.2009 passed by respondent No.2, and accordingly, respondent No.2 is directed to pass fresh order in accordance with law laid down by this Court in W.P. No.16086 of 2003, dated 20.07.2005, and W.P. No.2381 of 2012, dated 13.11.2015, in respect of the grounds raised relating to rejection of the request of petitioner, within a period of six (6) months from the date of receipt of a copy of this order.

With the above directions, this Writ Petition is allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A.RAMALINGESWARA RAO, J

31.03.2016

MVA

^[1] 2016 (2) ALT 196