

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.12637 OF 2011

Dated:05.12.2016

Between:

S. Yesupadam, S/o. K. Sundar Raj,
Aged about 64 years, Retd., Drawing
Master, UMTS – Telugu Medium
High School, Arogyavaram, Chittoor District .. Petitioner

And

The State of Andhra Pradesh, rep.,
by its Secretary, Government of A.P.,
Edn (SE.PS.I) Department, Secretariat
Buildings, Hyderabad and others .. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No.12637 OF 2011****ORDER:**

The petitioner was appointed in an unaided post as Drawing Master on 15.02.1983 by the UMTS Telugu Medium High School, Arogyavaram, Chittoor District. The said post was later admitted to grant-in-aid by G.O.Ms.No.178, dated 23.07.1990, w.e.f. 01.11.1989. The District Educational Officer, Chittoor, the 3rd respondent, by order, dated 21.03.1995, approved the petitioner's appointment to grant in-aid post w.e.f. 15.02.1983 and thereafter, the Regional Joint Director, by order, dated 07.08.1997, modified the order of appointment to grant-in-aid post, as granted by the 3rd respondent to 21.03.1995, on which date the 3rd respondent earlier passed orders. The petitioner continued to make his grievance with reference to his entitlement with retrospective effect and to grant consequential benefits. The petitioner earlier filed W.P.No.6859 of 2009. This Court, by order dated 07.04.2009, disposed of the said Writ Petition directing the Government to decide the petitioner's representation, dated 17.07.2007, duly taking note of the report of the 3rd respondent, within a period of six weeks from the date of receipt of copy of the order. As a consequence of the said direction, the Government passed orders vide Memo No.16591/SE.PS.I/A2/2007, dated 22.04.2010, rejecting the claim of the petitioner for such appointment retrospectively. The said Memo is under challenge in this Writ Petition.

2. Learned counsel for the petitioner submits that the petitioner was appointed on 15.02.1983 by following the due procedure and with the prior approval of the 3rd respondent and by that time, the post was not admitted to grant-in-aid. He further submits that since the petitioner's appointment was followed by due procedure and the same was admitted to grant-in-aid, the period prior to grant-in-aid should be treated as regular appointment to that of grant-in-aid post and ought to have been granted all consequential benefits. He further submits that the 3rd respondent correctly appreciated the issue and granted the benefit of appointment retrospectively to the petitioner from the date of his initial appointment i.e., 15.02.1983 and subsequent action of altering the date of appointment in grant-in-aid post w.e.f. 21.03.1995 by the Regional Joint Director was erroneous. As a consequence of sanctioning of grant-in-aid post, the appointment earlier made by the School Management gets affirmed as a permanent appointment against unaided post and there is no further requirement of formal appointment in accordance with the subsequent Rules, as a consequence of admission of the post to grant-in-aid and that the order of the Government impugned in the Writ Petition is liable to be set aside only on the ground that it is a non-speaking order.

3. Learned Government Pleader for School Education supports the decision of the Government in rejecting the claim of the petitioner. According to him, the petitioner is not entitled to regularisation of his appointment retrospectively, after the sanction

of the post in 1989, as he was not appointed in terms of the Rules governing the field and therefore, no such claim can be made.

4. The only issue that arises for consideration is:

“Whether the action of the respondent authorities in restricting the appointment of the petitioner to grant-in-aid post from 21.03.1995 is valid?”

5. **POINT:-** It is not in dispute that by the time, of course, the petitioner was admitted into grant-in-aid post w.e.f. 01.11.1989, Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Central) Rules, 1988 were notified vide G.O.Ms.No.524, dated 20.12.1988. Rule 12 thereof prescribes the detailed procedure for appointment of staff against grant-in-aid post. It is also not in dispute that the petitioner was not appointed by following the procedure as prescribed in the said Rule. The 3rd respondent only ratified the earlier appointment granted to the petitioner, when the post was not admitted to grant-in-aid, vide his orders dated 21.03.1995. It is also appropriate to notice that by the time such orders were passed by the 3rd respondent, Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools Under Private Managements) Rules, 1993 have been notified vide G.O.Ms.No.1, dated 01.01.1994. According to these Rules, the competent authority is Regional Joint Director. Thus, by the time the orders were passed by the 3rd respondent, he was not the competent authority to pass such orders. However, the Regional Joint Director vide his order dated 07.08.1997, having found that the question of granting retrospective validation of

appointment from 15.02.1983 was erroneous, modified the said appointment to the date of passing of the order by the 3rd respondent and the Government by its Memo, dated 16.08.2001, approved the same. The said decision of the Government is further affirmed in their decision communicated vide Memo, dated 24.10.2006.

6. Though this Court is of the opinion that unless a person is appointed in accordance with the Rules after the post is admitted to grant-in-aid, since the decision of the Regional Joint Director has become final and approved by the Government regulating the appointment of the petitioner w.e.f. 21.03.1995, not inclined to go into the issue of validity of such appointment.

7. Having regard to the fact that the petitioner was not appointed to the grant-in-aid post, when the post occupied by him was admitted to grant-in-aid, in accordance with the 1988 Rules or 1994 Rules, his claim for retrospective validation of his appointment w.e.f. 01.11.1989 cannot be acceded to.

8. Further, the claim of the petitioner that the order impugned in the Writ Petition is liable to be set aside on the ground that it is not a speaking order, having regard to the facts of this case, cannot be countenanced. Though the said order does not assign reasons, it refers to the earlier Memos of Government, dated 16.08.2001 and 24.10.2006. In Memo, dated 16.08.2001, the Government approved the decision of the Regional Joint Director ratifying the appointment of the petitioner to grant-in-aid

post w.e.f. 21.03.1995. Furthermore, the petitioner has retired from service in the year 2004. Having regard to the fact that the claim *per se* is not in accordance with the provisions of the relevant Rules, even assuming that the order of the Government impugned in the Writ Petition is not a speaking order, as contended by the petitioner, I am not inclined to remit the matter to the Government for consideration at this stage and the Writ Petition is liable to be dismissed.

9. The Writ Petition is accordingly dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

Date:05.12.2016

KH

P. NAVEEN RAO, J

