

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Writ Petition Nos.24050 of 2005 and 7551 of 2007

COMMON ORDER:

W.P.No.24050 of 2005 is filed by the petitioner for issuance of writ of Mandamus to declare the action of the respondents in not approving her post of School Assistant in the 4th respondent's College as illegal, irregular and violative of Articles 14, 16 and 21 of the Constitution of India.

W.P.No.7551 of 2007 is filed by the petitioner for a writ of Mandamus to declare the orders of the 3rd respondent in Rc.No.1515/A3/2003 dated 15.09.2005 and dated 23.04.2006, rejecting her approval of appointment as School Assistant as arbitrary, illegal, discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India and contrary to G.O.Rt.No.62 Edn., dated 31.01.2006 and consequently direct the respondents to consider her case for approval of appointment as School Assistant (Maths) in the 4th respondent—College w.e.f. 28.08.2003 with all attached benefits thereto.

2) The brief facts of the case are thus:

a) The petitioner was selected and appointed as School Assistant in the 4th respondent—College and working as such since 28.08.2003. The college authorities sent proposals to the competent authority for approval but the official respondents did not approve the post and release the salary. Questioning the same she filed W.P.No.2621 of 2005. A learned single Judge of this Court disposed of the said writ petition directing the

respondents to examine the matter and pass appropriate orders but the respondent authorities did not implement the Court orders. Hence, she filed C.C.No.1009 of 2005. Thereafter, the 3rd respondent issued proceedings dt.15.09.2005 rejecting the petitioner's case stating that it was not feasible for approval of her selection as the Government imposed ban, though in fact there was no ban for the post of petitioner i.e. School Assistant. Then the Government passed G.O.Rt.No.62 Edn., dt.31.01.2006 permitting the 2nd respondent to instruct the competent authorities to approve the selection made by the managements prior to the ban. In spite of the same, the 3rd respondent has not approved the petitioner's selection and appointment. Hence, the writ petitions.

b) Respondent No.3 filed counter affidavit in W.P.No.24050 of 2005 submitting that petitioner had already filed W.P.No.2621 of 2005 for approval of her selection as School Assistant. This Court by order dated 26.04.2005 disposed of the said writ petition directing the 3rd respondent to examine the matter and pass appropriate orders on the proposal sent by the DEO within three months. Accordingly, the 3rd respondent obtained required information and sent the same to the 2nd respondent. The 2nd respondent by proceedings dated 08.04.2005 rejected the proposal since there were certain lapses in the selection process and ban in filling up the posts in private aided institutions and petitioner was informed the same through proceedings dated 15.09.2005. It is also submitted that correspondent of the 4th respondent filed W.P.No.20769 of 2005 for approval of selections conducted on 27.08.2003 including that of petitioner

which was disposed of by this Court in terms of the judgment in W.A.No.1578 of 2005. Therefore, the grievance if any, of the petitioner should be taken up only by the correspondent of the petitioner.

c) R3 filed counter affidavit also in W.P.No.7551 of 2007 reiterating that 2nd respondent rejected the approval of appointment of petitioner. He further stated that there are lapses in selection process. In the meanwhile, the Government issued G.O.Rt.No.62 Edn., Department dated 31.01.2006 according permission to the managements of various schools to fill up 123 aided posts. Accordingly, 3rd respondent requested to take action as per G.O.Rt.No.62 and if the selection process was made as per the existing rules and the selection process was completed before the ban memo issued on 20.10.2004 to avoid further complications in the matter. It is further submitted that when the petitioner filed C.C.No.1009 of 2005 for implementation of judgment in W.P.No.2621 of 2005 dated 26.04.2005, again her case was examined with reference to G.O.Rt.No.62 and rejected by the 3rd respondent through proceedings dated 23.04.2006 which is impugned in W.P.No.7551 of 2007. Thus, they prayed to dismiss the writ petition.

d) When both the Writ Petitions were taken up for hearing on 23.12.2016, this Court directed the official respondents to file additional counter affidavit with all subsequent facts and particulars. Therefore, common counter affidavit was filed by 3rd respondent stating that 4th respondent filed W.P.No.20769 of 2005 which was disposed of on 08.08.2007 in terms of W.A.No.1578 of 2005 dated 29.12.2006 wherein

the Division Bench observed that selections made prior to 03.06.2003 were permitted to continue. In the present case, the petitioner was selected on 28.08.2003 which is much after the cut-off date fixed by the High Court. It is further stated the 4th respondent having received the order in W.P.No.20769 of 2005 remained silent as they have no legal stand. The petitioner also aware of the said fact and once the Institution approached this Court and accepted the order passed in W.P.No.20769 of 2005 which attained finality, the petitioner has no legs to stand. It is also contended that as per the records of the 4th respondent—Institution, petitioner never worked as School Assistant. Thus, they prayed to dismiss the writ petitions.

e) Common reply affidavit was filed by the petitioner reiterating the facts stated in the writ petitions and denied all the allegations made in the common counter. She thus prayed to allow the writ petitions.

3) Heard arguments of Smt. K.N.Vijayalakshmi, learned counsel for petitioner in W.P.No.24050 of 2005 and Sri Kasa Jaganmohan Reddy, learned counsel for petitioner in W.P.No.7551 of 2007 and learned Government Pleader for School Education.

4a) Learned counsel for petitioner would argue that the petitioner was selected as School Assistant in the existing B.Ed. (Maths) aided post in HCM Junior College for Girls (HS), Ongole having been selected by the selection committee consisting of Deputy Educational Officer, Ongole who was the departmental nominee and other members. The selection process was conducted fairly by following the rules and the 4th respondent issued

appointment order dated 27.08.2003 and submitted the proceedings for approval of the competent authority but the respondents 1 to 3 failed to issue approval and therefore, the petitioner was constrained to file W.P.No.2621 of 2005 seeking declaration that inaction of the respondents in approving the selection and appointment of the petitioner as illegal and arbitrary and this Court in its order dated 26.04.2005 directed the 3rd respondent therein to examine the matter and pass appropriate orders on the proposal submitted by the District Educational Officer within a period of three months. Learned counsel would further submit that in spite of the said order the respondents failed to pass the order approving her selection and therefore, she was constrained to file C.C.No.1009 of 2005 and thereafter the 3rd respondent issued proceedings dated 15.09.2005 rejecting the petitioner's case on lame excuse that it was not feasible for approval of her selection as the Government imposed ban on filling up of aided vacancies and also due to lapses in selection process.

b) Learned counsel would vehemently argue that the objections raised by the respondents against approval of her selection are quite untenable and preposterous. She would submit that ban imposed by the Government through Memo No.12080/COSE/A2/2004-4, dated 20.10.2004 has absolutely nothing to do with the selection of the petitioner as the selection had taken place much earlier to the ban and that too with the approval of the competent authority.

c) So far as the other contention of the respondents that the selection was vitiated due to lapses in the selection process is concerned, learned

counsel argued, there were no lapses in the selection process and if at all there were any lapses in applying reservation, that was with regard to other posts but not the post of the petitioner.

d) Learned counsel would further argue that for the first time in the counter, respondents have taken an untenable plea as if the petitioner was not working in the institution and therefore her case cannot be considered. This was not the plea originally taken by the respondents either in W.P.No.20769 of 2005 filed by the 4th respondent or in W.P.No.2621 of 2005 filed by the petitioner. She submitted that in view of pendency of writ petitions filed by petitioner, probably her name might not have been included in the attendance register but that cannot be a ground to reject her claim. Learned counsel thus prayed to allow the writ petitions.

5 a) Per contra, learned Government Pleader for Education would firstly argue that the instant Writ Petitions filed by the petitioner are not maintainable for the main reason that the 4th respondent, who is the correspondent of HCM Junior College for Girls (HS), Ongole, had already filed Writ Petition No.20769 of 2005 which was disposed on 08.08.2007 in terms of the order in Writ Appeal No.1578 of 2005 dated 29.12.2006 wherein the Division Bench of this Court observed that in view of the ban in Government Memo No.12080/COSE/A2/2004-4-Edn. dt.20.10.2004, the selections made prior to 03.06.2003 alone were permitted to continue. In the instant case, the petitioner was selected on 28.08.2003 and as her selection was much after the cut-off date fixed by the High Court, her

selection cannot be approved. In view of the said order, the Writ Petitions are liable to be dismissed in *limini*.

b) Secondly and alternatively he would argue that even assuming that the aforesaid ban had no application, still the petitioner's selection cannot be approved in view of many lapses crept in the selection process. In expatiation, he would submit that the management of the Schools and Colleges had not followed Roster points against the concerned posts; the list of the candidates sponsored by the District Employment Exchange Officer, Ongole on 21.03.2003 which was valid for a period of 3 months only but the selection was conducted on 27.08.2003 much after the lapse of the list and hence the selection was vitiated.

c) Thirdly, he contended that the petitioner never worked in the HCM Junior College for Girls (HS), Ongole after her selection and therefore, her case cannot be considered.

He thus prayed to dismiss the Writ Petitions.

6) In the light of above rival arguments, the following points would emerge for consideration:

- i) *Whether the petitioner's selection is hit by the order in W.P.No.20769 of 2005 which was passed in terms of the order in W.A.No.1578 of 2005 dated 29.12.2006?*
- ii) *If point No.1 is held in negative, whether petitioner's selection is hit by the lapses in selection process, alleged?*

iii) *To what relief?*

7) **POINT No.1:**

The impact of order in W.P.No.20769 of 2005 which was disposed on 08.08.2007 in terms of the order in W.A.No.1578 of 2005 dated 29.12.2006:

A perusal of the order dated 08.08.2007 in W.P.No.20769 of 2005 would show that the authorities of HCM Junior College for Girls (HS), Ongole filed the said Writ Petition seeking to declare the Government Memo No.12080/COSE/A2/2004-4-Edn. dated 20.10.2004 issued by 1st respondent had no application to fill up the aided vacancies in the petitioner institution and to direct the respondents to consider the approval of the candidate selected by the Selection Committee on 27.08.2003. Thus it is clear that the authorities of HCM Junior College for Girls (HS), Ongole, wherein the petitioner claims to work, have already filed the Writ Petition to uphold the selection of petitioner and others. A learned single judge of this Court has disposed of the said writ petition on 08.08.2007 in terms of the covered judgment of the Division Bench passed in Writ Appeal No.1578 of 2005 dated 29.10.2006. Therefore, as rightly contended by learned Government Pleader, the orders in W.P.No.20769 of 2005 and W.A.No.1578 of 2005 are binding on the petitioner.

8) The order in W.A.No.1578 of 2005 and Batch would show that the D.B considered two aspects i.e., a) the validity of the total ban imposed on the recruitment of aided teachers by the Government vide Memo

No.12080/COSE/A2/2004-4 dated 20.10.2004 and 2) the legality of rationalisation undertaken by the authority of Education Department.

9) The first point is concerned, the D.B held that the ban imposed under the Memo dated 20.10.2004 on the recruitment against existing vacancies is not applicable to the cases in which permission had already been granted by the District Educational Officer or the Regional Joint Director. With regard to the rationalisation, the D.B held that the exercise of rationalisation undertaken by the departmental authorities was violative of Rule 10(17) read with Rule 10(12) and the norms prescribed by the Government vide G.O.Ms.No.103 dated 05.08.2005. The D.B made it clear that however the order would not prevent the competent authority from undertaking fresh exercise for rationalisation. Accordingly, the Batch of Writ Petitions filed by the Government was dismissed. It must be noted that in the above judgment, the D.B had not held that the selections which were permitted and made prior to 03.06.2003 alone were valid in view of the ban imposed as per memo dated 20.10.2004. It was only observed that the ban imposed on the recruitment against existing vacancies was not applicable to the cases in which permission had already been granted by the competent authority. In that view of the matter, the contention of learned G.P that as per the order of the D.B, selections made prior to 03.06.2003 with permission alone were valid and since the petitioner was selected on 28.08.2003 i.e., after the cut-off date fixed by the High Court was not valid, cannot be approved. In the instant case, the material papers produced by the petitioner in W.P.No.24050 of 2005 would show that the Commissionerate

and Director of School Education, A.P, Hyderabad had, in his proceedings vide R.C.No.2455/B2-3/2002 dated 09.09.2002 accorded permission to fill up B.Ed (Maths)—2, B.Ed (Science)—1, Drawing—1, Music—1, vacant aided posts with roster points in HCM Junior College, Ongole and pursuant to the said permission, the Deputy Educational Officer, who was the departmental nominee fixed the date for selection as 27.08.2003 and the selection committee conducted the written test and interview for the candidates wherein the petitioner and some other candidates were selected, which is evident from the copy of the minutes of the selection test held on 27.08.2003, at HCM Junior College, Ongole. Since the permission and selection took place long prior to the ban imposed under memo dated 20.10.2004, it is futile on the part of the respondents to contend that her selection was hit by the ban. It should be noted that orders in W.P.No.20769 of 2005 and W.A.No.1578 of 2005 are in fact in favour of the petitioner's selection. This point is answered accordingly in favour of petitioner and against the Government.

10) **POINT No.2:** As point No.1 is held in negative, it has now to be seen whether the selection of the petitioner was vitiated by the lapses alleged by the respondents 1 to 3. As already noted supra, the selection was held on 27.08.2003 with the prior permission accorded by the 2nd respondent. As already stated, there were two B.Ed (Maths) posts, one for OC(Women) for which the petitioner competed and another post reserved for SC-A(W). The minutes of the selection process shows that due to non-availability of SC-A(W) and SC-B(W) candidates, the selection committee

selected SC-C(W) candidate for the 2nd post. Thus the contention of the respondents that the roster points were not followed, cannot be approbated. Even assuming for arguments sake, the said argument to be true, still that has nothing to do with the selection of the petitioner as she was selected under OC(W) category.

11) The next contention of the respondents is that the District Employment Exchange Officer sponsored the list of candidates on 21.03.2003 which was valid for 3 months only but the selection was held on 27.08.2003 and therefore, the selection was invalid. This argument has no legs to stand. The selection procedure had in fact commenced with issuance of press notification on 11.06.2003 by making paper publication in Telugu Newspaper Andhra Jyothi, pursuant to which, some candidates directly applied. Thus selection procedure was commenced within three (3) months after the list of the candidates was sent by the District Employment Exchange Officer. Ofcourse, selection was held on 27.08.2003. However by virtue of the paper notification, apart from the candidates sponsored by the District Employment Exchange Officer on 21.03.2003, other candidates who responded to the paper notification also got an opportunity to participate in the selection procedure. Those candidates may include those who got registered their names with the employment exchange subsequent to 21.03.2003. Thus it can be said that the paper notification has served the purpose of disseminating the information of the notification. In its judgment dated 11.08.2014 in W.A.No.1129 of 2014, the Division Bench of this High Court has observed that with the introduction of other modes

of publication, the role of employment exchanges has been reduced. It was held thus:

“Though employment exchange used to be the only source for sponsoring candidates few years ago, for all practical purposes, the registration with the employment exchange has become redundant, wherever the procedure provides for issuance of notification. Once a notification is issued, not only those who get themselves registered with the employment exchange, but also others can apply. No distinction exists in law on the basis of mere registration in the employment exchange. There are several precedents handed out by the Supreme Court, which are to the effect that the employment exchanges are no longer the exclusive sources for drawing the candidates for employment.”

Thus in any view, the argument of the respondents has no force.

12) The next argument of the respondents is that the petitioner has not been working in the HCM Junior College for Girls (HS), Ongole. Learned G.P filed copies of the attendance registers of the said School for the years 2006 to 2010 to show that the name of the petitioner does not appear therein. It is thus argued that since the petitioner has not been working in HCM Junior College for Girls (HS), Ongole, her selection cannot be approved. The reply of the petitioner is that she has been working in the said school and since she filed the writ petitions, the authorities might not have shown her name in the attendance register. In my view, the contention of the respondents is untenable. When it is the contention of the respondents that her selection cannot be approved due to some alleged lapses, they cannot turn-round and argue that she was not attending the institution. Thus, the contentions raised by the respondents are devoid of

merits. Accordingly, this point is answered in favour of petitioner and against respondents.

13) **POINT No.3:** In the result, the two Writ Petitions are allowed and the order of 3rd respondent in RC No.1515/A3/2003 dated 15.09.2005 rejecting the approval of the petitioner's appointment as School Assistant is held arbitrary, illegal and violative of Articles 14 and 21 of the Constitution of India and consequently, respondents 1 to 3 are directed to approve the selection and appointment of the petitioner as School Assistant (Maths) in the 4th respondent institution w.e.f. 28.08.2003 with all the benefits attached to the post and issue suitable orders within one(1) month from the date of receipt of a copy of this order. No order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 02.06.2017

Murthy / SCS

U. DURGA PRASAD RAO, J