

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.25026 of 2004

ORDER:

The present Writ Petition came to be filed seeking issuance of a Writ of Mandamus declaring the action of the respondents in applying G.O.Ms.No.180 dated 29.12.2000 to the case of the petitioner, as illegal, arbitrary, unconstitutional and violative of Articles 14, 16 and 21 of the Constitution of India.

The case of the petitioner, as seen from the averments made in the affidavit filed in support of the writ petition, is as follows:

After completing his bachelors' degree in Arts and also Physical Education, petitioner herein was appointed as a teacher, by the 4th respondent, on 01.10.1988 in an unaided post and the same was ratified by the 3rd respondent vide Proceedings Rc.No.359/A4/92-1 dated 13.08.1991. Subsequently, the same was approved by the 2nd respondent vide proceedings Rc.No.927/B3/2003 dated 01.04.2003. It is not in dispute that the 4th respondent-Institution is an Aided Institution and is regularly receiving Aid from the State Government. The averments in the affidavit filed in support of the writ petition further show that fourteen years after the petitioner was appointed in the unaided post, an aided post fell vacant due to retirement of one Smt.Pramila and consequently the name of the petitioner was sent for absorption into the said aided post. After examining the case the petitioner, the 2nd respondent approved the appointment of the petitioner in the aided post w.e.f.16.07.2003 vide proceedings Rc.No.3811/B3/2003 dated 09.09.2003. As such, the petitioner

became entitled for regular pay-scale attached to the post of Secondary Grade Teacher w.e.f.16.07.2003. *Instead* of paying regular pay-scale, to which he is entitled to, the respondents started paying stipend to the petitioner by relying upon G.O.Ms.No.180 and denied the benefit which the petitioner claims to be entitled to. Challenging the applicability of said G.O., to the facts in issue, the present writ petition came to be filed.

By an order dated 06.06.2005, this Court granted interim direction as prayed for i.e. direction to the respondents to pay the scales of pay attached to the post of Secondary Grade Teacher to the petitioner, atleast from the month of December, 2004, pending disposal of the main writ petition. Challenging the said interim order, Writ Appeal No.2528 of 2005 came to be filed, which was dismissed on 26.02.2005 leaving it open to the respondents to file appropriate application to vacate the interim order. Pursuant thereto, WVMP No.838 of 2006 came to be filed along with a counter affidavit by respondents 1 to 3.

The plea taken by respondents 1 to 3 in the counter is that in respect of appointments, which have been made prior to the date of approval by the Department, the said candidates have to undergo the apprenticeship period for a period of two years and only then will be entitled to stipend during such period. After the said period of two years, the candidates would be entitled to regular pay scales.

It is urged by the learned Government Pleader for Education that having accepted the post and understood the terms of G.O with regard to conditions for absorption, the petitioner cannot now

turn around and question the very validity of G.O. It is stated that as per the terms of the G.O., the petitioner is not entitled for regular scales for a period of two years and is only entitled for a stipend during such period.

Initially the petitioner herein was appointed in an un-aided post, by the 4th respondent, in the year 1988. Subsequently, he was converted from P.E.T. to S.G.T. and the same was ratified by the DEO on 13.08.1991. Thereafter on 01.04.2003, the Regional Joint Director of School Education issued proceedings, wherein it has been stated that basing on the recommendations made by the DEO vide letter dated 18.02.2002 and in view of the powers vested with the Regional Joint Director of School Education, the action taken by the Management in converting the petitioner, who was working as un-aided PET, to un-aided S.G.T. w.e.f. 01.08.2002 was approved. Thereafter, on 09.09.2003, the action taken by the Management in absorbing the petitioner from SGT (un-aided) to SGT (aided) was approved by the Regional Joint Director of School Education.

The short question that falls for consideration in this writ petition is 'whether the petitioner, who has put in 14 years of service and absorbed in the post of aided SGT, can be denied regular pay-scale for a period of two years in view of G.O.Ms.No.180?'

In order to appreciate the same, it would be useful to refer to Rule 12 of The Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools Under Private Managements) Rules, 1993, which deals

with 'Appointment of Staff'. Clause (1) thereof states that *the Educational agency shall appoint staff as per the staffing pattern prescribed by Government from time to time. All staff shall conform to the qualifications prescribed by Government from time to time.*

A reading of the above would show that no staff pattern for appointment of the staff is prescribed insofar as un-aided staff is concerned.

Similarly, clause (7) of Rule 12 states that *the procedure in respect of aided schools as indicated in sub-rules (4), (5) and (6) above shall apply whether the selection is for an aided post or an unaided post.*

Likewise, clause (8) states that *all appointments made either in teaching or non-teaching staff, by aided or un-aided institutions, shall be subject to the approval of the competent authority. For this purpose, the educational agency shall inform the competent authority within one month of the selection. The competent authority shall grant approval unless the selection has been in violation of these rules. If the approval is not granted within two months from the date of receipt of the proposals, in respect of unaided posts, the approval shall be deemed to have been granted. In order to obviate confusion, it shall be incumbent on the educational agency to remind the competent authority one month after the initial communication, if no approval is received. The burden of proof of having communicated the selection to the competent authority shall lie with the educational agency.*

In the instant case, the procedure contemplated under Rule 12 was followed and guidelines framed by the Government for appointment of the petitioner to the un-aided post was also followed. But, the petitioner was in un-aided post for a period of fourteen years and his salary has been paid by the Management. As stated earlier, the appointment/conversion of the petitioner was approved by the competent authority from time to time. After putting in 14 years of service, when the aided post fell vacant, the petitioner was absorbed into the same. The proceedings issued by the Regional Joint Director on 09.09.2003, which was relied upon by the learned counsel for the petitioner, would show that the action of the 4th respondent in absorbing the petitioner from un-aided post to aided post w.e.f. 16.07.2003 was approved. Such being the position, the issue is 'whether G.O.Ms.No.180 dated 29.12.2000 would come in the way of the petitioner in getting the benefits which the petitioner claims to be entitled to?'

A reading of the G.O. would show that *"every selected candidate for the aided post of teachers shall be initially appointed as an apprentice for a period of four years from the date of joining duty. He or she shall work under general supervision of the Headmaster/Headmistress, as the case may be. During the period of apprenticeship, he or she shall be paid a monthly stipend at a rate to be prescribed from time to time by the Government. On satisfactory to a regular post with a regular scale of pay, the apprenticeship period shall count for probation"*.

From the above it is clear that a person, who has been selected in the aided post of a teacher shall be appointed as an

apprentice. However, the circulars/proceedings issued by the authorities, which are referred to earlier, nowhere it is mentioned that the petitioner was appointed in the aided post in the year 2003. On the other hand, the material on record clearly indicate absorption of the petitioner from un-aided post to aided post and approval of the same by the Regional Joint Director. The petitioner definitely, in my view, cannot be treated as an apprentice since he has already worked in the same post in un-aided category. It is also pertinent to mention here that the petitioner had an experience of 14 years, at the time of absorption into the aided post. Therefore, the argument of the learned Government Pleader that the petitioner is not entitled for any benefit for the period of four years, which was subsequently reduced to two years, cannot be accepted.

Hence, the Writ Petition is allowed holding that the petitioner is entitled for all the benefits for a period of two years from 16.07.2003.

Miscellaneous petitions pending in this writ petition, if any, shall also stand closed. No order as costs.

C. PRAVEEN KUMAR, J

09.02.2016
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