

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 5028 of 2013

Date : 9.3.2017

Between :

Farida Banu W/o P Ziaul Kareem
Umar Arabic Elementary School,
Kurnool Town, Kurnool

Petitioner

And

The State of A P
Rep by the Principal Secretary,
School Education Department,
Secretariat Building, Hyderabad and others

Respondents

The Court made the following:



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ORAL ORDER:

Heard learned counsel for petitioner, learned Government Pleader for School Education (AP) for official respondents 1 to 3 and none appeared for 4th respondent.

2. Petitioner was initially appointed against unaided post and later absorbed into aided post as a Secondary Grade Teacher (SGT) and retired from service. In this writ petition, petitioner challenges the proceedings of the District Educational Officer dated 12.12.2012 granting absorption against aided post only prospectively and on such appointment placing the petitioner as an apprentice for a period of two years.

3. 4th respondent school is admitted to grant in aid. The school management earlier processed to fill the unaided SGT posts. The District Educational Officer, initially granted permission and as a consequence petitioner was appointed. Objecting to the manner in which petitioner was appointed, proposal submitted by the management was rejected by the District Educational Officer. Against the order of District Educational Officer, management and petitioner filed W P No. 5889 of 1993 and 1380 of 2000. By common order dated 18.9.2002, this Court directed the District Educational Officer to accord post facto approval from 10.3.1991. This was challenged in W A No. 1206 of 2003 and 1210 of 2003. The Division Bench by order dated 31.1.2005 having noted that the Commissioner of School Education regularized the services of the petitioner, granted liberty to the appellants to prefer statutory appeal and till a decision is made on such appeal, directed continuation of the petitioner. On review filed by the petitioner and the management in Review WAMP No. 1750 of 2005 in W A No. 1206 of 2003 and Review WAMP No. 2099 of 2005 in W A No. 1210 of 2003 by order dated 30.1.2006, opportunity was directed to be given to the petitioners therein before the authorities with reference to the determination

of the date of giving effect of minority status to the petitioner institutions therein. On detailed consideration of the history of the case, by orders in G O Rt No. 177 Education Department dated 13.3.2009 Government accorded permission for appointment of the petitioner against unaided posts with effect from 29.9.1997.

4. As a consequence to arising of a vacancy in the aided post, petitioner sought for absorption. It appears management of the 4th respondent school sent proposals for absorption on 29.7.2009. Simultaneously, petitioner also petitioned to the Member of Parliament and office of the Chief Minister to redress her grievance. On a reference of the said representations, the District Educational Officer caused enquiry and submitted his proposals to the Commissioner and Director of School Education dated 1.7.2010 recommending her absorption to the aided vacancy. On consideration of the proposals, in G O Ms No. 85 dated 20.9.2012 Government accorded permission to the Commissioner for absorption of petitioner against Aided post. The District Educational Officer passed consequential orders on 12.12.2012 granting absorption to the petitioner. However, in said order, District Educational Officer directed the absorption only from prospective date and on absorption was directed to be treated as an apprentice. Petitioner is aggrieved by these clauses.

5. In support of contention that petitioner is entitled for absorption from the date of submission of the proposals from the college management and that petitioner cannot be placed as an apprentice, learned counsel for petitioner placed reliance on the decision of this Court in W P No. 805 of 2004 dated 11.12.2009 as confirmed by the Division Bench in W A No. 202 of 2012 dated 22.8.2013.

6. On consideration of the relevant provisions of the rules, statutory requirements, more specifically with reference to the apprenticeship clause in Rule 12 (4) of the A P Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993,

learned single Judge held that person is entitled to absorption from the date of proposals and that an inservice candidate appointed against unaided vacancy on absorption to aided vacancy, need not be treated as an apprentice. This view of the learned single Judge was upheld by the Division Bench. The Division Bench held that Rule 12 (4)-A is applicable only to direct recruitees and not to inservice teachers working against unaided posts on absorption to aided posts and also held that since proposals are already submitted from earlier date, there is no justification to deny absorption from the date of sending such proposals. Denying the benefit of such absorption on the date of sending such proposals is held as arbitrary.

7. On both issues agitated in this writ petition, the subject matter is covered by the decision of the Division Bench referred to above. It is also appropriate to note at this stage that on account of grant of absorption into grant in aid post and placing the petitioner as apprentice from 12.12.12, petitioner is denied all service benefits except to the fact that she retires as a person having worked against aided post. According to the amended Rule 12(4)-A, minimum of apprenticeship period is 2 years, whereas, just after completing one year of service as apprentice, petitioner retired from service.

8. It is not in dispute that the proposals also submitted by the management of the 4th respondent school. However, the District Educational Officer, in her letter dated 1.7.2010 while sending proposal to the Commissioner and Director of School Education for absorption of the petitioner, does not refer to the alleged proposals submitted by the management. However, the District Educational Officer does not deny the factum of submission of the proposals by management.

9. Having rendered long and continuous service and having regard to the fact that management has sent proposals on 29.7.2009 and the recommendations of the DEO for such absorption was made on 1.7.2010 merely

because there is delay in processing the issue of absorption and granting actual absorption much later should not deprive the employee rightful claim.

10. It is also appropriate to note that in G.O. Ms No. 85 dated 20.9.2012, Government did not mandate absorption prospectively. It is the invention of the District Educational Officer. Further, as petitioner was already working in unaided post and absorbed in aided post, she could not have been treated as apprentice.

11. In view of the law laid down by the Division Bench referred to above, writ petition deserves to be allowed. Accordingly, the order impugned is set aside and the writ petition is allowed.

12. Respondents are directed to treat the petitioner as absorbed into the aided post from 29.7.2009 and shall treat her as regular teacher and not as apprentice and shall be granted all consequential benefits flowing from such declaration. The entire exercise of working out the benefits flowing out of this declaration shall be granted to the petitioner as expeditiously as possible, preferably within a period of two months from the date of receipt of copy of this order. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

DATE: 9.3.2017
TVK

P NAVEEN RAO,J

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