

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No. 2657 of 2008

ORDER:

Aggrieved by the action of respondents 1 to 5 in not promoting her as Grade-I Hindi Pundit on the ground that the Government has imposed a General Ban on recruitment, except for posts for which permission was specifically granted, the petitioner approached this Court with this writ petition invoking jurisdiction of this Court under Article 226 of the Constitution of India.

2. Brief facts of the case are that the petitioner is working as Grade II Hindi Pundit in aided post at Majety Guravaiah High School, Guntur. In the month of June, 2004, Sri Ch. S.K.H. Sarma, Grade-I Hindi Pundit retired. Consequently, Y. Nagalakshmi, Grade-II Hindi Pundit in Hindu High School was transferred to Majeti Guravaiah High School, Guntur. The petitioner was promoted as Grade-I Hindi Pundit and transferred to Hindu College High School by the 6th respondent vide Proceedings in Rc.No.57/Sec/2004, dated 30.06.2004, and the petitioner had taken charge of his post on 01.07.2004. The Management submitted proposal to the 5th respondent-District Educational Officer, Guntur, stating that the petitioner was eligible for promotion. The 5th respondent called for remarks of the Deputy Educational Officer by letter dated

10.08.2004. The Deputy Educational Officer submitted his remarks vide letter dated 30.12.2004. The 5th respondent returned the proposal on 15.02.2005, stating that prior permission is required for sending the proposal. He was informed that no permission is required as per GOMs.No.1 dated 01.01.1994, and re-submitted the proposal. Thereafter, correspondence was made to 4th and 5th respondents to approve the promotion of the petitioner as Grade-I Hindi Pundit w.e.f. 01.07.2004. No decision was taken by the 4th respondent on the proposal that were re-submitted. However, the 5th respondent informed the Management that the Government has imposed ban on appointments, promotions in aided schools by Memo dated 20.01.2004. The Management has addressed a letter dated 16.09.2006 to the 4th respondent-Regional Joint Director of School Education, Guntur, by submitting the proposal of promotion with effect from 01.07.2004, stating that the ban imposed by the Government in Memo dated 20.10.2004 and 14.11.2005 do not stand in the way of approving the promotion of the petitioner, as the petitioner was promoted prior to the issuance of ban memos. The 4th respondent obtained the proposal from the D.E.O. Guntur, vide proceedings in Rc.No.4891/B1/2006 dated 17.10.2006 and the proposal are pending with the 4th respondent. Hence, the writ petition.

3. Heard Sri N. Subba Rao, learned counsel for the petitioner, and the learned Government Pleader for Education representing the respondents 1 to 5.

4. Learned counsel for the petitioner contended that the process of promotion was commenced long back prior to the issuance of ban memo dated 20.10.2004. As such, the ban memo is not applicable to the case of the petitioner. Reliance is placed on a similar case decided by the Division Bench of this Court, which reads as under:

“We may have delved deep into the issue whether the note dated 19.10.2004 recorded by Prl. Secretary (W & P) and consequential Memo dated 20-10-2004 could be treated as the decision taken in the meeting held on 8-10-2004 under the Chairmanship of the Hon’ble Chief Minister and whether Memo dated 20-10-2004 was issued in accordance with the rules of business framed under Article 166 of the Constitution of India, but in view of our conclusion that the said Memo does not have the effect of satisfying the process of recruitment initiated by the Management of the private schools prior to 20-10-2004.”

5. It is submitted that as per the provisions contained in G.O.Ms. No.1 dated 01.01.1994, in view of the decision in the G.O., obtaining prior permission from the respondents in cases of promotions does not arise. It is further submitted that the Government issued GOMs.No.75 dated 23.09.2002 indicating the procedure for recruitment of vacant aided teaching and non-teaching posts, and the said G.O., was in existence as on the date of submitting the proposal.

6. Learned Government Pleader for Education argued that the proposal of promotion were forwarded without prior permission. Thereafter, the Government imposed ban on the appointments and promotions and, therefore, the writ petitioner is not entitled to promotion.

7. There is a procedure in place for recruitments and promotions. The proposal sent by the Management on 27.02.2004 to the 5th respondent-District Educational Officer, for approval of promotion of the petitioner, were returned on 15.02.2005 stating that prior permission was required. The Management re-submitted the proposal stating that no prior permission was required as per G.O.Ms.No.1 dated 01.01.1994. Thereafter, there was a lot of correspondence made to 4th and 5th respondents requesting approval of proposal of promotion. In the meanwhile, ban was imposed by the Government. In fact, the rights of the petitioner are adversely affected because of the inaction of the 5th respondent and 4th respondent. The proposal for promotion were sent long prior to the issuance of ban orders. This Court has declared the ban orders as illegal.

8. It is pertinent to note that this Court, while admitting the writ petition on 12.02.2008 has already granted interim relief to the petitioner. The respondents filed vacate stay petition,

WVMP No.1980 of 2008 and the same was dismissed by this Court vide docket order dated 24.11.2010 which reads as under:

“By interim order dated 12.2.2008, this court directed the respondents to take a decision on the proposal dated 27.7.2004 submitted by the sixth respondent school without reference to the Government Memos dated 20.10.2004 and 14.11.2005. To vacate the said order, the respondents 1 to 5 in the writ petition filed WVMP No.1980 of 2010. It is however stated by them that pursuant to the above order, proceedings were issued by the Regional Joint Director of School Education, Guntur in Rc.No.4891/B1/2006 dated 6.10.2009 rejecting the proposal submitted by the sixth respondent school. In that view of the matter, the interim order has already been complied with and there is no need of vacating the same at this stage.

WVMP No.1980 of 2010 is accordingly dismissed.”

9. This Court, in W.P.No.4207 of 2005 and Batch, by Common Order dated 23.08.2013, passed the following:

“In this batch of Writ Petitions, the petitioners sought for a direction to the respondents to absorb the petitioners in the aided vacancies in the institutions.

The respondents resisted the request on the ground that there is ban through Government Memo No.12080/COSE/A2/ 2004-4 dated 20.10.2004 and that the absorption or appointment is therefore not permissible.

The memo came up for consideration before me in W.P.No.9503 of 2005 and batch; through orders dated 30.7.2013, I set aside the Government Memo dated 20.10.2004. The only objection raised by the respondents regarding the absorption of the petitioners is ban orders. As the ban orders were set aside by the orders of this Court, the petitioners are entitled to be absorbed into aided SGT or School Assistant vacancies or non-teaching positions, as the case may be.

Consequently, this batch of Writ Petitions is allowed. The respondents are directed to consider the case of the petitioners for absorption/appointment either SGTs or

School Assistants, as the case may be, disregarding the Government Memo dated 20.10.2004, within four weeks from the date of receipt of a copy of this order. It is clarified that the same is also applicable to non-teaching staff, who are covered by the Government Memo. No costs. Miscellaneous petitions pending, if any, shall also stand closed.”

10. The Division Bench of this is Court, in W.A.No.1578 of 2005 and Batch, vide order dated 29.12.2006, while dismissing the appeals filed by the Government, observed as under:

“In the result, the appeals are dismissed. The writ petitions filed by the management of the private schools and others are allowed. Now, the management of the private schools shall be free to appoint selected candidates and seek approval of such appointments from the competent authority.

The exercise of rationalization undertaken in furtherance of interim order dated 31-10-2005 passed by this Court and directions contained in letter dated 3-11-2005 issued by the Director of School Education are quashed. However, it is made clear that this order shall not prevent the competent authorities from undertaking fresh exercise for rationalization, which may lead to declaration of certain teachers’ surplus and for absorption of such surplus teachers.

Needless to say that any person adversely affected by the fresh exercise to be undertaken by the competent authorities shall be free to challenge the same by availing appropriate legal remedy.

All the miscellaneous petitions are disposed of as infructuous.”

11. Similarly, the Division Bench of this Court, in W.A.M.P. No.663 of 2014 in W.A.No.216 of 2014, passed the following order dated 25.02.2014:

“While considering the interim relief, we are of the view that absolute stay of operation of the impugned judgment and order of the learned trial Judge will not be permissible. The learned trial Judge has prima facie held that the ban imposed by the State is not acceptable under the Constitution. However, this decision is under scrutiny before us.

Therefore, considering the balance of convenience, we feel that the respondent-management will be free to appoint teachers and for this purpose, temporary permission must be granted within seven days from the date of receipt of this order. This factum of granting permission should not be given any weightage or advantage in favour of the respondent at the time of hearing of the appeal. Everything will abide by the result of the appeal. Once the permission granted, the respondent-management will be free to appoint teachers in accordance with the rules and for the time being, the salary of the teachers shall be borne by the management. It shall also be notified to the appointees that this appointment will be subject to the result of the appeal.

We pass this order keeping in view the interests of the students at large. In the event, this appeal fails and the judgment and order of the learned trial Judge is upheld, then the appellants shall pay grant-in-aid as permissible under the Rules with interest at 9% per annum from the date of passing of the judgment of the learned trial Judge. All points are kept open.”

12. In the Special Leave to Appeal (C) Nos.28430-28435 of 2014 filed by the Government of A.P., against the order dated 18.09.2014 in WA No.925 of 2014, the Hon’ble Supreme Court passed the following order on 14.09.2015:

“The High Court has protected the interest of the State by making it clear that the appointments, if any, are to be made subject to the final result of the appeals pending before the High Court. The High Court has also clarified that for the time being the salary being paid to them shall also be subject to the final outcome of the appeals.

We do not find any merit in these special leave petitions which are accordingly dismissed.”

13. In view of the foregoing reasons, considering the merits of the writ petition, the writ petition is liable to be allowed.

14. In the result, the writ petition is allowed, directing the respondents to accept the proposal of promotion of the petitioner and issue appropriate orders. No costs. Miscellaneous petitions, if any pending, shall stand closed.

24th April, 2017

KSM

GUDISEVA SHYAM PRASAD, J



HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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24th April, 2017

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