

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.4566 of 2006

ORDER:

Memo bearing No.8146/PS(2)/2005 dated 1.7.2005 issued by the State Government-1st respondent herein, rejecting the claim of the petitioner for promotion to the category of Record Assistant from the category of Attender in 5th respondent School is under challenge in the present writ petition.

2. According to the petitioner, he was appointed as Attender in the 5th respondent-School in aided post in the year 1999 pursuant to the approval granted by the 3rd respondent-Regional Joint Director of School Education, Guntur and working as such. 5th respondent appointed 6th respondent as Record Assistant in the month of March 2001 in an unaided post. Consequent upon the retirement of one Ch.Venkateshwar Rao on 6.1.1999, one aided post of Record Assistant fell vacant. It is the case of the petitioner herein that though he is working in aided post of Attender, which is a feeder category for the post of Record Assistant and despite his eligibility for promotion, 5th respondent sent proposals to the District Educational Officer-4th respondent herein for absorption of 6th respondent in the aided post of Record Assistant. The petitioner herein made a representation to the Respondents 3 and 4, requesting to consider his case for promotion as per the Rules and the Deputy Educational Officer, Guntur inspected the School and recommended the name of the petitioner for promotion vide letter No.181 addressed to the 4th respondent. The District Educational Officer-4th respondent vide proceedings Rc.No.11091/B2/2003 dated 6.3.2004 returned the proposal of the 5th respondent-School made in favour of 6th respondent on the ground that as per G.O.Ms.No.75 School Education (PS-2) Department dated 23.9.2002, an Attender working in the feeder category should be

considered for promotion. The 4th respondent-District Educational Officer addressed a letter to the Regional Joint Director of School Education, Guntur vide proceedings Roc.No.11091/B2/2003 dated 12.10.2004, recommending in favour of the petitioner. The Regional Joint Director vide letter Rc.No.4327/B1/2004 dated 29.11.2004, sought necessary orders from the Commissioner and Director of School Education on the claims of the petitioner and the 6th respondent. Subsequently, vide letter Rc.No.2277/D1-4/2004 dated 25.1.2005, the same was forwarded to the 1st respondent-State for necessary orders. By virtue of Memo bearing No.8146/PS(2)/2005 dated 1.7.2005, the State Government turned down the request on the ground of existence of ban on recruitment. In the above background, questioning the validity and legal sustainability of the said Memo dated 1.7.2005, the present writ petition came to be filed.

3. This Court, on 7.2.2008 in W.P.M.P.No.5762 of 2006 granted interim direction to the Respondents 1 to 5 to consider the case of the petitioner for promotion to the post of Record Assistant in the existing vacancies in terms of G.O.Ms.No.75 dated 23.9.2002 and Government Memo No.8544/PS-I/05 dated 22.8.2005 if there is no ban on promotions and to pass appropriate orders.

4. Heard Sri Kasa Jaganmohan Reddy, learned counsel for the petitioner, the learned Government Pleader appearing for Respondents 1 to 4, Sri Srinivas Baba, learned counsel for Respondent No.5 and Sri Posani Venkateshwarlu, learned counsel for Respondent No.6 and perused the material available before the Court.

5. It is contended by the learned counsel for the petitioner that the cause of action for the petitioner's claim arose in 1999 when the vacancy in the

category of Record Assistant arose, as such, the ban imposed by virtue of Memo dated 20.10.2004 cannot be given retrospective effect to deny the claim of the petitioner herein; that the District Educational Officer accepted the claim of the petitioner, while rejecting the claim of the 6th respondent; that the claim of the petitioner was denied due to non-adherence to the Rules by the 5th respondent; that in view of Memo dated 22.8.2005, the ban has no application in the present case; that the memo dated 20.10.2004, imposing ban was set aside by this Court vide order dated 30.7.2013 in W.P.No.9503 of 2005 and batch.

6. On the contrary, it is strenuously contended by the learned Government Pleader and the learned Advocates appearing for Respondents 5 and 6 that there is absolutely no illegality nor any infirmity in the impugned action and in the absence of the same, the order impugned is not amenable to any judicial review under Article 226 of the Constitution of India. It is further submitted that in view of ban imposed by the State Government by virtue of Memo dated 20.10.2004, the Respondents are perfectly justified in rejecting the claim of the petitioner herein.

7. There is absolutely no controversy on the reality that the petitioner is working as Attender on regular basis in an aided post in 5th respondent School and appointed as such in the year 1999 and whereas the 6th respondent, having been appointed in the year 2001, is working as Record Assistant in an unaided post. It is significant to note that when the proposals were sent by the 5th respondent School to the 4th respondent-District Educational Officer, the 4th respondent vide proceedings dated 6.3.2004 returned the proposals made by the 5th respondent in favour of 6th respondent for absorption against an aided post of Record Assistant, which

fell vacant in the year 1999 consequent upon the retirement of one Sri Ch.Venkateshwara Rao. In the said proceedings dated 6.3.2004, the District Educational Officer also clarified in clear and unequivocal terms that the candidate working as Attender needs to be considered for promotion as per G.O.Ms.No.75 dated 23.9.2002. As per paragraph 7 of the said Governmental Order, where there is a feeder category for promotion, the vacant aided post shall be filled in the ratio of 2:1 i.e. 1st and 2nd posts by promotion and 3rd by direct recruitment/absorption. The proceedings of the District Educational Officer-4th respondent dated 12.10.2004 clearly show the eligibility of the petitioner to hold the post. The said aspect would also be evident from the letter of the 3rd respondent dated 29.11.2004, so also the letter dated 25.1.2004 of the 2nd respondent.

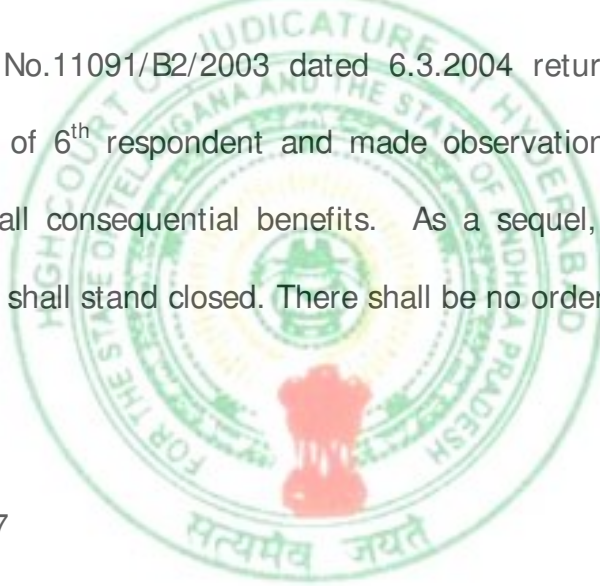
8. The 1st respondent-State Government by virtue of the impugned memo dated 1.7.2005, rejected the claim of the petitioner for promotion on the ground of existence of ban imposed vide memo dated 20.10.2004. It is important to note in this context that subsequently vide Memo bearing No.8544/PS-1/2005-1 dated 22.8.2005, the State Government issued a categoric clarification that the ban imposed vide memo dated 20.10.2004 would not apply in the cases of promotion of candidates from one cadre to another higher cadre. While saying so, the State Government permitted the Director of School Education to consider the case of one Smt.K.E.Snehalatha, Grade-II Telugu Pandit to Grade-I Telugu Pandit. Therefore, there is absolutely no justification on the part of the official respondents herein in rejecting the claim of the petitioner herein for promotion from the category of Attender to the category of Record Assistant. Even as per the proceedings of the 2nd respondent dated 12.10.2004, the said vacancy is the first vacancy in the School after issuance of G.O.Ms.No.75 dated 23.9.2002. It is also

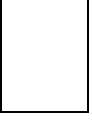
pertinent to note in this context that the validity of Memo dated 20.10.2004 was assailed before this Court in W.P.No.9503 of 2005 and batch and this court by way of order dated 30.7.2013, set aside the said Memo. Therefore, by any stretch of imagination, the denial of promotion to the petitioner herein can neither be countenanced nor approved.

9. For the aforesaid reasons, the writ petition is allowed, setting aside the Memo bearing No.8146/PS(2)/2005 dated 1.7.2005 issued by Respondent No.1 and consequently Respondents 1 to 5 are directed to promote the petitioner herein to the category of Record Assistant with effect from 6.3.2004, i.e. the date on which the District Educational Officer, Guntur vide proceedings Rc.No.11091/B2/2003 dated 6.3.2004 returned the proposals made in favour of 6th respondent and made observations in favour of the petitioner with all consequential benefits. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 11.8.2017
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A.V.SESHA SAI, J





THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.4566 of 2006

11.8.2017

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