

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.9263 of 2011

Date: 07.06.2017

Between:

Azmeera Uma D/o Azmeera Swamy Naik, Aged 38 years,
Working as TGT (Hindi) at A.P.Social Welfare Residential
School (Boys), Cherial, Warangal District.

.....Petitioner

and

A.P.Social Welfare Residential Educational Institutions
Society, rep.by its Chairman, Hyderabad and another.

.....Respondents



The Court made the following:

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ORDER:

Recruitment notification was issued on 20.10.2002. Petitioner was appointed on contract basis on 18.11.2002 as Resident Teacher. Petitioner services were regularized by order dated 06.10.2007. While so, on 09.01.2008, show-cause notice was issued to the petitioner to submit her explanation as to why her services should not be terminated on the ground that petitioner produced bogus Hindi Pandit Training Certificate to secure employment. It appears, petitioner filed her explanation. No final orders are passed. Earlier petitioner filed W.P.No.2441 of 2008 aggrieved by not allowing her to work. Writ petition was dismissed. It appears orders were passed on 08.07.2008 rejecting the claim of the petitioner and terminating her services. Aggrieved thereby, petitioner preferred appeal before the Hon'ble Minister concerned and the Hon'ble Chief Minister. It appears similar such claim was made by many other employees. It appears, the Hon'ble Chief Minister convened the meeting of all concerned on 14.08.2008 and in the said meeting, directed the respondents to continue the service of Resident Teachers (TGT), who were dismissed/removed on the ground of producing bogus certificates and to give four years of time to acquire the requisite qualifications. Having regard to the directions issued by the Hon'ble Chief Minister, by order dated 21.11.2008, petitioner was directed to continue in service subject to condition that petitioner should acquire requisite qualification within four years. Accordingly, petitioner is continued. Petitioner acquired

qualification in the year 2009. Petitioner represented to sanction interim relief and increments for the gap period from 07.08.2008 to 26.11.2008 and also to incorporate the qualification acquired by her in the service record. This request of the petitioner was rejected by memo dated 24.02.2011, impugned in the writ petition.

2. The reasons assigned for rejection of request of petitioner is on the ground that petitioner did not work during the period and, therefore, not entitled to claim interim relief and increments. It is further stated that appropriate further steps would be taken regarding incorporation of the qualification in the service record only after receipt of the genuineness of HPT from the Government Examinations Department.

3. Heard learned counsel for petitioner and Sri N.Bhoopal Reddy, learned standing counsel for respondents.

4. Learned counsel for petitioner submits that as a consequence to the decision taken in the meeting convened by the Hon'ble Chief Minister and as per his directions, petitioner is entitled to continue in service and in view of the said direction and the consequential order passed by the competent authority, it is deemed that petitioner is in continuous service and, therefore, petitioner is entitled to all the benefits flowing out of such deemed continuation. She, therefore, submits that as petitioner acquired qualification, as mandated in the order, dated 21.11.2008, the decision of the respondents, impugned, rejecting request for incorporation of qualification acquired and for granting pay and allowances for the period is *ex facie* illegal and amounts to arbitrary exercise and power.

5. Learned counsel for petitioner also contends that in view of the orders of the Government in G.O.Ms.No.342, Social Welfare (D3) Department, dated 30.08.1977, which envisages granting of sufficient time to acquire new/additional qualifications, the decision of the respondents in holding that petitioner was not qualified and terminating her service on that ground is not valid in law.

6. In response, Sri N.Bhoopal Reddy, learned standing counsel for respondent society submits that as petitioner produced bogus certificates, her services were validly terminated and she was not in service till the order of reinstatement was passed as a consequence to the directions of the Hon'ble Chief Minister. Therefore, for the interregnum period, petitioner is not entitled to claim any benefits. He further contends that as the issue of submission of bogus certificates is yet to be resolved, the question of entering of new certificate in the service record does not arise.

7. It is not in dispute that against termination of service, petitioner preferred appeal to the Hon'ble Minister and Hon'ble Chief Minister and on the said appeal, Hon'ble Chief Minister directed the competent authority to continue the petitioner's service and give further time of four years to acquire requisite qualification. In terms thereof, competent authority passed orders on 21.11.2008. The order clearly shows that direction issued by the Chief Minister was **"to continue the petitioner"** and the order also shows that petitioner is continued in service. The decision **'to continue'** would mean that earlier order of termination of service would not hold the field and stood superseded. Otherwise

there cannot be order of continuous in service. Furthermore, decision of the Hon'ble Chief Minister and the consequential orders on appeal preferred are passed in continuation to earlier order of termination. Thus, term used 'to continue' would mean petitioner is deemed to be in continuous service and, therefore, entitled to claim of computation of service for service benefits. However, fact remains that after the termination and before the fresh orders were passed, petitioner did not render any service and, therefore, for that period, petitioner cannot claim pay and allowances or increments.

8. In terms of the orders passed on 21.11.2008, petitioner was required to acquire requisite qualification within four years and within the time granted, she acquired the qualification. Once qualification as required is acquired and when a request is made to enter in the service record about the acquisition of qualification, I do not see any justification in rejecting the claim. Pending investigation on the earlier certificate submitted by the petitioner has no relevance to incorporate the qualifications subsequently acquired in terms of the orders by the competent authority dated 21.11.2008. Thus, such action of the respondents is *ex facie* illegal.

9. I see no merit in the contention of the learned counsel for petitioner that in view of the orders in G.O.Ms.No.342, the earlier decision to terminate the services on the ground that she has not acquired higher qualification has no merit. As seen from the recruitment notification, ordinarily a candidate aspiring for appointment to the post of Resident Teacher required to possess

second class in Post Graduation in concerned subject with B.Ed., in the concerned methodology or second class Graduation in concerned subject with B.Ed., in the concerned methodology. When it comes to candidates belonging to Scheduled Tribe, relaxation is provided to the extent of prescribing qualification of passing Degree in concerned subject with B.Ed., in concerned methodology. Further exemption provided is, if the candidates possessing B.Ed., are not available, the candidates without B.Ed., can also be considered. However, for language teachers, no distinction in qualification is prescribed for open competition and competition for vacancies reserved for Scheduled Tribes. However, according to this para, if candidates with B.Ed. are not available, candidates with HPT/TPT respectively would be considered. It is not in dispute that petitioner is competing to the post of the Resident Teacher in Hindi Language. It appears, there was no candidate possessing qualifications generally required and, therefore, petitioner was considered. Based on the claim made by the petitioner that she possessed HPT certificate, she was appointed. Thus, G.O.Ms.No.342, dated 30.08.1977 is not attracted and petitioner cannot fall back on that order to contend that termination was illegal.

10. Having regard to the above findings, writ petition is disposed of with the following directions:

i) Respondents are directed to treat the period as continuous service without applying any break for the period of out of service after the earlier order of termination. However, petitioner is not entitled to claim pay and allowances and increments for the period

of out of service. This period shall be counted only for the purpose of computation of service for retirement benefits.

ii) the qualification acquired by the petitioner after the orders dated 21.11.2008 shall be reflected in the service record of the petitioner.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

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