

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.12821 of 2002

ORDER:

This writ petition is filed seeking a writ of mandamus declaring the orders of 3rd respondent in Rc.No.26/A4/94, dated 20-5-2002 as arbitrary, illegal and violative of Articles 14, 16 and 21 of Constitution of India. A consequential direction is also sought to approve the petitioner's appointment and pay salaries from the date of appointment as Secondary Grade Teacher in 4th respondent school.

Heard Sri Kasa Jaganmohan Reddy, counsel for the petitioner and the learned Government Pleader for respondents.

It is contended by the petitioner that he was appointed as Secondary Grade Teacher in the 4th respondent school vide proceedings dated 10.03.1997 and joined the service on 14.03.1997 and ever since he is discharging his duties without any complaint. The 4th respondent school is admittedly a grant-in-aid school. The 4th respondent management has sought permission from the competent authority to fill up the Aided Secondary Grade Teacher Post and the competent authority i.e., DEO has granted permission to fill up the Aided Secondary Grade Teacher Post vide proceedings dated 29.11.1996. Thereafter, the 4th

respondent management has published the notification to fill up the Aided Secondary Grade Teacher Post in the local newspapers on 03.12.1996 and also informed the Employment Exchange to sponsor the eligible candidates for the said post.

It is further contended by the petitioner that the 4th respondent vide its letter dated 20.02.1997 while requesting the competent authority to grant permission to fill up Aided Secondary Grade Teacher Post also requested to send a departmental nominee to oversee the selections conducted by the 4th respondent management and the 4th respondent management has clearly informed that the interviews are likely to be conducted on 09.03.1997.

It is further contended that inspite of receiving the information to fill up the post of Secondary Grade Teacher by way of interview on 09.03.1997, the competent authority has not nominated any of its candidate to be part of the selection process. Left with no other option, the 4th respondent management had gone ahead with the selection process and selected the petitioner as Secondary Grade Teacher and based upon the marks awarded by the Selection Committee, petitioner was selected and appointed as Secondary Grade Teacher on 10.03.1997 and the petitioner joined service on 14.03.1997. Thereafter, the 4th respondent management has

submitted proposals on 15.03.1997 to the competent authority through Mandal Education Officer. The Mandal Education Officer vide his letter dated 16.03.1997 has informed the competent authority to approve the appointment of petitioner as he was successful candidate in the interview which was held on 09.03.1997. The competent authority had not considered the proposals of the 4th respondent management, though the 4th respondent management made repeated requests to approve the appointment of petitioner as Secondary Grade Teacher.

Finally, the competent authority has rejected the proposals submitted by the 4th respondent vide impugned orders dated 02.05.2002 on the ground that inspite of direction by the competent authority to the 4th respondent management not to fill up the vacant Aided Secondary Grade Teacher Post vide its letter dated 28.03.2001, the 4th respondent management has filled up the post with the candidate of Agency area of the District i.e., the petitioner, which is contrary to the proceedings of Director of School Education dated 07.07.2000.

The competent authority-District Educational Officer has not stated anything about the proposals which it has received way back in 1997. Though the District Educational Officer and his subordinate staff conducted inspection

periodically, they did not notice the fact that the petitioner was working since 1997. Hence, it cannot be contended that the competent authority has not received any proposals submitted by the 4th respondent school seeking approval of the appointment of the petitioner.

The petitioner further contended that the writ petition is to be allowed and the appointment of the petitioner should be approved from the date of his initial appointment i.e., 10.03.1997 and he shall be paid salaries attached to the post of Secondary Grade Teacher in the aided vacancy.

Learned Government Pleader appearing for the respondents had contended that the respondents have not received the proposals submitted by the 4th respondent. He contends that the respondents have received the proposals only in the year 2002 i.e., on 01.05.2002 and immediately within 15 days, the competent authority has rejected the proposals submitted by the 4th respondent. Therefore, the question of approving the appointment of petitioner would not arise as it is contrary to the stipulated rules which clearly state that when a aided vacancy is filled up, the Selection Committee should be associated with the departmental nominee. Since the appointment of the petitioner was done by the Selection Committee where there was no departmental nominee, the appointment of petitioner cannot be approved.

Thus, the 4th respondent management committed illegality by appointing the petitioner as Secondary Grade Teacher and the said appointment of petitioner cannot be legalised.

Learned counsel appearing for the petitioner submits that when similar issue fell for consideration of this Court in W.P.No.27004 of 2003 dated 12.06.2007 as to whether the selections conducted by the management in the absence of departmental nominee are vitiated or not, this Court has considered the issue in the following manner:

“While the 3rd respondent, in the impugned order dated 16.06.2003, had stated that Rule 12(5), which require the nominee of the District Educational Officer to be part of the Selection Committee, was not complied with and that respondents 4 to 7- schools had not included the representative of the District Educational Officer as a nominee in the Selection Committee, both the petitioners and respondents, 4 to 7 would submit that despite a specific request being made to send his nominee, the 3rd respondent had failed to do so. The question as to whether respondents 4 to 7 had, in fact, requested the 3rd respondent to send his nominee to participate in the selection process and as to whether the 3rd respondent had failed to comply with such a request are also matters which the 3rd respondent is required to examine. Rule 13(1), of the rules notified in G.O.Ms.No.1 dated 01.01.1994, prescribes the composition of the staff selection committee. Rule 13(3) provides that the quorum for the staff selection committee shall be four. Thus, even in the absence of the nominee of the District Educational Officer, as

required under Rule 13(1)(e) there could still be a quorum for the staff selection committee. Further Rule 12(5), while requiring aided schools to have a nominee of the District Educational Officer in the staff selection committee and for the educational agency to fix the selection process in consultation with the District Educational Officer or his nominee and to afford the D.E.O's nominee reasonable opportunity of being present, also provides that the selection shall not be vitiated only on the ground of the absence of the D.E.O's nominee if the Educational agency has offered reasonable explanation. Failure on the part of the 3rd respondent to depute his nominee to participate in the selection process, despite a specific request by respondents 4 to 7 schools to do so, cannot vitiate the selection process nor can the 3rd respondent take advantage of his own default to contend that Rule 12(5), of the Rules notified under G.O.Ms.No.1 dated 01.01.1994 has been violated. On the question of absence of the nominee of the D.E.O. in the selection process, when respondents 4 to 7 schools selected the petitioners, the 3rd respondent shall, in accordance with Rule 12(5), examine whether respondents 4 to 7 schools have offered a reasonable explanation in this regard"

In view of the observations made therein, this Court has set aside the impugned rejection orders and directed the competent authority to re-examine the matter afresh.

It has been further contended by the counsel for the petitioner that in W.P.No.16053 of 2004 dated 02.07.2008, the issue fell for consideration before this Court is that if

approval is not granted within three months as per the rules, it has to be deemed to have been approved and the very same principle was laid down in the above said case. Admittedly, in the instant case, proposals were submitted by the 4th respondent on 15.03.1997 and the respondents have not passed any orders till 2002. Therefore, for the above said reasons, it should be deemed that the appointment of the petitioner has been approved.

This Court, having considered the rival submissions made by both the parties, is of the considered view that the order passed by the competent authority i.e., Rc.No.26/A4/94 dated 20.05.2006 is liable to be set aside as the competent authority has not considered the fact that the 4th respondent management has filled up the post of Aided Secondary Grade Teacher on 10.03.1997 in pursuant to the permission granted by the competent authority vide its letter dated 29.11.1996. The competent authority's impugned rejection order stating that the 4th respondent management filled up the vacant post inspite of informing not to fill up the post vide its letter dated 21.03.1997 is factually incorrect, because the petitioner was appointed way back in the year 1997. The impugned rejection order is passed without application of mind and without taking into account the fact that the petitioner was appointed way back in March, 1997.

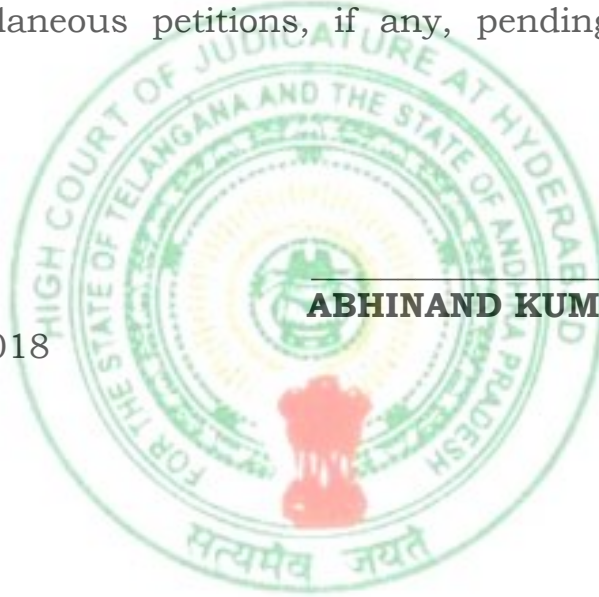
Therefore, the competent authority should consider the case of petitioner afresh by duly taking into account the fact that the petitioner was appointed way back in March, 1997 in pursuance to the permission granted by the competent authority vide its letter dated 29.11.1996 and pass appropriate orders within a period of four (04) weeks from the date of receipt of copy of this order.

Writ petition is disposed of with the above observations.

No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Dt: 25.09.2018
dv



ABHINAND KUMAR SHAVILI,J

