

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.1360 OF 2002

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus declaring the action of the 2nd respondent in issuing the proceedings in Rc.No.2065/D1-2/2001, dated 16.11.2001 as illegal and arbitrary, and consequently, to direct the 5th respondent to promote the writ petitioner as Junior Assistant in Viswodaya Boys School by giving all antecedent benefits attached to the post.

2. Heard Sri P.V. Ramana learned Counsel for the petitioner, Sri M.V.S. Suresh Kumar, learned Counsel for the 5th respondent and the learned Government Pleader for School Education for respondents Nos.1 to 4.

3. The case of the petitioner in brief is as follows:

(i) He was appointed as record assistant on 14.8.1995 by the 5th respondent-management and his appointment was confirmed by the 3rd respondent. While the petitioner was working as Record Assistant, a vacancy of Junior Assistant has arisen in another school run by the 5th respondent- management, and since the petitioner is senior most record assistant his case ought to have been considered, but the 5th respondent-management ignored the petitioner and appointed the 6th respondent as Junior Assistant.

(ii) The 5th respondent-management is running two educational institutions i.e., Dr. L.K.R. Viswodaya Boy's High School and Swamy Seshachalam Chetty Viswodaya Girls' High School, and as these schools are being run by the same management, both the schools may be treated as single unit. As per the proceedings dated 3.6.1985 issued by the Director of School Education, for the purpose of seniority in a category, each school may be treated as unit, where the management is having one school, and in respect of management, which is having more than one school, the District may be treated as a unit and the seniority list be communicated to the staff members of the school/schools and to the District Educational Officers under proper acknowledgement. The proceedings dated 3.6.1985 discloses that in respect of management, which is running more than one school, the management must maintain one common seniority list in respect of all the schools run by such management in the same District. Relying upon the above proceedings, the petitioner contends that when the vacancy had arisen in Swamy Seshachalam Chetty Viswodaya Girls' High School, in the cadre of junior assistant, the case of the petitioner ought to have been considered as he is senior most among the record assistants in both the schools run by the 5th respondent-management.

(iii) The 6th respondent was appointed as record assistant on 13.10.1997 in Dr. L.K.R. Viswodaya Boys' High School whereas the petitioner was appointed as record assistant in Girls' High School two years prior to the appointment of the 6th respondent. The action of the respondents in promoting the 6th respondent is arbitrary and illegal.

4. From the material available on record, it is obvious that when the vacancy arose in the cadre of Junior Assistant, the petitioner submitted a representation to the competent authority viz., Regional Joint Director of School Education, and the said Regional Joint Director of School Education, vide proceedings dated 9.8.2000 directed the 5th respondent-management to prepare seniority list, cadre-wise by duly taking into consideration of seniority of the employees working in all schools under the same management, for filling up the vacant posts. Aggrieved by the same, the 5th respondent filed appeal before the Commissioner and Director of School Education, Andhra Pradesh. The said Commissioner vide orders dated 16.11.2001 reversed the orders of the Regional Joint Director of School Education, and held that the 5th respondent-management has been maintaining records of two schools run by it separately treating each school as a separate unit for the purpose of seniority and promotions. The 5th respondent-management has produced documentary evidence before the Commissioner and

Director of School Education to show that each school is being treated as separate unit for the purpose of seniority and promotions. As per the 5th respondent-management, no promotions or transfers are being effected between these two schools as each school has a separate entity. One school, which is being run by the 5th respondent, is a boys' school and another school is a girls' school. So, the 5th respondent-management demonstrated before the authority that no transfers or promotions are effected between these two schools. The 2nd respondent-Commissioner and Director of School Education in the order dated 16.11.2001 observed as under:

“After thorough examination of the case, it is evident that the Management of Viswodaya High Schools has been maintaining separate roster/separate seniority for the Boys and Girls Schools dealing as separate units. All the appointments and promotions in Dr.L.K.R. Viswodaya Boys High School, Kavali after issue of G.O.Ms.No.524, Education, dated 20.12.1988 and G.O.Ms.No.1 Education, dated 1.1.1994 were made considering the school as a single unit and the appointments were approved by the District Educational Officer, Nellore/Regional Joint Director of School Education, Guntur. The District Educational Officer, Nellore and the Regional Joint Director of School Education, Guntur have failed to obtain the option of the Management to be considered as a single/combined unit after issue of proceedings Rc.No.3070/D1-4/94, dated 29.3.1995 of the Director of School Education.

In view of the facts and circumstances explained above, since the Management of Viswodaya Educational Institutions is maintaining separate rosters/seniority and the Department is approving all the appointments and promotions etc. It is implied that the management has opted "School as a Unit" as per the Circular of this office proceedings Rc.No.3070/D1-4/94, dated 29.3.1995. Hence, the same practice needs to be continued in future appointments/promotions."

5. Perusal of the proceedings of the 2nd respondent-Commissioner and Director of School Education would disclose that the Education Department had issued proceedings vide circular dated 29.3.1995 wherein option was sought from the private managements as to whether they intend to maintain separate entity for each school being run by them or to maintain the single unit whenever the management is running more than two educational institutions. It is the finding of the 2nd respondent-Commissioner and Director of School Education that it is implied that the management of the 5th respondent school has opted to treat the school as unit as per the circular dated 29.3.1995 and the same practice needs to be continued in future appointments and promotions.

6. At this stage, the learned Counsel for the petitioner has submitted that on the earlier occasion, inter se transfers and

promotions were effected between two schools run by the 5th respondent-management.

7. Perusal of the material on record would disclose that all those transfers were taken up way back in the year 1960 and 1970s. Based on such transfers, the petitioner cannot contend that two schools should be treated as a single unit for the purpose of seniority and promotions.

8. Having regard to the above circumstances, this Court is of the view that the 2nd respondent-Commissioner and Director of School Education has rightly passed the order dated 16.11.2001 to the effect that each school run by the 5th respondent should be treated as a separate unit for the purpose of promotions and seniority based upon the circular dated 29.3.1995. This Court does not find any illegality in the order of the 2nd respondent-Commissioner and Director of School Education.

9. Accordingly, the Writ petition is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 3rd August, 2018.
Nn.

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

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3/08/2018

Nn.