

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.17215 of 2018

ORDER :

Heard the learned counsel for petitioner and Smt.K.Lalitha, learned Counsel for 5th respondent.

2. Petitioner is working as Record Assistant in the 5th respondent-School from 2003. He acquired B.A. degree from B.R.Ambedkar Open University, Hyderabad in the year 2009. In the year 2014, he decided to pursue Bachelor of Physical Education course and applied for permission to the 5th respondent.

3. On 20-01-2014, the 5th respondent issued permission to the petitioner to pursue B.P.Ed. course and sanctioned half pay leave on educational grounds. Petitioner later pursued the said B.P.Ed. Course at Sanjeev Reddy College of Physical Education, Penumantra, West Godavari District and obtained the said degree in May, 2014 with First Class Distinction.

4. Petitioner contends that he is eligible to be promoted to the post of Teacher, Physical Education in the 5th respondent-School since there is no other candidate available for promotion, but the 5th respondent is not promoting the petitioner to the said post. Petitioner, therefore, seeks a Writ of Mandamus to declare the action of the 5th respondent in not promoting him to the post of Teacher,

Physical Education from the post of Record Assistant in the 5th respondent-School.

5. Learned counsel for petitioner placed reliance on the guidelines issued by the Commissioner of School Education, Andhra Pradesh, Hyderabad in Rc.No.90/PS-I/2010-2 dt.20-07-2017 which state that when there are no qualified persons in the feeder categories in teaching staff, and if the persons working in non-teaching posts are qualified to hold a particular post, then non-teaching candidates can be considered for promotion to the teaching categories subject to fulfillment of other conditions.

6. Learned counsel for petitioner contends that in spite of the said enabling provision in the guidelines, the 5th respondent is not taking any action.

7. Counter-affidavit is filed by the 5th respondent stating that the contention of the petitioner that he sought permission from the then Correspondent and there was such permission granted on 20-01-2014 to pursue B.P.Ed. course, is false.

8. This contention is not tenable since petitioner has filed the said proceeding issued by the then Correspondent. It is not open to the 5th respondent to deny the same.

9. It is true there are no orders of the Commissioner permitting the petitioner to join B.P.Ed course. But that fact is not relevant since

there is no requirement in any law that such permission should be obtained from the Commissioner.

10. Also, when the petitioner was permitted by the Correspondent of the 5th respondent on 20-01-2014 and the petitioner pursued and completed the course, the respondents cannot question the degree certificate issued by the Andhra University to the petitioner and throw any doubt on the petitioner's qualification.

11. The other plea raised in the counter-affidavit of the 5th respondent is that minimum percentage of attendance in an academic year prescribed for studying of a course by Andhra University is 75%, but petitioner attended only for 89 days in B.P.Ed course, which is 44.5% in the B.P.Ed. course. How this fact is relevant when the Andhra University admittedly granted the petitioner B.P.Ed. degree certificate to petitioner, is not explained by 5th respondent. Once the petitioner obtained the said qualification with First Class Distinction, he cannot be said to be ineligible on the ground that the percentage of his attendance while pursuing B.P.Ed. course was less than what was permissible.

12. Since 5th respondent has not disputed that no other person was possessing qualification than the petitioner, and since the guidelines issued by the Commissioner on 20-07-2017 themselves permit the persons working in non-teaching post, who are qualified to hold teaching posts, to be considered for promotion to the said teaching

posts, within four (04) weeks from today, the 5th respondent shall consider the case of petitioner for appointment as Teacher in Physical Education in 5th respondent-Institution without reference to the attendance aspect of the petitioner while pursuing B.P.Ed. course and communicate his decision to the petitioner.

13. The Writ Petition is allowed with the above directions. No costs.

14. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-10-2018

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