

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.18646 OF 1998

ORDER:

The petitioner, SGBT Teacher, filed this Writ Petition to declare the G.O.Rt.No.1788, Education (PS.I) Department, dated 18.12.1997 insofar as absorbing the petitioner as SGBT with effect from 01.05.1993 instead of 20.03.1985 on which date the aided post fell vacant, as being illegal, arbitrary and consequently to declare that the petitioner is entitled for absorption in the aided post with effect from 20.03.1985.

2. The case of the petitioner is that she was initially appointed as a Teacher on 16.09.1980 in an unaided post in the 3rd respondent school, whereas the respondents 4 and 5 were appointed on 10.08.1981 and 05.04.1982 in unaided posts respectively and thereby they were juniors to the petitioner. Later, two vacancies of aided SGBT posts were fell vacant in the 3rd respondent school. The District Educational Officer, Khammam absorbed Smt. A.Sita Kumari against one of the aided post, whereas the petitioner's claim was ignored. As the petitioner was not possessing requisite qualification for holding SGBT post. The required qualifications to hold the post of SGBT are – 1) Inter passed and 2) Teacher Training Certificate, whereas she passed VIII standard and completed Higher Grade Basic Teacher Training course. For absorbing Smt. M.Vijaya Laxmi - petitioner as S.G.B.T. aid post, the

Government have power to relax the educational qualifications as she passed VIII standard and holds only EGBT certificate. But, the Commissioner and the Director of School Education have recommended for relaxation of qualification in the case of Smt.Vijaya Laxmi. All the three teachers including the petitioner filed writ petitions seeking their absorption against aided posts and the same were disposed of by a common order dated 14.07.1994, directing the Government to hear the parties and take decision regarding absorption of three teachers against aided SGBT posts. Though relaxation was given to the petitioner, but she was absorbed in the grant-in-aid post with effect from 01.05.1993. Hence, this writ petition is came to be filed for absorbing the petitioner as aided teacher in the third respondent school w.e.f. 20.03.1985.

3. Respondents 1 and 2 filed counter stating that the petitioner was initially appointed on 19.08.1980 as a Teacher with 8th class pass and holding Higher Grade Basic Teacher Training Course certificate in the third respondent private unaided school. As per G.O.Rt.No.1000 (S) dated 07.12.1982, the Director of School Education issued proceedings in Rc.No.3475/D1-4/82 dated 27.11.1992 to the effect that all the teachers who are holding EGBT/HGBT/SGBT comes under the category 3 as per G.O.Rt.No.1000(S) dated 07.12.1982 carrying the Scale of Pay of Rs.550-850/-. Therefore, the proposals sent to the Government by the then

Director of School Education, as per the interim orders of this Court granted on 26.04.1990 in WPMP No.2972 of 1990. This Court passed orders on 14.07.1994 holding that the Government has got powers of relaxation and such power was invoked in similar cases vide Memo No.1927 (SS-2/88-9 Education, dated 6-1-1991). In view of the orders passed by this Court, the Government considered the proposals of the Commissioner dated 22.01.1993 and absorbed the petitioner in grant-in-aid post by relaxing the educational qualifications as per Rule 74 of the Andhra Pradesh Education Rules, 1966 (for short 'Rules 1966') with effect from 01.05.1993 vide G.O.Rt.No.1788 Education (PS-I) Department dated 19.12.1997. The petitioner is only having VIII standard with EGBT qualification. The relaxation of the qualification arises only at the time of absorbing the particular employee into the aided service. Even assuming that the authorities committed any irregularity by giving relaxation erroneously to others with retrospective effect, that cannot be taken as principle in other cases. The petitioner has retired from service on 30.09.2005 and her pensionary benefits have settled and paid as per law. Hence, prayed to dismiss the petition.

4. Sri Pratap Narayan Sanghi, learned counsel for the petitioner, would contend that initially the petitioner was appointed on 16.09.1980 in an unaided post in the third respondent school, whereas the respondents 4 and 5 were appointed on 10.08.1981 and 05.04.1982 in an unaided post

and they were juniors to the petitioner. The petitioner could have been appointed in the said one of the two aided vacancies which were fallen vacant on 20.03.1985 and 20.06.1985. The third vacancy was transferred to the third respondent school in the year 1993. The petitioner being the senior most could have absorbed in the first aided vacancy from 20.03.1985, on which date the first vacancy arose. It is further contended that the respondent-Government has issued the impugned G.O.Rt.No.1788 Education (PS-I) Department dated 19.12.1997 and relaxation was granted from 01.05.1993, whereas the relaxation could have been granted retrospectively from the date of first vacancy arose on 20.03.1985 and hence, she could have been appointed with effect from 20.03.1985 and depriving the salary and other benefits from 20.03.1985 is illegal.

5. The learned Government Pleader submits that the petitioner was appointed as SGBT teacher having VIII standard with EGBT qualification on 19.08.1980 and in pursuance of this Court order, the petitioner was absorbed into the grant-in-aid post by relaxing the qualification of the petitioner as per Rule 74 of the Rules 1966 with effect from 01.05.1993 vide G.O.Rt.No.1788 Education (PS-I) Department, dated 19.12.1997. There cannot be retrospective relaxation under Rule 74 of the Rules 1966 and monetary benefits and other service benefit would be given with effect from the date of absorption i.e. 01.05.1993 and not

from the date of arising of the aided vacancy. It is further submitted that as on the date of arising of the vacancy, the petitioner is not qualified and only on relaxation, he was appointed. Now, the petitioner retired from service on 30.09.2005 and the pensionary benefits were accordingly settled and she is not entitled for any pensionary benefits from the date of arising of the aided vacancy.

6. In the facts and circumstances of the case and in considered view of this Court, the petitioner was appointed on 19.08.1980 in an unaided post in the third respondent school, whereas the respondents 4 and 5 were appointed on 10.08.1981 and 05.04.1982 respectively. Even though they were juniors to the petitioner, they were fully qualified and eligible for appointment to the post of SGBT teacher. Accordingly, as per the common order passed by this Court on 14.07.1994 in a batch of writ petitions (three in number), the Government after hearing the contentions of the petitioner along with two others, passed the Government Order in G.O.Rt.No.1788 Education (PS.I) Department, dated 19.12.1997, stating thus:

“(i) Smt. M.Vijayalakshmi was appointed as H.G.B.T. with reference to the then prevailing rules. In a few cases of this nature, in certain Districts the H.G.B.T. teachers were automatically treated as S.G.B.T. teachers and continued in service with all benefits. In a few cases referred to Government, Government have issued orders for their continuance as SGBT teachers in relaxation of Rule 74 of

A.P.E.R., 1966. In the circumstances, relaxation of Rule 74 of A.P.E.R., 1966 with effect from 1-5-1993 may be given in her case and absorbed in the Grant-in-aid post.

- (ii) In regard to Smt. T.V.V.Manikyamba, she is reported to be qualified to hold the post of SGBT and even if M.Vijayalakshmi and Smt.A.Sitakumari cases are considered. Smt.T.V.V.Manikyamba will be eligible to get into one of the aided post. She is sandwiched between M.Vijayalakshmi and Smt.A.Sitakumari in the appeals. The two grant-in-aid posts were vacant in the school from 20-3-1985 and 20-6-1985. The third vacancy arose due to transfer of a surplus post in the year 1993. Therefore, since her appointment is with reference to rules and she require no relaxation she may be absorbed in the first vacancy of the Grant-in-aid post and orders issued by the competent authority notwithstanding with the case of other two teachers.
- (iii) In regard to Smt. A.Sitakumari, it may be stated that this appeal relates to the question of seniority of the incumbent among other teachers. The incumbent has already been reportedly dismissed from service and her appeal with the Department is still pending. As such adjudication of her claim of seniority is not necessary at this juncture. Therefore, the appeal is closed.”

7. Hence, in view of the above, there is no illegality or irregularity in issuing G.O.Rt.No.1788 Education (PS.I) Department, dated 19.12.1997, in absorbing the petitioner into grant-in-aid post by relaxing the qualification as per Rule 74 of the Rules 1966 with effect from 01.05.1993 and the same could not be find fault with as the petitioner is not qualified as on the date of arising of vacancy in aided post and only on relaxation, she was appointed with effect from 01.05.1993 in the third vacancy arose due to transfer of a

surplus post in the year 1993. Hence, the contention of the learned counsel for the petitioner that absorbing the petitioner from 01.05.1993 instead of 20.03.1985 by retrospective relaxation, cannot be accepted as the relaxation was granted vide impugned order dated 19.12.1997 as per Rule 74 of the Rules 1966. Hence, the petitioner is not entitled for the relief as prayed for in this writ petition.

8. Accordingly, the Writ Petition is dismissed. No order as to costs.

9. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

22-06-2018
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