

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.24502 OF 2009

ORDER:

1. This writ petition is filed seeking to issue a writ of mandamus declaring the action of respondent No.3 in issuing proceedings dated 5.9.2009 rejecting for approval of the promotion of the petitioner as headmaster basing on the ban orders issued in Government Memo dated 20.10.2004, as illegal and arbitrary, and consequently, to direct respondents Nos.2 and 3 to consider the request of the petitioner for approval of promotion as headmaster in the 7th Respondent-school with effect from 1.7.2004.

2. Heard Smt. P. Radhika, learned Counsel for the petitioner and the learned Government Pleader for School Education.

3. The case of the petitioner is that initially he was appointed as Grade II Telugu Pandit on 26.8.1970 and thereafter, he was promoted as B.Ed. assistant on 1.9.1975 in the 7th respondent-school. While he was working so, regular Head Master post had arisen consequent upon the retirement of regular incumbent and the case of the petitioner was considered for promotion to the post of Head Master on 1.7.2004. The 7th respondent-management submitted proposals to the respondents for approval of promotion of the petitioner as

Head Master. The respondents kept the said proposals pending and the petitioner retired from service on attaining the age of superannuation on 30th June, 2005. Further, it is the case of the petitioner that his post in the cadre of Telugu Pandit Grade II as well as B.Ed. Assistant were admitted into grant-in-aid but the 3rd respondent has not granted any approval orders for promotion of the petitioner to the post of Head Master, which was given effect by the 7th respondent in favour of the petitioner on 1.7.2004. Finally, the 3rd respondent vide impugned order dated 5.9.2009 rejected the case of the petitioner for approval of promotion as Head Master on the ground that the State Government had imposed ban vide memo dated 20.10.2004 and therefore, the request of the petitioner cannot be acceded to. Aggrieved by the same, the present writ petition is filed.

4. Learned Counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in **Government of A.P. and others Vs. Sri Sevadas Vidyamandir High School and others**¹, wherein it was observed as follows:

"Having considered the submissions made on behalf of the respective parties, we are of the view that no interference is called for with the judgment and order of the Division Bench of the High Court. There is no dispute that the Memo dated 20th October, 2004, imposing a ban on recruitment to grant-in-aid posts was issued after the schools in question had been given permission by the State authorities to fill up the

¹ 2011(6) SLR 620

vacant posts in the schools being managed and run by the writ petitioners, who are the respondents in these Special Leave Petitions. There is also no dispute that the said Memo was not given retrospective effect so as to negate the approval already given for filling up the grant-in-aid posts. The State Government and its authorities could not, therefore, contend that the rationalization process which had been introduced, would also apply in respect of the private aided schools, where the process of recruitment had already been commenced pursuant to the approval granted earlier. Furthermore, as was submitted by Ms. Pavani, even the approval which was granted for filling up the vacant aided posts, had been granted after due scrutiny as to the requirements of the schools in question. Since it is well-settled that administrative orders are prospective in nature, unless they are expressly or by necessary implication made to have retrospective effect, there is no need to refer to the decisions cited by Ms. Pavani, appearing on behalf of the respondent schools."

The learned Counsel for the petitioner contended that in view of the law laid down by the Hon'ble Supreme Court, the 3rd respondent should not have rejected the case of the petitioner for approval of promotion to the post of Head Master under the guise of Government Memo dated 20.10.2004.

5. The learned Government Pleader for School Education contended that the 3rd respondent has rightly rejected the case of the petitioner for approval of promotion to the post of Head Master and that no illegality has been committed by the 3rd respondent.

6. This Court having considered the rival submissions made by the parties, is of the view that the 3rd respondent rejected the case of the petitioner without application of mind and he relied upon the Government memo which was issued subsequent to the promotion effected on 1.7.2004, whereas ban orders were issued by the State Government vide Memo dated 20.10.2004. In view of the same, the Government memo relied upon by the 3rd respondent has no relevancy. Therefore, the impugned proceedings are liable to be set aside.

7. Accordingly, the Writ Petition is allowed setting aside the proceedings dated 5.9.2009 issued by the 3rd respondent. The respondents are directed to consider the case of the petitioner for approval of his promotion to the post of Headmaster with effect from 1.7.2004 and pass fresh orders. Since the petitioner has already retired from service on 30.6.2005, his case should be considered for revising pensionary benefits to which he is entitled, within a period of 8 weeks from the date of receipt of a copy of this order. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 27th August, 2018.
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HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 24502 OF 2009



27/08/2018

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