

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.18741 OF 2018

Dated:08.06.2018

Between:

B. Chandra Sekhar, S/o. Venkateswarlu,
Aged 31 years, Inclusive Education
Resource teacher (HI), Yaddanapudi Mandal,
Prakasam District and others .. Petitioners

And

The State of Andhra Pradesh, rep., by its
Principal Secretary, Development of
School Education, Velagapudi,
Amaravathi, Guntur and others .. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No.18741 OF 2018****ORDER:**

Heard.

2. Petitioners 1 and 3 got Diploma in Special Hearing Impairment and petitioner No.3 got diploma in Special Visual Impairment (Hearing and Visual Handicap). Their appointment as Inclusive Education Resource Teacher (Mentally Retarded-MR) category was challenged in W.P.No.29043 of 2017. Learned Single Judge of this Court by order dated 09.11.2017 held that the appointment of the petitioners to MR category was erroneous and issued directions to issue fresh notification in respect of MR category as well as Hearing Impairment/Visual Impairment category. The Court further directed that the appointments should be made only by qualified candidates as these posts are specialized posts, where possessing requisite qualification is mandatory. Aggrieved by the decision of learned Single Judge, petitioner herein and others filed W.A.No.1878 of 2017. The said Writ Appeal was disposed of by order dated 11.12.2017.

3. After the disposal of Writ Appeal respondents issued recruitment notification dated 11.05.2018 calling upon eligible candidates to participate in the selections for appointment as special teachers for all the three disciplines. Petitioners challenge decision to go for fresh recruitment.

4. According to learned counsel for petitioners no fresh recruitment can be conducted to VI/HI category posts as

petitioners were validly selected and though their appointment is set aside, their selection is not set aside, and they are entitled to be appointed in the existing vacancies.

5. Per contra, learned Standing Counsel for Sarva Siksha Abhiyan appearing for respondents 2 and 4 would submit that the Division Bench of this Court granted discretion either to send out the petitioners or to accommodate them and on detailed consideration of the matter, decision was taken to go for fresh recruitment. He produced a copy of the proceedings of the State Project Director, Sarva Siksha Abhiyan, dated nil, May 2018 to go for fresh notification.

6. Paragraph Nos.6 to 8 of the judgment in W.A.No.1878 of 2017 read as under:

“6. It may be true that from the year 2014-2015, the appellants are continued, after being selected for appointment as Special educators. But even in the order of appointment, it was made clear that once the persons who were trained to teach mentally retarded children are appointed, the appellants would be displaced. In such circumstances, it is clear that the qualifications required for teaching mentally retarded children are distinct and different from those required for teaching visually impaired and mentally impaired. They may require some kind of special training though the academic and B.Ed. qualifications may be the same.

7. The next grievance of the appellants is that when they are lawfully appointed and continued from time to time, there was no occasion of the learned Judge setting aside the same. The grievance is partly justified and can also be redressed. The Government has a duty to appoint persons, who are specially trained, to take care of and to

teach mentally retarded children. The duty cannot be shirked by continuing in service the persons who are specially trained in audiology and speech therapy. However, till a notification is issued and appointments are made to the special category, it is not necessary to keep schools without teachers. Therefore, to that extent the order of the learned Judge requires modification.

8. In view of the above, the writ appeal is partly allowed setting aside only that portion of the order of the learned Judge which mandates the termination of services of the appellants herein. However, the State Government and respondents 2 and 4 shall proceed with recruitment to MR category, as per the time schedule fixed by the learned Judge. As soon as a selection to MR category is made, the appellants herein shall either be sent out or accommodated against the vacancies intended for teaching visually impaired and hearing impaired. It is open to the contesting respondents, who are writ petitioners, to participate in the process of selection and take a chance.”

7. As seen from the judgment of the Division Bench, extracted above, only limited relief was granted to the petitioners. With reference to their accommodation, discretion was vested in the competent authority. As stated by learned Standing Counsel on consideration of the matter decision was taken not to accommodate the petitioners and to go for fresh recruitment.

8. In view of the earlier round of litigation and the judgment of the Division Bench of this Court, it is no more open for the petitioners to contend that the decision was not validly made, and they should be continued by accommodating them against VI/HI vacancies. Since discretion is vested in the competent authority either to accommodate the petitioners or to send them out and

resort for fresh recruitment, the decision not to accommodate the petitioners and to resort to fresh recruitment cannot be faulted. I therefore do not see any error in the recruitment process taken up by the respondents warranting interference by this Court.

9. At this stage learned counsel for the petitioners seeks liberty to avail appropriate remedy as available in law against the decision of the State Project Director dated nil. May 2018.

10. The Writ Petition is accordingly dismissed granting liberty to the petitioners to avail appropriate remedy as available in law against the decision of the State Project Director, dated nil. May 2018. Pending Miscellaneous Petitions shall stand closed.

Date:08.06.2018

KH

P. NAVEEN RAO, J



THE HON'BLE SRI JUSTICE P. NAVEEN RAO



WRIT PETITION No.18741 OF 2018

Dated:08.06.2018