

**THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

**WRIT PETITION No.26917 OF 2018**

**DATED :16.08.2018**

Between :

M.Thirupathi Reddy S/o.Late M.Venkat Reddy,  
Aged about 59 yrs, Occu : Retired School Assistant,  
From SBNRM Aided High School, Kothapalle,  
Komarolu Mandal, Prakasam District, A.P.,  
R/o.Kothapalle Village, Komarolu Mandal,  
Prakasam District.

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Petitioner

And

The State of Andhra Pradesh,  
Rep., by its Principal Secretary,  
School Education Department,  
Velagapudi, Amaravathi, Guntur District,  
Andhra Pradesh & others.

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Respondents



This court made the following :

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**ORDER :**

Heard learned counsel for the petitioner and learned Government Pleader for Education for respondents 1 to 5.

2. Petitioner was working as School Assistant in Sri Bandugula Narapu Reddy Memorial Aided High School, Kothapalle-6<sup>th</sup> respondent school. By order dated 01.01.2018, the Correspondent of the 6<sup>th</sup> respondent school removed the petitioner from service. Aggrieved by the order of removal, petitioner filed application dated 04.01.2018 before the Regional Joint Director of School Education. The Regional Joint Director suspended the order of removal holding that it is in violation of the provisions of Section 79 (1) of the Andhra Pradesh Education Act (for short 'the Act'). Aggrieved thereby the Management preferred appeal before the Commissioner of School Education. The Commissioner affirmed the interlocutory order made by the Regional Joint Director and in the meanwhile petitioner retired from service on attaining the age of superannuation. The application preferred by the petitioner is pending consideration of the Regional Joint Director. This writ petition is filed alleging that even though petitioner retired from service, the retirement benefits are not paid causing hardship and suffering to the petitioner.

3. Learned Senior counsel appearing for the respondent-School submits that aggrieved by the decision of Commissioner, the Management preferred second appeal on 04.08.2018 and the same

is pending and prays for a direction to the second appellate authority to consider the second appeal and to pass orders.

4. *Prima-facie*, as seen from the material on record, petitioner is removed from service by the Management. As the petitioner is working in an aided institution, it is governed by the provisions of the Act. Section 79 (1) of the Act, though vests power in the management to remove an employee from service, according to first *proviso* appended to Sub-Section (1), no order of dismissal or reduction in rank can be passed against an employee without prior approval of competent authority. It is not in dispute that no prior approval was obtained from the competent authority before petitioner was removed from service and the order of the Correspondent of the respondent-School is now suspended by the 3<sup>rd</sup> respondent.

5. Learned Senior Counsel appearing for the respondent School placed reliance on the decision of the Division Bench of this Court in ***Sri Vani Upper Primary School Vs Secretary to Govt., Education Department, Hyderabad and others***<sup>1</sup> to contend that there is ambiguity regarding who is competent to accord sanction for prosecution and that the Court did not invalidate the order of removal from service, even if first *proviso* to Section 79 (1) of the Act, is not complied.

6. Learned Senior Counsel is also fair in submitting that the Court has not declared in the said decision that non-compliance of *proviso* appended to Section 79 (1) of the Act, does not vitiate the order of removal from service. Furthermore, as noticed from the provision in Section 79 (1), the *proviso* is in mandatory terms and

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<sup>1</sup> 1999(1) ALD 260

therefore, non-compliance of seeking prior approval would invalidate the order *per se*.

7. In the facts as noted above, *prima-facie*, the order of removal is not valid in the eye of law and therefore, unless and until appropriate orders are made by following the due procedure, the benefits accrued to an employee on retirement from service cannot be denied.

8. Thus, the order impugned is set aside and the Writ Petition is allowed directing the respondents to process the retirement claims of the petitioner. However, since the Management has right of further appeal and such appeal is already preferred on 04.08.2018, it is open to the Management to pursue the appeal preferred. However, this order does not come in the way of second appellate authority in considering the appeal preferred by the Management.

Pending miscellaneous petitions, if any, shall stand closed.

16<sup>th</sup> August, 2018  
Rds

**P.NAVEEN RAO,J**