

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.Nos.2543, 2266, 2187, 2393, 2410, 2411, 2412, 2536,

2538, 2542, 2558, 2560, 2565, 2572, 2574,

2519, 2520 of 2010

COMMON ORDER

Since the issue involved in all these writ petitions is one and the same, they are heard together and disposed of by this common order.

For the sake of convenience, the facts in W.P.No.2543 of 2010 are discussed hereunder.

W.P.No.2543 of 2010 is filed seeking the following relief:

“....to issue a writ, order or direction especially one in the nature of writ of mandamus declaring that (a) Memo No.42351/IE-II(1)/2004, dated 2.1.2010 is illegal, arbitrary and discriminatory and is also in violation of Articles 14, 16 and 21 of the Constitution of India (b) Consequently declare the proceedings of the 2nd respondent in Rc.No.Admn.I-B-2/1055/2002-51, dated 12.1.2010 also to be illegal and violative of Articles 14, 16 and 21 of the Constitution of India, declare that the petitioner is entitled to continue in service as Physical Director in terms of the order of his appointment and (c) and pass such order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Heard Sri M.Surender Rao, learned Senior Counsel, Sri J.R.Manohar, Sri P.B.Vijaya Kumar and Sri K.R.Prabhakar Rao, learned counsel appearing for the petitioners, learned

Government Pleader for Education, Sri D.L.Pandu, learned Standing Counsel appearing for the Intermediate Board and Sri M.Ratna Reddy, learned Standing Counsel appearing for the 4th respondent-Management.

It is the case of the petitioner in W.P.No.2543 of 2010 that pursuant to the permission granted by the 2nd respondent for filling up the post of Physical Director, the 4th respondent had issued notification. The petitioner applied for the said post and after undergoing regular selection process, he was selected and appointed as Physical Director in an aided vacancy. The 4th respondent had submitted proposals for approval of the appointment of the petitioner before the competent authority within time. The competent authority approved the appointment of the petitioner *vide* proceedings dated 8-2-1996 and since then he is discharging his duties to the best satisfaction of his superiors. While so, the erstwhile Government of Andhra Pradesh, Higher Education Department, *vide* Memo dated 02.01.2010 cancelled the appointments of the Physical Directors and Librarians in private aided junior colleges in the State made during the ban period. In pursuance thereof, the 2nd respondent *vide* proceedings dated 12.01.2010 asked the petitioner to show cause as to why his appointment should not be cancelled and

why he should not be continued on contract basis instead of regular basis. Challenging the same, the present writ petition is filed.

While admitting the writ petition on 8.2.2010, this Court in W.P.M.P.No.3388 of 2010 granted interim direction and in pursuance thereof, the petitioner is being continued in aided vacancy.

Learned counsel appearing for the petitioners, in all the writ petitions, contended that G.O.Ms.No.275, dated 14.12.1995 has no application in the present cases as it pertains to appointments made by the Public Service Commission or other recruitment Agencies. Elaborate procedure was contemplated in G.O.Ms.No.275, dated 14.12.1995 to the effect that before filling up the vacancies, departments have to first seek approval and clearance from the Financial Department and only thereafter make appointments. But the respondents have issued the impugned show cause notices contending that the approval of the appointments of the petitioners is contrary to G.O.Ms.No.275, dated 14.12.1995. The respondents have failed to appreciate the fact that the 4th respondent has obtained prior approval from the 2nd respondent *vide* proceedings dated 20-3-1995 for filling up the post of Physical Director in aided vacancies and a representative of

Intermediate Education was also present in the selection process and after being satisfied that the appointments of the petitioners were in accordance with the Rules, the competent authority has approved their appointments. It is further contended that the 2nd respondent has granted permission *vide* proceedings dated 20-03-1995 to the 4th respondent, whereas G.O.Ms.No.275, dated 14.12.1995 was issued nearly after lapse of nine months from the date of granting permission to the 4th respondent. Hence, G.O.Ms.No.275, dated 14.12.1995 has no application in the cases on hand. It is also contended that the action of the 2nd respondent in issuing the show cause notices is arbitrary and illegal. Taking these aspects into account, the State Government has issued subsequent G.O.Ms.No.75, dated 23.09.2002 holding that G.O.Ms.No.275, dated 14.12.1995 has no application and the respondents have mechanically issued the show cause notices contending that the approval for appointment of the petitioners is liable to be cancelled as it is contrary to G.O.Ms.No.75, dated 23.09.2002. It is prayed that appropriate orders be passed setting aside the impugned show cause notices.

Learned Government Pleader appearing for the respondents contended that G.O.Ms.No.75, dated 23.09.2002

was issued by the School Education Department, but not by Higher Education Department and the said G.O has no application in respect of Higher Education Department. It is contended that the appointments made even in aided vacancies are to be made in accordance with G.O.Ms.No.275, dated 14.12.1995, and the then Commissioner of Intermediate Education has erroneously accorded permissions to fill up the vacant aided posts contrary to G.O.Ms.No.275, dated 14.12.1995 and without ascertaining whether surplus Physical Directors/ Librarians are there in surplus cell and without obtaining prior permission from the finance department, as the approval of the appointment is contrary to G.O.Ms.No.75, dated 23.09.2002, the respondents have rightly issued the impugned show cause notices. The petitioners have approached this Court without furnishing any explanation to the said show cause notices. Therefore, the writ petitions are not maintainable and the same are liable to be dismissed.

Sri Ratna Reddy, learned Standing Counsel appearing for the 4th respondent contended that after obtaining necessary permission from the competent authority i.e., the 2nd respondent, the 4th respondent has issued notification for filling up the aided vacancies and a nominee of the 2nd respondent was also present in the selection process. Only

after satisfying with the entire selection process held in a transparent manner, the 2nd respondent has approved the appointments of the petitioners.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the view that the impugned show cause notices have been issued to the petitioners based on G.O.Ms.No.275, dated 14.12.1995, whereas the 2nd respondent has given permission to fill up the vacancies much prior to the issuance of G.O.Ms.No.275, dated 14.12.1995 i.e., 20-03-1995. Entire regular selection process was over before issuance of G.O.Ms.No.275, dated 14.12.1995. The contention of the respondents that the appointment of the petitioners is contrary to G.O.Ms.No.275, dated 14.12.1995 has no application to the cases on hand. Admittedly, G.O.Ms.No.275, dated 14.12.1995, has no application to the facts and circumstances of the case as the said G.O was issued after lapse of nine months from the date of giving permission by the 2nd respondent to the 4th respondent to fill up the said vacancies. It is also noticed that the impugned show cause notices were issued to the petitioners without taking into account G.O.Ms.No.75, dated 23.09.2002, wherein it was categorically held by the State Government that G.O.Ms.No.275, dated 14.12.1995 has no

application when it comes to appointments made in aided private educational institutions. Hence, all these writ petitions are liable to be allowed.

Accordingly, all the writ petitions are allowed and the impugned Memos dated 02.01.2010 and the impugned show cause notices dated 12.01.2010 are set aside. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

11th September, 2019
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