

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.18763 of 2016

ORDER:

This writ petition is filed seeking a writ of Mandamus declaring the proceedings dated 23.02.2016 issued by the 2nd respondent as arbitrary, illegal, discriminatory and violative of Articles 14 and 21 of the Constitution of India and to set aside the same and also sought a consequential direction to direct the respondents 1 and 2 to admit the petitioner into grant-in-aid in an appropriate non-teaching aided post of the 3rd respondent College with effect from 02.06.1993.

Heard Sri Kowturu Pavan Kumar, counsel appearing for the petitioner, Government Pleader for Higher Education (TS) appearing for respondent Nos.1 and 2 and Sri Aka Venkataramana, counsel appearing for respondent Nos.3 to 5.

It has been contended by the petitioner that he was initially appointed as Gardener in the 3rd respondent College on 02.04.1991 and since then, he has been discharging his duties to the best satisfaction of his superiors and every one concerned. It has been further contended that on the representation submitted by the petitioner on 29.11.1999 requesting to place him in regular pay scale, the 4th respondent made an endorsement to consider the case of the petitioner. It is also stated that when the services of the petitioner were discontinued during 2002, he filed a writ petition being W.P.No.20609 of 2002 and this Court allowed the said writ petition

vide orders dated 04.04.2014 and directed the respondents to allow the petitioner to perform his duties and place him in regular pay scale from the date of his confirmation by admitting his post to grant-in-aid, without any backwages, but with all consequential attendant benefits. Aggrieved by the same, the management preferred writ appeal being W.A.No.1519 of 2014, whereby, a Division Bench of this Court partly allowed the writ appeal *vide* orders dated 28.11.2014 and set aside the direction issued by the Single Judge as regards the absorption of the 1st respondent therein, who is the petitioner herein, in grant-in-aid vacancy, but directed the appellants to forward the case of the 1st respondent therein for absorption against aided vacancy and to pay salary on par with other aided employees of the institution within four weeks. In pursuance of the orders passed by the Division Bench, the respondents 3 to 5 have submitted proposals for admitting the petitioner into grant-in-aid and the 2nd respondent had considered the said proposals and mechanically rejected the proposals *vide* impugned order dated 23.02.2016 on the ground that the College was admitted into grant-in-aid in 1992 and there was no vacant post of Class IV staff at the time of admission into grant-in-aid and thereafter the Government has imposed ban on filling up of vacancies in Private Aided Colleges.

Counsel for the petitioner had further contended that the Division Bench of this Court had partly allowed the Writ Appeal with a specific finding that the case of the petitioner for absorption against existing aided vacancy should be recommended by the management,

and pursuant thereto, since there were existing aided vacancies, the management has submitted proposals to the 2nd respondent and thereupon the 2nd respondent without even examining whether there are aided vacancies in the 3rd respondent College or not, has mechanically rejected the case of the petitioner without application of mind. It is neither the case of the petitioner nor the management that the petitioner was working in aided vacancy in 1999. The respondents 3 to 5 have submitted proposals during 2015 for absorption of the petitioner into vacant aided post. The 2nd respondent ought to have considered the case of the petitioner by duly taking into account as to whether there are any aided vacancies in 2015 or not, but without appreciating the said aspect, the 2nd respondent rejected the proposals submitted by the management on the ground that the College was admitted into grant-in-aid from 01.04.1992 and since the High School, where the petitioner was working from 1999, is unaided, the case of the petitioner could not be considered in the aided vacancy. Therefore, counsel for the petitioner contended that appropriate orders be passed in the writ petition by duly setting aside the impugned rejection orders of the 2nd respondent and to further direct the 2nd respondent to consider the case of the petitioner for absorption into vacant aided post by duly taking into account the recommendations made by the respondents 3 to 5.

Government Pleader appearing for the respondents had contended that the Division Bench had set aside the direction issued

by the Single Judge as regards the absorption of the petitioner in grant-in-aid vacancy. However, the Division Bench directed the management to forward the case of the petitioner for absorption against aided vacancy and to pay salary on par with other unaided employees of the Institution. Government Pleader further submitted that since the management has submitted proposals for absorption of the petitioner into vacant aided post, the same was considered by the 2nd respondent, but since the School where the petitioner was working was unaided, the case of the petitioner was not considered, therefore, there are no merits in the writ petition and the writ petition is liable to be dismissed.

This Court, having considered the rival submissions of learned counsel for respective parties, is of the considered view that as the same management is running a school, Degree College and other educational institutions, the Division Bench has specifically directed the management to forward the case of the petitioner for absorption against aided vacancy and, accordingly, the management has submitted proposals during 2015 for absorption of the petitioner into vacant aided post in the Degree College, and the 2nd respondent was to examine whether there were any aided vacancies during 2015 or not, but without examining the said aspect, the 2nd respondent has mechanically rejected the case of the petitioner. If there were vacancies of aided post in the Degree College during 2015, in compliance of the orders passed by the Division Bench, the 2nd respondent was to absorb the petitioner into aided vacancy.

Therefore, this Court is of the view that the impugned order is passed without application of mind and, therefore, the same is liable to be set aside.

Accordingly, the writ petition is allowed and the impugned order is set aside. The 2nd respondent is directed to examine the case of the petitioner afresh by duly taking into account as to whether there were any vacancies of aided posts in the Degree College during 2015 and, if there were any such posts, consider the case of the petitioner for absorption into aided service with all consequential benefits. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI,J

08.01.2020
v v

