

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

**W.P. No. 19615 of 2015**

**ORDER:**

Heard learned counsel for the petitioner and learned Government Pleader for School Education.

2. The petitioner filed this writ petition to issue an appropriate Writ of Mandamus, to declare the inaction of the 3<sup>rd</sup> respondent in not approving the proposals dated .10.2013 in Rc.No.34 of 2013 submitted by the 5<sup>th</sup> respondent management as illegal improper unjust and violative of principles of natural justice.

**3. The case of the petitioner, in brief, is as follows:**

a) The 5<sup>th</sup> respondent was first having 1<sup>st</sup> to 7<sup>th</sup> classes and got grant in aid for primary classes and later school has been upgraded to high school by opening 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> classes from the year 1991-92, 1992-93 and 1993-94 and admitted into grant in aid from 11.11.1994 and one post of School Assistant and two SGTs were sanctioned, later one more School Assistant, one Telugu Pandit, one Hindi Pandit and three SGTs were admitted to grant in aid from

16.12.2003 and those posts were filled up by absorption of unaided teachers. Thus, the school has become full-fledged aided high school.

b) In order to handle the classes, the authorities directed to create unaided post according to the need of the school and accordingly, the 5<sup>th</sup> respondent management has got approval of certain unaided teacher posts.

c) The petitioner was working as Assistant from 1988 and acquired Madhyama Visaradha from Allahabad University in the year 1995 and also undergone Hindi Sikhak Training at Yadagir, Karnataka State in the year 1999. Thus, the petitioner fully qualified to hold the post of Hindi Pandit from the date of acquiring the training qualification.

d) One H.Ramachanderji, who was appointed on 02.01.1987 in unaided post and got approved by the 3<sup>rd</sup> respondent in the unaided post in the year 1994-95 in Hindi Pandit Grade I post. Then there was a requirement of Hindi Teacher to handle the Hindi Classes from 6<sup>th</sup> to 10<sup>th</sup> in addition to the existing in the Hindi Pandit. As such Management had appointed the petitioner as Hindi Pandit II from the date of the acquiring requisite qualification i.e. from

29.04.1999 in unaided post. Accordingly, the management submitted the proposals to the 3<sup>rd</sup> respondent vide proceedings in Rc.No.3/92-3, dated 04.02.1999 and the same was approved by the 3<sup>rd</sup> respondent on 08.07.1999 vide proceedings No.C1/1143/94-2.

e) In the 4<sup>th</sup> respondent school one post of Hindi Pandit fell vacant and the senior unaided employee who was working in the school had resigned to the post. Accordingly, the 5<sup>th</sup> respondent management submitted proposals to the 3<sup>rd</sup> respondent, but in proceedings Rc.No.3/92-3, dated 04.02.1999, by that time, the Government had imposed a ban on recruitment/promotions as such the petitioner's absorption could not be done along with the other unaided approved teachers.

f) The 5<sup>th</sup> respondent Management again submitted proposals on .10.2013 to the 3<sup>rd</sup> respondent and the 3<sup>rd</sup> respondent has not approved the petitioner's appointment into the aided post which is kept vacant. The petitioner orally and virtually requested the 5<sup>th</sup> respondent Management and the 3<sup>rd</sup> respondent to absorb him into the aided post, but in vain. Hence, this writ petition is filed.

4. The Counsel for the Petitioner places reliance on the following judgments and prays for allowing the writ petition as prayed for.

- (i) The Judgment dt. 06.09.2011 in Government of Andhra Pradesh & Others v. Sri Seva Das Vidyamandir High School & Others reported in 2011 (9) SCC page 613 in SLP (C) No.9541/2007 and batch.**
- (ii) The Judgment dt. 13.07.2013 passed by the High Court of Andhra Pradesh at Hyderabad in W.P.Nos. 9503/2005, 7055/2006 and 23292 and 22580/2010.**
- (iii) Order of the Apex Court dt. 14.09.2015 passed in SLP(C) No.8547/2014.**
- (iv) Order dt. 11.04.2022 in W.P.No.23/2013 in Farhat Anjum v. Government of Andhra Pradesh & Others.**

**4. The counter affidavit filed on behalf of respondents 1 to 4 is as follows:**

a) The petitioner is an employee of the 5<sup>th</sup> respondent and that the 5<sup>th</sup> respondent is having two school assistants, five secondary Grade Teachers, one Telugu Pandit and one Hindi Pandit admitted into Grant in aid on various dates by the

Government. The Management got approval of unaided teacher posts to handle the classes which is the matter related to Management only, but not the Government.

b) The 5<sup>th</sup> respondent Management submitted proposal on .10.2013 to the 4<sup>th</sup> respondent. The erstwhile High Court in W.P.No.9503 of 2005 and batch vide orders dated 30.07.2013 declared that the impugned ban Memo No.12080/COSE/A2/2010, dated 20.10.2004 is illegal and arbitrary and directed the respondents to accord permission to fill up vacant Grant in aid post. Against the said orders, the Government filed W.A.No.216 of 2014 before the Division Bench and that the said writ appeal was confirmed by the Division Bench on 25.02.2014. Against the orders of the writ appeal, the Government filed SLP No.8547 of 2014 before the Hon'ble Supreme Court and that the Hon'ble Supreme Court stayed the operation of the order of the Division Bench dated 25.02.2014 vide order dated 28.03.2014.

c) The State of Telangana was formed on 02.06.2014 and steps are being taken in constituting a committee to give suggestions/recommendations to solve the problem of Court cases against the Government vide memo dated 20.10.2004

regarding imposing ban on the creation and filling up of grant in aid posts in aided schools vide memo dated 24.06.2015.

d) Hence, the writ petition is liable to be dismissed as against these respondents.

**5. Perused the record :**

**6.** The facts as borne on record and as evidenced by the material documents filed by the Petitioner herein and also undisputed by the Respondents are as follows:

a) The Petitioner has been appointed vide proceedings R.C.No.14/1988, dt. 01.05.1988 of the 5<sup>th</sup> Respondent herein as Teacher on consolidated pay of Rs.398/- p.m. and posted at Sri Vani Vidya Nilayam, Nagarkurnool in an unaided post created by the 5<sup>th</sup> Respondent Management.

b) The Petitioner has acquired intermediate and Madyama Visharada from Allahabad University in April 1995 and also undergone Hindi Shikshak Training at Yadgir at Karnataka State and completed in April 1999.

c) The 5<sup>th</sup> Respondent herein vide Proceedings RC No.3/92-3, dt. 04.02.1999 addressed to the 4<sup>th</sup> Respondent

herein i.e, the District Educational Officer, Mahabubnagar submitted its proposal for approval of the appointment of the Petitioner as Hindi Pandit-II at the 5<sup>th</sup> Respondent's School from the date of acquiring requisite qualification i.e., from 29.04.1999 in unaided post.

d) The Petitioner who was appointed as a Teacher in unaided post created by the Management from 12.06.1988 is appointed as Hindi Pandit-II by the 5<sup>th</sup> Respondent's school vide Proceedings RC No.14/1988-2, dt. 01.05.1999.

e) Vide Proceedings No.C1/1143/94-2, dt. 08.07.1999 the District Educational Officer, Mahabubnagar was pleased to approve and ratify the action of the Management with regard to appointment of the Petitioner as Hindi Pandit-II after acquiring the qualification from 01.05.1999 at the 5<sup>th</sup> Respondent's school as Hindi Pandit-II.

f) The 5<sup>th</sup> Respondent herein vide its proceedings RC No.34/2013, dated October 2013 addressed to the District Educational Officer, Mahabubnagar the 4<sup>th</sup> Respondent herein submitted a detailed report with regard to the absorption of the Petitioner into vacant grant-in-aid post since the Petitioner

was regularly working in the 5<sup>th</sup> Respondent school and since there is sufficient work load of language Pandit.

7. The petitioner filed reply affidavit to the counter affidavit filed by respondents 1 to 4 reiterating the contentions raised in the writ affidavit.

**8. Paras 7, 8 and 9 of the Counter Affidavit filed by the Respondents No.1 to 4 read as under :**

***"Para 7 :***

*It is submitted that the management submitted proposal on \_\_.10.2013 to the District Educational Officer, Mahabubnagar. It is to state that the Government imposed a ban vide Memo No.12080/COSE/A2/2010, dt. 20.10.2004. Therefore at this stage, considering his case of absorption is not feasible due to ban.*

**Para 8 :**

It is submitted that the Hon'ble High Court in W.P.No.9503/2005 & batch vide orders dt. 30.07.2013 declared that the impugned ban Memo No. 12080/COSE/A2/2010, dt. 20.10.2004 is illegal and arbitrary and violating Articles 14 & 15 of the Constitution of India and directed the Respondents to accord permission to fill up vacant grant-in-aid post. Against the said orders, Government filed W.A.No.216/2014 in the Hon'ble High Court, the



Division Bench of the Hon'ble High Court in its order dt. 25.02.2014 confirmed the order of the Learned Single Judge.

**Para 9 :**

Against the said orders the Hon'ble Division Bench Government have filed SLP NO.8547/2014 and the Hon'ble Supreme Court in its order dt. 28.03.2014 stayed the operation of the impugned order of the Division Bench dt. 25.02.2014 in WAMP No.663/2014 in W.A.No.216/2014. Thus the process of appointment/approval in filling up of grant-in-aid post is stayed by the Supreme Court".

**10. CONCLUSION :**

**(A) The last para of the order dt. 13.07.2013 passed in W.P.Nos.9503/2005, 7055/2006 and 23292 and 22580/2010 reads as under :**

*"Accordingly these Writ Petitions are allowed declaring that the impugned Memo No.12080/COSC/82/2004-04, dt. 20.10.2004 issued by the Education Department regarding the ban after creating or filling up of existing vacancies in the Private Educational Institutions except with the prior authorization of the Government, is illegal, arbitrary, violative of Articles 14, 21-A and 45 of the Constitution of India and direct the Respondents to accord permission to the Petitioners institutions to fillup the*

*vacant grant-in-aid posts in accordance with the Rules. The Petitioners have not agitated about the other reliefs sought for and the same are, consequently, not granted. There shall, however, be no order as to costs."*

**(B) The order dated 14.09.2015 of the Apex Court in SLP (C) No.8547/2014 and batch of connected cases reads as under :**

*"The High Court has protected the interest of the State by making it clear that the appointments, if any, are to be made subject to the final result of the appeal pending before the High Court. The High Court has also clarified that for the time being the salary being paid to them shall also be subject to the final outcome of the appeals.*

*We do not find any merit in these special leave petitions which are accordingly dismissed".*

**(C) It is submitted the reasons taken in the counter affidavit filed by Respondents 1 to 4, denying grant of relief to the Petitioner are twofold, firstly, Ban imposed by the Government vide Memo No. 12080/COSE/A2/2010, dt. 20.10.2004, and secondly, the Stay granted by the Supreme Court dt. 28.03.2014 passed in SLP No.8547/2014.**

11. This Court opines that the two reasons pleaded by the Respondents in the Counter Affidavit filed by the Respondents No.1 to 4 extracted above cannot be held to be valid now in view of the fact as borne on record that the SLPs have been dismissed on 14.09.2015 (SLP (C) No.8547/2014 & batch dated 14.09.2015.

12. This Court opines that the orders of approval of the District Educational Officer, Mahabubnagar vide R.C.No.C1/1143/94-2, dated 08.07.1999, approving the appointment of the Petitioner as Hindi Pandit-II after the Petitioner acquired the qualifications (i.e., Intermediate and Madhyama Visharda from Allahabad University in April 1995 and also undergone Hindi Sikhak training at Yadgir at Karnataka State and completed in April 1999) i.e. from 01.05.1999 at the 5<sup>th</sup> Respondent School and duly ratifying the action of the Management as per the provisions contemplated in G.O.Ms.No.524/Education, dated 20.12.1988 is prior to the issuance of the Government Memo dated 28.10.2004. The Petitioner is entitled to be considered

as working in the aided post of Hindi Pandit w.e.f., 08.07.1999, since it is borne on record, that the petitioner's case has been recommended by the High Level Committee in its report dated .10.2013 whereunder it is observed as follows:

*"It is further submitted that Sri K.Yadagiri i.e. the petitioner herein S/o Buchaiah, who is approved unaided Hindi Pandit is eligible and qualified for absorption into vacant grant-in-aid post and he is regularly working in the school as there is sufficient work load of language Pandit."*

13. Taking into consideration the above referred circumstances and also the law laid down by the Judgements relied upon by the Counsel for the Petitioner, and referred to and discussed above, the Writ Petition is allowed declaring the inaction of the Respondent No.3 in not approving the proposals dated October 2013 in R.C.No.34/2013 submitted by the 5<sup>th</sup> Respondent as illegal, improper, unjust and violative of principles of natural justice and the 1<sup>st</sup> and 3<sup>rd</sup> Respondents are directed to approve the proposals of the 5<sup>th</sup> Respondent dated October 2013 in R.C.No.34/2013 within 3 weeks from today and pass

**appropriate orders in accordance with law and duly communicate the same to the petitioner. However, there shall be no order as to costs.**

Miscellaneous petitions, if any, pending shall stand dismissed.

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**SUREPALLI NANDA, J**

Date: 26.09.2022

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