

(1998) 08 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12537 of 1998

Hony. Correspondent, Sri Savithri Kanya Unnatha Patha Sala,
Hyd.

APPELLANT

Vs

Commissioner and Director of School Education, Govt. of A.P.,
Hyd. and others

RESPONDENT

Date of Decision : 04-08-1998

Acts Referred:

Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools Under Private Managements) Rules, 1993 — Rule 12, 12(8), 12(9)

Citation : (1998) 5 ALD 513

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Judgement

1. The proceedings issued by the Regional Joint Director of School Education dated 27-12-1997 as confirmed by the appellate authority by orders dated 5-6-1998 are assailed in this writ petition.

2. The petitioner is an institution. After getting clearance from the authorities a notification was issued for appointment of SGBT Teachers. For this purpose regular Selection Committee was constituted and number of teachers were selected including one Smt. N. Suseela. Accordingly, she joined duty on 4-3-1996 however she left the services on 31-12-1996. She made a claim for payment of salary and ultimately she approached this Court by filing a Writ Petition No.21675 of 1997. The said writ petition was disposed of with a direction to the Regional Joint Director to consider the proposals pending before him submitted by the institution and pass appropriate orders. However, the said authority passed orders on 27-12-1997 refusing to grant approval and directing the management to pay the salaries to the Teachers. Aggrieved by the said order the petitioner-management filed the present writ petition.

3. It is also the case of the management that it also filed an appeal before the appellate authority. Since the management was directed to pay the salaries in

pursuance of the directions of this Court in Writ Petition No.21675 of 1997 dated 12-11-1997, while admitting the present writ petition, interim suspension of the order dated 27-12-1997 was granted by this Court. Subsequently, the appeal filed by the management before the appellate authority was rejected on 5-6-1998 and therefore the order of the appellate authority also is impugned in this writ petition.

4. The teamed Counsel for the petitioner submits that the order dated 27-12-1997 is wholly illegal and contrary to the rules. It is the case of the petitioner that the Selection Committee was constituted in accordance with the rules and the proposals were sent to the appropriate authority on 12-3-1996. However no action was taken for a considerable time and it is only after the orders were passed by this Court in Writ Petition No.21675 of 1997 dated 12-11-1997, the proceedings were issued by the competent authority on 27-12-1997 rejecting the approval. It is also submitted that there is no violation of Rule 12 of G.O. Ms. No.1, Education, dated 1-1-1994. The learned Counsel for the petitioner submits that in accordance with the requirement under Rule 12(8) of the A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993 the appointments were made subject to clearance of the Government and that the proposals were sent by the management within the time. Therefore, it will not be open for the authorities to reject the same on the ground that there was no approval. Hence, the impugned order has to be set aside and the respondents may be directed to release the salaries of the teachers who were appointed and whose proposals were sent by the management to the competent authority on 12-3-1996.

5. The learned Government Pleader submits that since the appointments were made without obtaining approval as required under Rules 12(8) and (9), the order passed by the authorities is correct and the writ petition has to be dismissed. Further it is submitted by the learned Government Pleader that in the instant case, admittedly no approval was granted, and hence, the management ought not to have appointed the teachers. Therefore, the action taken by the authorities is not against the rules referred to above. For proper appreciation of the case, it is necessary to extract Rule 12(8) and (9):

"Rule 12(8) : All appointments made either teaching or non-teaching staff by aided or unaided institutions shall be subject to the approval of the competent authority. For this purpose the educational agency shall inform the competent authority within one month of the selection. The competent authority shall grant approval unless the selection has been in violation of these rules. If the approval is not granted within two months from the date of receipt of the proposals in respect of unaided posts the approval shall be deemed to have been granted. In order to obviate confusion, it shall be incumbent on the educational agency to remind the competent authority one month after the initial communication if no approval is received. The burden of proof of having communicated the selection

to the competent authority shall lie with the educational agency.

(9) The educational agency shall make the appointments only on the approval as per sub-rule (8) above."

6. From the above rule position it is manifest that the words "appointments made" empowers the right to make appointments, but however such appointments shall be subject to approval of the competent authority. The rule making authority deliberately used the word "appointment" and not "selection". Therefore to say that the management cannot issue the appointment order at all till the approval of the competent authority would be something more beyond the intention of the rule. The word "approval" itself signifies the action already taken to be confirmed or not. Otherwise, the rule making authority could have used the word prior approval. However, the learned Government Pleader submits that sub-rule (9) mandates that the educational agency shall make appointments only on approval by the competent authority and therefore without approval the appointments are invalid. The learned Government Pleader is right when sub-rule (9) is read in isolation. Sub-rule (8) allows the management to make appointment subject to approval of the competent authority and at the same time sub-rule (9) cannot restrict such appointments. To that extent there is inconsistency. But it is well settled principle that the statutory provisions have to be interpreted harmoniously to subserve the purpose and object. Rule 12 contemplates selection and appointment and approval of teaching and non-teaching staff. Therefore, sub-rules (8) and (9) have to be given purposeful meaning. Hence a conjoint reading of these two provisions would lead to inevitable conclusion that though the appointments are subject to approval of the competent authority, yet the educational agency is not precluded from issuing appointment orders pending approval. Admittedly, the management has issued appointment orders by selecting the Teachers subject to approval of the competent authority. Therefore, the management is entitled to issue appointment orders duly following the procedure laid down under UK rules. Further, the management shall inform the competent authority, within one month of the selection and this aspect has also been followed by the management and it is admitted that the proposals were sent to the competent authority on 12-3-1996. It is permissible for the competent authority to reject the approval if the selection was made in violation of rules. So what is required to be considered is whether the selection has been done in violation of rules. In this case, the teachers were selected by the duly constituted Selection Committee and that the institution had issued the appointment orders subject to the approval by the competent authority. The competent authority is not finding fault with the selection process and only relying on the approval as required under Rule 12(9). As already held supra, prior approval for appointment is not the pre-requisite and what is required is the issuance of appointment order subject to approval of the competent authority. Therefore, I hold that the impugned order is not sustainable under law. Accordingly, it is set aside.

7. This Court also finds some inordinate delay in the process of the selection made by the educational agency. The proposals were sent on 12-3-1996 and it was rejected only after a lapse of 1 year 9 months: The reasons for such an inordinate delay are not forthcoming. While in the case of unaided teachers if the approval is not granted within two months, the rule stipulated that the appointments made by the management shall be deemed to have been approved. But, such a provision is not available in respect of aided posts. There is no reason why such deeming clause is not stipulated for aided posts. In fact such a provision is necessary to keep the administration on guard. It is not open for the authorities to deal with the matter leisurely. It is required to be dealt with within a reasonable time. In the instant case, the competent authority took 1 year 9 months time to deal with the matter, which, cannot be said to be reasonable time more so in the absence of any explanation. It is hoped that the Government will amend Rule 12(8) properly so as to apply the deeming clause for aided posts also.

8. For the aforesaid reasons, the impugned orders dated 27-12-1997 and the order of the appellate authority dated 5-6-1998 are quashed. The respondents are directed to release the salary of Smt. N. Suseela from the period from 4-3-1996 to 31-12-1996 in the relevant pay scale, within a period of six weeks from the date of receipt of a copy of this order. Accordingly, the writ petition is allowed. No costs.