

(2016) 06 KAR CK 0197
In the Karnataka High Court
Case No : W. P. No. 8965 of 2014 (S-RES)

Smt. Vanitha Suchita

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 07-06-2016

Acts Referred:

Constitution of India, 1950 — Article 16, Article 226

Citation : (2017) 2 AirKarR 848

Hon'ble Judges : B.S. Patil, J.

Bench : Single Bench

Advocate : Smt. Maitreyi Krishan, Advocate. For Sri. Clifton D. Rozaric & Sri Anand Ramu M.S., Advocates, for the Petitioner; Sri. R.B. Sathyanarayan Singh, AGA, for the Respondent Nos. 1 to 5; Served, for the Respondent Nos. 6, 7, & 8

Final Decision : Allowed

Judgement

B. S. Patil, J.—Petitioner was appointed as Assistant Teacher on 01.06.2002 in Sri. Bethuru Channabasappa Siddabasappa Higher Primary School, Anekonda, Davanagere. Her appointment was approved by the Deputy Director of Public Instructions, Davanagere District, on 17.02.2005 without aid. This is evident by Annexure-B. On 02.02.2006 the Higher Primary School, where the petitioner was working, was admitted to grant-in-aid.

2. As per Annexure-C- communication dated 17.01.2006 addressed to the State Government, Department of Primary Education, by the Internal Financial Advisor, it was made clear that the student-teacher strength of the Higher Primary School enabled approval for grant-in-aid of three teachers by name S.Prakash, Lakshmana D. Koppada and Vanitha Sujitha - petitioner herein. Thereafter, on 08.11.2006, the State Government wrote to the Director, Primary Education, Department of Public Instructions, Bengaluru, requesting the Director to submit his opinion with regard to the approval of the post held by petitioner for grant-in-aid. This document is produced along with an application filed for production of additional documents as Annexure-N.

3. On 02.11.2007, Block Education Officer, North Zone, Davangere, has addressed a letter to the Deputy Director of Public Instructions, Davangere, stating that in the school in question, total number of students from 1st standard to 7th standard for the academic year 2007-08 were 163 and total number of students who were attending the school were 121, therefore, at the rate of one teacher for 40 students, three teachers could be permitted for grant-in-aid and that as only two teachers by name Lakshmana D. Koppada and Dhananjaya Reddy were working, there was provision for three teachers. This document has been enclosed to the application filed seeking production of additional documents at Annexure-P.

4. Even in Annexure-F communication dated 25.01.2008 addressed by the Director (Primary Education) to the State Government, this aspect of the matter has been reiterated with regard to the strength of the students and the provision for appointing and admitting three teachers for grant-in-aid. However, the claim of the petitioner for admitting the post held by her for grant-in-aid was not considered. It appears 1st respondent issued a Circular dated 12.10.2007 stating that no recruitment shall be made by any aided institution until the list of retrenched teachers was exhausted. Based on this circular, the authorities did not consider the claim of the petitioner for admitting the post held by her for grant-in-aid. In the circumstances, petitioner approached this Court by filing W.P.No.11668/2008. This Court disposed of the writ petition by issuing a direction to the State Government to consider the claim of the petitioner for admitting to grant-in-aid as per the recommendations made on 08.11.2006 (Annexure-N referred to herein above) and the communication dated 02.01.2008 (Annexure-E referred to herein above) and other communications. This Court made it clear in the said order that consideration of the case of the petitioner shall be done without reference to the Circular dated 12.10.2007 which was produced along with the said writ petition at Annexure-R. Thereafter, the impugned communication Annexure-M dated 14.01.2014 has been issued stating that post held by the petitioner could not be admitted for grant-in-aid.

5. The twin reasons assigned in the impugned endorsement for rejecting the claim of the petitioner are, (i) that the admitted strength of the students and the actual attendance of the students ratio in the school being 160 : 138, and the permissible student teacher ratio being 50 : 40: 1, there was provision for three teachers only to avail grant-in-aid and as there were already three teachers admitted to grant-in-aid, there was no vacancy for the fourth teacher; (ii) that as per the Circular dated 12.10.2007, any vacancy in respect of aided institutions had to be filled up from out of the excess teachers who had been admitted to grant-in-aid, and therefore, question of admitting the petitioner to grant-in-aid would not arise until the excess teachers were fully adjusted.

6. Assailing the impugned endorsement, learned Counsel for the petitioner has taken up several contentions. It is mainly urged by her that direction issued by this Court was on 23.02.2012, wherein it was specifically made clear that without

reference to Circular dated 12.10.2007, case of the petitioner had to be considered. But, in defiance of the said direction, 4th respondent has issued the impugned endorsement referring to the very same Government Order dated 12.10.2007 and citing it as one of the grounds for rejection of the claim of the petitioner. Her next contention is that as per communication produced at Annexures-E, N & P, there was provision for admitting three teachers for grant-in-aid as the strength of the students permitted such recourse and it was in this background only, this Court had earlier issued direction to consider the case of the petitioner. But, as can be seen from the impugned endorsement at Annexure-M, the authorities have rejected the case of the petitioner on the ground that fourth teacher could not be admitted for grant-in-aid having regard to the student teacher ratio.

7. It appears Mr. Dhananjaya Reddy the 7th respondent has been adjusted as against the third post which was permissible for being admitted to grant-in-aid. 7th respondent, it is submitted at the bar by Counsel for petitioner, was an excess teacher who has been transferred to the 8th respondent-school. As rightly contended by the Counsel for the petitioner, claim of the petitioner ought to have been considered having regard to students the teachers ratio in the 8th respondent-school as on the date proposal was submitted and immediately thereafter.

8. As is evident from Annexure-F and the materials referred to herein above, upto the year 2008, student strength and regular attendance was in the order of 162:123. It is also evident from Annexure-F "communication of the Director (Primary Education) addressed to the State Government that Mr. Dhananjaya Reddy" 7th respondent herein was not taken by the 8th respondent-school although in the counselling held, he was allotted to the said school.

9. Be that as it may, when petitioner has been agitating her grievance and had obtained an order from this Court, wherein respondents were directed to consider her case for admitting the post held by her for grant-in-aid, without reference to the Circular dated 12.10.2007, it was impermissible for the respondent-authorities to reject her case on the ground that one Dhananjaya Reddy had been already allotted to the said school as an excess teacher and that the Circular dated 12.10.2007 did not permit any other teacher for grant-in-aid except by absorbing the excess teacher.

10. The impugned endorsement, to say the least, runs contrary to the direction issued by this Court and the same is against the communication addressed by the Director to the State Government on 25.01.2008. Petitioner- s case ought to have been considered with reference to the fact situation as obtained at the time when her case was considered and recommended as per Annexures-C, E & F. Petitioner having succeeded before this Court in securing a direction, her request could not have been turned down on the ground that in the interregnum 7th respondent was permitted to join duties in the school as he was found to be an excess teacher elsewhere. The direction issued by this Court and the claim of the

petitioner cannot be defeated by such process.

11. Hence, this writ petition is allowed. Impugned endorsement at Annexure-M is quashed. Respondent- authorities are directed to re-consider the case of the petitioner in the light of the observations made above and the student- teacher ratio as obtained and the vacancy in the posts as prevalent at the relevant time viz., between the period from 2006-2008. The respondents shall re-consider the matter within a period of three months from the date of receipt of a copy of this order.