
(2000) 08 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17379 of 1999

Sree Seetha Rama Upper Primary School, Matwada,
Warrangal

APPELLANT

Vs

Commissioner and Director, School Education, Hyderabad

RESPONDENT

Date of Decision : 11-08-2000

Acts Referred:

Citation : (2000) 6 ALD 11 : (2000) 5 ALT 532

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : Mr. S.V. Bhatt, for the Appellant; Government Pleader for School Education, for the Respondent

Judgement

1. The question that falls for consideration in this writ petition is in a narrow compass i.e., whether the management is entitled to claim reimbursement of the salaries that were paid to the teachers for the period from 1-9-1994 to 26-12-1996 i.e., from the date of admitting the school to grant-in-aid to the date on which the services of the teachers working in un-aided posts were ultimately regularised by the Government.

2. Since 1982 the petitioner's school started functioning and running class in Telugu and English mediums. As per the grant-in-aid rules, the school became eligible to be admitted to grant-in-aid according to Act No.22 of 1988. On an application filed by the Correspondent seeking admission of the school to grant-in-aid, the Government issued G.O. Ms. No.365, Education, (PS-2), dated 10-10-1994. In this G.O., several school including the petitioner's school were admitted to grant-in-aid. At S.No.13 in Annexure-I of the said G.O. four posts were admitted to grant-in-aid in English medium. At S.No.12 in the Annexure-II of the said G.O., one post of B.Ed. Assistant and 5 posts of SGBT were admitted to grant-in-aid and one post of Telugu Pandit and one post of Hindi Pandit were also admitted to grant-in-aid in Telugu Medium. In this writ petition, the dispute relates to the posts that were admitted to grant-in-aid in Telugu medium. Before

adverting to the merits of the case, I would like to refer to the content and purport of the G.O. The above posts were admitted to grant-in-aid with effect from 1-9-1994 subject to the conditions that the schools must have been established prior to 1-9-1985 and the persons are fully qualified to hold the grant-in-aid posts and also subject to the following relevant conditions:

"I.....

II.....

III.....

IV. The Director of School Education, Hyderabad, shall not release grant-in-aid if no person is appointed in the posts by the competent authority;

V.....

VI. The posts are admitted to grant-in-aid as per the Revised Pay Scales of 1993."

3. From this G.O. it is seen that the grant-in-aid has to be released with effect from 1-9-1994 for the posts in which teachers are working as on the date of admission of the school to Grant-in-aid, of course, subject to the approval of the competent authority.

4. The dispute in this writ petition relates only to five teachers. Admittedly, all of them were appointed on various dates prior to 1992. It is also not disputed that the correspondent sent proposals to the District Educational Officer, Warangal who is the second respondent, for approval of their appointments when the school was not admitted to grant-in-aid. But the District Educational Officer did not choose to pass any orders on those proposals. Now the case of the respondents is that these appointments were not made in accordance with G.O. Ms. No.524, dated 20-12-1988. I am to state that under Rule 15(4) of the Rules, if no orders are passed on the proposals sent by the management within 3 months, the appointments made by the correspondent are deemed to have been approved. The learned Counsel for the respondents Vehemently contends that this deeming clause is only to the appointments made in accordance with the said G.O. Ms. No.524 but not otherwise i.e., by a constituting selection committee and drawing candidates from the Employment Exchange. Though I cannot uphold this argument, I am not adverting to the contentions because of the subsequent events that took place in this case. On 2-1-1995, the petitioner submitted proposals for absorption of the unaided teachers in aided posts as per the orders of the Government admitting the school to grant-in-aid. At this stage, the District Educational Officer, the second respondent raised an objection that the appointments of the teachers were not made as per the said G.O. Ms. No.524 and rejected the proposal on 20-2-1995 with a further direction to take up fresh recruitment. Accordingly, the Correspondent issued notification, inviting applications from the eligible candidates to be appointed. At this stage, the second respondent, on the basis of telegraphic instructions given by the first respondent, directed the management not to proceed with the selections and

recruit the teachers. As the telegram given by the first respondent was not produced before this Court, it is not possible to know whether the telegram was given by the Government as a policy or at the instance of the teachers or the Correspondent. Subsequently, on 27-12-1996, the Government issued Memo No.09471/ T3-1/96 directing the District Educational Officer to approve the appointment of unaided teachers as the Rule 15(4) of the said G.O. Ms. No.524. Even then the second respondent did not take steps to approve the appointments. Four months thereafter, on 15-3-1997 the Government issued a telegram to the second respondent stating that the appointments made by the Correspondent in the un-aided posts were ratified as a special case and directed him to issue orders accordingly. Pursuant to the said orders, the second respondent, by his proceedings, dated 21-3-1997 approved the appointments of 5 teachers whose claim for the salary is being disputed from the dates of their initial appointments. Subsequently, the Correspondent submitted proposals to the second respondents seeking absorption of unaided teachers into aided posts with effect from 1-9-1994, the date on which the Government agreed to meet the financial commitment towards the payment of salaries of the teachers. Within one week thereafter, on 29-3-1997 he also submitted proposals in respect of these teachers claiming arrears from September, 1994 to February, 1997. On that, the second respondent seemed to have sought for a clarification whether the bills have to be admitted from 1-9-1994 or from any subsequent date. Having received these proceedings, the first respondent sought for clarification from the Government in his proceedings dated 25-5-1997. The Government, in its memo, dated 7-6-1997, issued a clarification stating that as the Government directed the second respondent to approve the appointments of teachers with effect from 27-12-1996, and as such their claim for salary may be admitted from the date only. Having received the said proceedings, the second respondent issued consequential proceedings on 8-7-1997 absorbing unaided teachers into aided posts with effect from 27-12-1996. From the above, it is seen that their pay was directed to be paid in the Revised Pay Scales of Pay 1993, with effect from. 27-12-1996. But, subsequently, the second respondent, while implementing the pay revision scales of 1993, gave monetary benefit from 1-9-1994 vide his orders issued in December 1997. By proceedings, dated 27-3-1999, the second respondent informed that the first respondent passed orders stating that the unaided services shall be counted for fixation of pay in the Revised pay Scales of 1993. At the same time, the second respondent admitted the claim for Rs 4,71,059/- towards arrears from 1-9-1994 to 26-12-1996 on the basis of the bills submitted by the petitioner on 20-3-1999 according to the Counsel for the petitioner which was seriously disputed by the Counsel for the Government stating that the same was submitted on 31-3-1999 and the District Educational Officer passed orders instantaneously. Be that as it may, the fact remains that the Correspondent drew the amount on 31-3-1999. On 23-4-1999, the Gazetted Administrative Officer attached to the office of the second respondent sent a communication to the Correspondent to obtain a banker's cheque in his name for the amount drawn by him on 31-3-1999 and submit the

same to him till verification of the records. The Correspondent submitted the Banker's cheque to the District Educational Officer on 3-5-1999. In the receipt issued by him, it is categorically stated that this amount relates to salaries of the teachers for the period from 1-9-1994 to 26-12-1996 as the teachers received salaries during the above period from the management. Questioning the correctness of the order of the Gazetted Administrative Officer, dated 23-4-1999 this writ petition was filed.

5. From the narration of the facts as stated above, the question that falls for consideration is whether the teachers whose appointments were approved from the dates of their appointments in unaided posts when the school was not admitted to grant-in-aid, are entitled to draw the salary in the Revised Pay Scales 1993 from 1-9-1994 to 26-12-1996 till the date on which the Government directed the District Educational Officer to approve the appointments. I have already extracted the relevant portions of the G.O. From a reading of that G.O., it is crystal clear that the Government while admitting the school to grant-in-aid, agreed to release the grant-in-aid to the persons working in the unaided posts if they are fully qualified and the question of payment of any salary does not arise if the posts that were admitted to grant-in-aid were lying vacant on the date on which the school was admitted to grant-in-aid. Here, to my mind, the question of pressing into service the G.O. Ms. No.524 does not arise to reject the claim of the management for the release of the grant-in-aid. Now, the objection raised by the Government is that the appointments were not made in accordance with G.O. Ms. No.524. Firstly, it is not in dispute that on 22-6-1992 the Correspondent sent proposals to the District Educational Officer and the District Educational Officer did not pass any orders thereon and under Rule 15(4) of the said G.O., the appointments are deemed to have been approved. Further the Government issued orders dated 27-12-1996 in Memo No.09471/T3-I/96 to approve the appointments of teachers working in unaided posts. As much reliance is placed by the learned Government Pleader on this Memo, I am inclined to extract the said memo dated 27-12-1996 hereunder:

"The attention of the C and DSE, Hyd./ D.E.O. Warangal is invited to the reference cited (copy enclosed) and he is informed that the matter is pending in the office of the D.E.O. for the last 4 years, which appears to be unjust.

2. He is therefore requested to examine and arrange for the redressal of the grievance immediately."

6. In this memo nowhere it is stated that the Government is giving approval to the appointments with effect from that date as contended by the learned Government Pleader. On the other hand, the Government took serious objection on the conduct of the District Educational Officer stating that he did not pass any orders for 4 years having received the said proposals from the management and that the same is unjust. In fact, the Government gave a positive direction to the District Educational Officer to approve the appointments by invoking the deeming provision i.e., Rule 15(4)(A) of the said G.O. Ms. No.524. When the second

respondent did not take any action to approve the appointments pursuant to this memo, the Government issued telegraphic orders dated 15-3-1997 stating that the appointments were approved by the Government itself ratifying the action of the management. Then only the District Educational Officer started acting in the matter and issued orders in his proceedings dated 1418/C3/94-95, dated 8-7-1997 approving the appointment of these 5 teachers with effect from the dates on which they were initially appointed in unaided posts. When the management submitted bills from 1-9-1994 claiming arrears, the second respondent entertained a doubt and sought for clarification. Ultimately, the Government, in its memo, dated 7-6-1997, clarified the absorption of unaided teachers into aided posts may be effected with effect from 27-12-1996. I have no hesitation to hold that this memo runs counter to the spirit of the G.O. Ms. No.365 in which the school was admitted to grant-in-aid and the memo dated 27-12-1996 wherein the Government directed the District Educational Officer, as well as the telegraphic orders issued by the Government on 15-3-1997 ratifying the appointments of the teachers in unaided posts followed by the orders dated 21-3-1997 issued by the District Educational Officer approving the appointments of the teachers from the dates on which they were initially appointed. It is not known how this proceedings could be given by the Government in contravention of the G.O. At any rate, it is well-settled principle that an executive order cannot override the order issued by order and in the name of the Governor. Hence, I have no hesitation to hold that this memo is not in accordance with the Government orders and it cannot be sustained in law. It should also be kept in mind that the Correspondent redeposit the money drawn by him by way of banker's cheque on 3-5-1999 and thereafter the school was subjected to audit. The auditor after verifying the records submitted his report on 24-9-1999 wherein he categorically stated that an amount of Rs.4,71,059/- was incurred by the management for payment of salaries to the staff from 1-9-1994. In the circumstances, it cannot be said that the Correspondent committed any illegalities or resorted to underhand dealings in drawing this amount. Hence, the memo of the Government dated 7-6-1997 cannot be sustained in law and it has to be quashed.

7. The learned Government Pleader laid much stress in support of the claim of his client that some illegalities took place in the school by relying on the letter dated 10-3-2000 of the Correspondent himself and he claimed the bills for those people who are not working in this school falsely. As far as Rajaiah is concerned, the Correspondent himself categorically stated that while he was working in the school, he was already clandestinely working in National High School, Kasi Bugga, Warrangal during that period. Hence I feel that this teacher cannot be allowed to draw the salaries from 1-9-1994. If the management had paid any salaries, it is open to them to recover the amounts from him and also initiate criminal proceedings against him for misleading the management and drawing the salaries by working simultaneously in two schools. Secondly, the learned Government Pleader made serious complaint with regard to Lalit Kumar on the

basis of a statement made by the Correspondent that he did not report to duty after he was absorbed in the aided post. Admittedly, orders were issued admitting him to grant-in-aid post only on 21-3-1997. In other words, this teachers worked upto March, 1997. Hence it cannot be said that the petitioner/ Correspondent committed any fraud in claiming the salary from 1-9-1994. Be that as it may, it is made clear, that if any, salaries were drawn by the Correspondent in his name after 27-12-1996 the Department is entitled to recover the same from the management from the amounts lying with the second respondent.

8. From the explanation given by the Correspondent, Lourdu Reddy whose services were also absorbed in the aided post resigned his job on 22-4-1996. Hence the petitioner is entitled to claim arrears insofar as this teachers is concerned for the period from 1-9-1994 to 22-4-1996. The direction given with regard to Lalit Kumar will apply mutatis mutandis to this petitioner also. As far as Purnachander Rao and Akhtar Begum are concerned, from the letter of the Correspondent it is seen that he is collecting information about these two individuals and he sought for 30 day's time from 10-3-2000. If any adverse circumstances are brought to the notice of the second respondent against these two individuals, he may take a decision in light of the observations made by the Court in this writ petition.

9. During the course of argument, it came to light that though a reference was made to the Government memo dated 7-6-1997 by the second respondent in his proceedings dated 8-7-1997 admitting the teachers to grant-in-aid from 27-12-1996, the said Memo of the Government was not communicated to the petitioner. As I have already taken the view that the Government memo, dated 7-6-1997 is per se illegal, it cannot be sustained in law and the same is set aside.

10. In the result, the writ petition is allowed and a direction is given to the second respondents to release the amount that was recalled by way of banker's cheque from the petitioner subject to the deduction to be made as per this order within four weeks from the date of receipt of this order. There shall be no order as to costs.