

# SUPREME COURT OF INDIA

Govt. of A.P. & Ors.

Vs.

Sri Sevadas Vidyamandir High

SLP. (Civil)No.9541 of 2007

(Altamas Kabir,J., Cyriac Joseph and Surinder Singh Nijjar,JJ.,)

06.09.2011

## JUDGMENT

**Altamas Kabir,J.,**

1. Two Special Leave Petitions, being SLP (C) Nos.9541 of 2007 and 10945 of 2007, arising out of the judgment and final order dated 29th December, 2006, passed by the Andhra Pradesh High Court have been taken up for consideration together, along with SLP(C)No.469 of 2011, which is directed against the judgment and order dated 9th July, 2009, passed by the said High Court in W.A.M.P.No.661 of 2008 in W.A.No.954 of 2009 and SLP(C)Nos.15231-32 of 2011, which are directed against the judgment and order 17th August, 2010, passed by the said High Court in W.A.No.1868 of 2003 and W.P.No.24066 of 2004. Inasmuch as, SLP(C)Nos.469 of 2011 and 15231-32 of 2011 arise out of different orders of the Andhra Pradesh High Court, the same will be dealt with separately, although, they have been taken up for hearing along with the other Special Leave Petitions.

2. For the sake of convenience, we shall refer to the facts in SLP(C)No.9541 of 2007 (Government of Andhra Pradesh & Ors. Vs. Sri Sevadas Vidyamandir High School & Ors.) in deciding the matters.

3. The subject matter of the various writ petitions, which were disposed of by the learned Single Judge of the Andhra Pradesh High Court, culminating in the various appeals, which were disposed of by the common judgment dated 29th December, 2006, is the effect of the ban order imposed by the State Government vide Memo No.1280/COSE/A2/2004-4 dated 20th October, 2004, on the filling up of existing vacancies in the aided posts of teachers where the recruitment process had already been initiated by the management of the private schools. The learned Single Judge, who had heard the writ petitions, had declared that the said ban would not be applicable to the recruitment process already initiated by the management of the private schools for filling up the vacant aided posts of teachers prior to the coming into effect of the aforesaid memo. The learned Judge had given a further direction to the said authorities to allow the writ petitioners to complete the process

of selection. In some cases, a further prayer was made that the concerned authorities be also restrained from transferring teachers from one school to another by declaring them surplus and to release the amount of salaries payable to the teachers appointed against the aided posts.

4. For the sake of convenience, the Division Bench of the Andhra Pradesh noted the facts from the paper book of W.A.(S.R.)No.121938 of 2005, filed by the Government of Andhra Pradesh and Others against an order dated 9th March, 2005, passed by the learned Single Judge in Writ petition No.22804 of 2004, i.e., C.A.M. High School, Nellore Vs. Government of Andhra Pradesh and others, wherein, pursuant to leave granted, a prayer had been made for quashing the impugned Memo dated 20th October, 2004, along with Rc.No.140/B2-1/2005 dated 3rd November, 2005, issued by the Director of School Education, Andhra Pradesh, Hyderabad.

5. C.A.M. High School, Nellore, is a private aided school established by Samavesam of Telugu Baptist Churches, wherein all the posts of teachers sanctioned for the school are aided posts. In 2004, the management of the school approached the District Education Officer, Nellore, for grant of permission to fill up the existing vacant posts. The said officer, by his letter dated 17th September, 2004, to the Regional Joint Director, School Education, Guntur, recommended grant of sanction to the management of the school to fill up the vacant aided posts. Such permission was duly granted by letter dated 22nd September, 2004, which has been reproduced in full in the judgment of the Division Bench of the Andhra Pradesh High Court. Pursuant to such permission being granted by the Regional Director of School Education, Guntur, the management of the school initiated the recruitment process by requesting the District Employment Officer, Nellore, to forward the names of eligible candidates and also by publishing advertisements in two daily newspapers inviting applications for filling up the vacant posts.

6. While the recruitment process was underway, the school was informed that the Government had issued the above-mentioned Memo dated 20th October, 2004, imposing a ban on the filling up of the vacant posts and, therefore, the selection process could not be completed. The management thereupon filed Writ Petition No.22804 of 2004 for a declaration that the decision contained in the said Memo dated 20th October, 2004, was not retrospective and the same could not, therefore, be applied to the ongoing process of recruitment initiated for the purpose of filling up the vacant aided posts for which permission had already been granted by the competent authority. As was noted by the Division Bench, in the counter filed by the District Education Officer, Nellore, it was not disputed that in furtherance of the sanction granted by the Regional Joint Director, Guntur, the process of recruitment of 8 teachers had been initiated by the management of the school and that Shri M.Ramalingam, Deputy Educational Officer, had been nominated as the departmental representative on the Staff Selection Committee. In fact, the date of interview had been fixed in consultation with Shri Ramalingam, but the same could not be completed on account of the promotion of Shri Ramalingam as the District Education Officer.

7. Thereafter, the management of the school suo motu fixed 14th December, 2004, as the date of the interview, but, although, the interviews were held, no further steps could be taken up on account of the ban order imposed by the State Government vide Memo dated 20th October, 2004. The Division Bench observed that the learned Single Judge had taken note of the fact that while permission had been given to fill up the vacant posts on 22nd September, 2004, the Memo in question was issued subsequently on 20th October, 2004.

8. Various appeals had been filed by the State of Andhra Pradesh against the said decision of the learned Single Judge before the Division Bench. While the appeals were pending, the Government began a process of rationalization for filling up all the vacant posts. Taking note of the same, the Division Bench adjourned the hearing of the appeals with liberty to the counsel for the writ petitioners in one of the cases to comprehensively amend the pleadings and also to challenge the legality of the Memo dated 20th October, 2004, if so advised. In furtherance of such leave, the writ petition filed by the C.A.M. High School, Nellore, was amended to challenge the legality of the said Memo dated 20th October, 2004. Ultimately, the Division Bench dismissed the appeals filed by the Government of Andhra Pradesh and allowed the writ petitions filed by the management of the private schools and directed that they would be free to appoint selected candidates and seek approval of such appointments from the Competent Authority. The Division Bench also quashed the exercise of rationalization undertaken in furtherance of the interim order dated 31st October, 2005, together with the directions contained in the letter dated 3rd November, 2005, issued by the Director of School Education, with liberty to the Competent Authorities to undertake a fresh exercise of rationalization, which might lead to certain teachers being declared surplus and for their absorption.

9. Appearing for the Government of Andhra Pradesh, Mr. P. Vishwanatha Shetty, learned Senior Advocate, submitted that the ban order imposed by the State Government, vide Memo dated 20th October, 2004, came into operation in respect of appointments of teachers in private aided institutions in the State. Mr. Shetty submitted that the Government of Andhra Pradesh, which had the full authority to extend grant-in-aid to educational institutions, also possessed the consequential and incidental power to adjust the posts covered under the grant-in-aid scheme and to transfer personnel from one institution to another. Since a decision had been taken up by a High Power Committee presided over by the Chief Minister, its decision was final and conclusive and it was not open to the High Court to scrutinize the same. It was submitted that in certain eventualities it could become necessary to declare staff of a school to be surplus and to transfer them to other schools and the power of the Government in such cases could not be curtailed. Mr. Shetty submitted that it is to meet such eventualities that a decision had been taken by the State Government to rationalize the staff pattern of the different institutions on a need-based basis.

10. On the other hand, it was emphatically argued on behalf of the respondent School that the Memo dated 20th October, 2004, did not have retrospective effect and could not, therefore, stultify the recruitment process initiated by the management of private aided schools where permission of the Competent Authority had been given prior to 20th October, 2004.

Accordingly, it was incumbent on the part of the Competent Authority to grant approval for the appointments made pursuant to the permission granted prior to 20th October, 2004, to the private aided schools for filling up the vacant posts in the school.

11. Holding the brief on behalf of Ms. Sunita Rao, learned Advocate, appearing for the respondent schools, Ms. Mahalakshmi Pavani, learned Advocate, submitted that as had been held by the Division Bench of the Andhra Pradesh High Court, the rationalization process was violative of Rule 10(17) of the A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools Under Private Management) Rules, 1993, inasmuch as, although, the said statutory Rules stipulated that the strength of students in private aided schools for two consecutive years would be the determining factor for transfer of surplus staff, the State had resorted to a wholly whimsical and arbitrary method to determine such surplus staff. Ms. Pavani submitted that in any event, having permitted the schools in question to fill up the vacant grant-in-aid posts after taking into account the need and the roll and attendance of students, it was no longer open to the State Government to adopt a different posture on account of the Memo dated 20th October, 2004, which was, in any event, prospective and not retrospective. Ms. Pavani submitted that interviews had been duly conducted on 14th December, 2004, for filling up the vacant posts in question, but the State Government had quite unreasonably refused to allow the recruitment process to be completed and to grant approval to candidates who had already been interviewed and had been selected for appointment.

12. Having considered the submissions made on behalf of the respective parties, we are of the view that no interference is called for with the judgment and order of the Division Bench of the High Court. There is no dispute that the Memo dated 20th October, 2004, imposing a ban on recruitment to grant-in-aid posts was issued after the schools in question had been given permission by the State authorities to fill up the vacant posts in the schools being managed and run by the writ petitioners, who are the respondents in these Special Leave Petitions. There is also no dispute that the said Memo was not given retrospective effect so as to negate the approval already given for filling up the grant-in-aid posts. The State Government and its authorities could not, therefore, contend that the rationalization process which had been introduced, would also apply in respect of the private aided schools, where the process of recruitment had already been commenced pursuant to the approval granted earlier. Furthermore, as was submitted by Ms. Pavani, even the approval which was granted for filling up the vacant aided posts, had been granted after due scrutiny as to the requirements of the schools in question. Since it is well-settled that administrative orders are prospective in nature, unless they are expressly or by necessary implication made to have retrospective effect, there is no need to refer to the decisions cited by Ms. Pavani, appearing on behalf of the respondent schools.

13. As indicated hereinbefore, we, therefore, see no reason to interfere with the judgment and order of the Division Bench of the Andhra Pradesh High Court impugned in these Special Leave Petitions and the same are accordingly dismissed.

14. As far as SLP(C)Nos.15231-32 of 2011 are concerned, the same have been filed by the Government of Andhra Pradesh, represented by its Principal Secretary, Education Department, Hyderabad, against Shaik Lal Mohammed and others. These Special Leave Petition are directed against the orders in the Writ Appeals filed by the Correspondent, Asafia High School, Malakpet, Hyderabad, against Shaik Lal Mohammed and others. The school was aggrieved by the order of the learned Single Judge in a writ petition filed by two employees of the school for a direction upon the State authorities to convert their posts into Class IV posts with effect from 9th June, 1980 and 16th March, 1981, respectively, and to pay them their arrears of salaries, which, according to them, were due. The two respondents had worked as sweeper and gardener-cum-watchman from 9th June, 1980 and 16th March, 1983, respectively. It was their claim that since their posts had been admitted into the grant-in-aid scheme and they had been appointed as full-time contingent employees, they were entitled to claim the benefit of certain Government Orders under which they were entitled to be converted as employees on the last grade service and the salary attached to such grade.

15. Claims of the said respondents were rejected by the State authorities on the ground that the posts had not been created under the orders of the Competent Authority and they had not been in service for a period of 10 years as on 1st April, 1985. Furthermore, they had not acquired the minimum educational qualification of Class VII as on the day G.O.Ms.No.259 dated 18th June, 1993, had been published. The learned Single Judge held that the said G.O.Ms. dated 18th June, 1993, was applicable to the said two respondents, who were the writ petitioners, and since the said findings had not been challenged by the Government, they had become final and, accordingly, the said respondents were entitled to have their posts converted into Class IV posts. Consequently, the order of rejection passed by the Regional Joint Director, Hyderabad, dated 6th April, 2004, was set aside and the writ appeal filed by the State against the said decision of the learned Single Judge was dismissed and the writ petitions filed by the said respondent Nos.1 and 2 were allowed.

16. It is in the light of the finding of the Division Bench of the High Court that findings of the learned Single Judge, had not been challenged, that G.O.Ms.No.259 dated 18th June, 1993, was made applicable to the petitioners. As the same had become final as between the writ petitioners and the State and it was no longer open to the State to come to a different conclusion, we see no reason to interfere with the impugned decision of the High Court and the said Special Leave Petitions are, accordingly, dismissed also.

17. As far as SLP(C)No.469 of 2011 is concerned, the same has been filed against the judgment and order dated 9th July, 2007, passed by the Division Bench of the Andhra Pradesh High Court, rejecting the prayer made on behalf of the State and the State authorities to condone the delay of 366 days in filing the writ appeal. Even the filing of the Special Leave Petition was delayed by 107 days. Since the subject matter of the writ petition was also with regard to the application of the ban order imposed by the Memo dated 20th October, 2004, which we have already considered in SLP(C) Nos.9541 and 10945 of 2007 decided in the earlier part of the judgment, we are not inclined to interfere with the order of the Division Bench dismissing the writ appeal on the ground of delay. The SLP(C)No.469 of

2011 is, therefore, dismissed in the light of the decision rendered in the aforesaid Special Leave Petitions and also on the ground of delay.

18. Having regard to the different circumstances in which the Special Leave Petitions have been filed, the parties will bear their own costs therein.