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APHC010469952024



*** THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI**

+W.P.NO.24719 OF 2024

% 19.08.2026

#Between:

M Rajasekhar

...Petitioner

\$And:

The State Of Andhra Pradesh and Others

...Respondent(s)

! Advocate for Petitioner:

KASA JAGANMOHAN REDDY

^ Advocate for Respondent:

GP FOR SCHOOL EDUCATION

<Gist:

>Head Note:

? Cases referred:

1. 2010 (8) SCC 49
2. 1996 SCC OnLine AP 1024
3. 1996 SCC OnLine AP 402
4. (2020) 13 SCC 411
5. (1974) 1 SCC 717

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

+W.P.NO.24719 OF 2024

M Rajasekhar

...Petitioner

\$And:

The State Of Andhra Pradesh and Others

...Respondent(s)

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE BALAJI MEDAMALLI

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|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of order may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

JUSTICE BALAJI MEDAMALLI

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI**WRIT PETITION NO: 24719 OF 2024****ORDER:**

This Writ Petition is filed seeking the following relief:

“...to issue a writ, order or direction more in the nature of Writ of Mandamus by declaring the impugned proceedings vide Rc.No.9836/B3/AI/ 2015 dated, 18.09.2024 on the file of the 3rd respondent as illegal, arbitrary, discriminatory and against the Law laid down by the Honble Apex court in between Sindhi Education Society and another v Chief Secretary Government of NCT Delhi and others reported in 2010 (8) SCC 49 and between K.C. High School, Korthareddy palem Guntur and Ors Vs Government of Andhra Pradesh Education department reported in 1996 SCC online AP 1024 and set aside the same and consequently direct the 3rd respondent to consider the approval dated-30.12.2003 submitted by the 4th respondent with regard to appointment of the petitioner and accordingly further direct the 3rd respondent to sanction grant in aid w.e.f, 30.12.2003 and pay all arrears...”

2. The brief facts of the case are that:

The petitioner was initially appointed as an Attender in the 4th Respondent-School against the retired vacancy on 30.06.2000. Thereafter, as the 3rd respondent did not approve the said appointment, the 4th respondent filed W.P.No.17416 of 2002 before this Court seeking permission for fresh recruitment. Pursuant to the orders of this Court dated 12.09.2002 in W.P.No.17416 of 2002, the 3rd Respondent, vide proceedings dated 17.12.2003, permitted the 4th Respondent to fill up the said vacancy. Accordingly, a notification dated 20.12.2003 was issued. Pursuant thereto, after conducting written test and oral interview on 28.12.2003, the petitioner was selected and appointed on 30.12.2003 as aided attender against the

regular aided vacancy. Immediately thereafter, the 4th Respondent submitted a proposal dated 30.12.2003 seeking approval of the petitioner's appointment. However, no orders were passed thereon. Aggrieved by that, the petitioner, along with similarly situated employees, filed W.P.No.31127 of 2011. This Court, by an order dated 11.12.2013, directed the respondents therein to consider their cases for absorption into the aided vacancies subject to fulfillment of conditions disregarding Government Memo dated 20.10.2004. However, the petitioner's claim was rejected by the 3rd Respondent vide Rc.No.9098/A1/2011, dated 16.05.2014, on the ground of alleged non-compliance with the Rules by the management. Challenging the rejection order dated 16.05.2014, petitioner filed W.P.No.4809 of 2015. During its pendency, the 3rd Respondent issued another rejection order vide Rc.No.9836/A1/2012, dated 15.04.2015 and the same was challenged in W.P.No.15794 of 2016. Thereafter, W.P.No.4809 of 2015 was dismissed as withdrawn by order dated 30.03.2016. This Court, by an order dated 28.12.2023 in W.P.No.15794 of 2016, disposed of the writ petition directing the 3rd Respondent to consider the proposal dated 30.12.2003 submitted by the 4th Respondent and pass appropriate orders in the light of the judgments referred therein. However, the 3rd Respondent rejected the petitioner's claim vide proceedings dated 05.03.2024 without considering the judgments cited therein. Thereby, the petitioner filed C.C.No.1851 of 2024. During the pendency of the said contempt proceedings, the impugned proceedings dated

18.09.2024 were issued, and the contempt case was closed granting liberty to the petitioner to challenge the same, if he is aggrieved.

3. Aggrieved by that, the present Writ Petition has been filed.

4. The respondents filed counter-affidavit contending that the petitioner was initially appointed on 30.06.2000 temporarily against a retired vacancy, subject to approval by the competent authority. Subsequently, pursuant to the orders of this Court, the 3rd Respondent, vide proceedings dated 17.12.2003, permitted the 4th Respondent-School to fill up one aided Attender post subject to compliance with the procedure prescribed under Rule 12 and 13 of G.O.Ms.No.1, dated 01.01.1994, and the guidelines issued by the competent authority. It is contended that the management failed to comply with the conditions stipulated in the said proceedings dated 17.12.2003, particularly the prescribed selection procedure and roster requirements. Therefore, the proposals seeking approval of the petitioner's appointment were rejected. It is further contended that pursuant to the directions of this Court in W.P.No.15794 of 2016 and subsequent contempt proceedings, the petitioner's case was reconsidered with reference to the judgments in ***Sindhi Education Society Vs Chief Secretary Government of NCT Delhi***¹ and ***K.C. High School, Korthareddypalem Vs Government of AP***². The said judgments do not advance the petitioner's case, as the appointment itself was not made in accordance with the prescribed procedure. Though the 4th Respondent is a

¹ 2010 (8) SCC 49

² 1996 SCC OnLine AP 1024

minority educational institution, appointments to aided posts are required to comply with the statutory requirements under G.O.Ms.No.23, dated 10.03.1999, read with Rule 12(8) of G.O.Ms.No.1, dated 01.01.1994. It is further contended that the proceedings dated 17.12.2003, which imposed the condition to follow roster system for filling up the aided vacancy, was never challenged by the Management, as such, it attained finality. Therefore, the petitioner cannot question the said condition after a lapse of two decades. Accordingly, the impugned proceedings were issued after due consideration of the relevant Rules, facts, and judgments relied upon by the petitioner, and no grounds are made out for interference under Article 226 of the Constitution of India.

5. Heard Sri Kasa Jagan Mohan Reddy, learned counsel for the petitioner and Sri Rama Chandra Rao Gurram, learned Government Pleader appearing for respondents.

6. Learned counsel for the petitioner submits that the petitioner was duly appointed on 30.12.2003 against a regular aided vacancy after following a proper selection process, including issuance of notification, conduct of written test and oral interview, pursuant to the permission granted by the competent authority vide proceedings dated 17.12.2003. Learned counsel further submitted that the rejection of the petitioner's appointment on the ground of non-adherence to the rule of reservation is unsustainable, as the 4th respondent institution is a minority educational institution and, in terms of Rule 12(6) of G.O.Ms.No.1 dated 01.01.1994, such institutions are exempted from

following the roster system when appointing candidates belonging to the same minority community.

7. Learned counsel for the petitioner further contended that the petitioner belongs to the Christian minority community and was appointed by a minority institution, and therefore the objection relating to reservation of the post for BC-A (Woman) is not applicable. He further contended that the ground regarding lack of prior permission is incorrect, as the competent authority had already granted permission on 17.12.2003, and the selection was conducted thereafter. The respondents failed to consider the subsequent valid selection process and erroneously treated the petitioner's appointment as one made in 1999. It was further contended that despite submission of proposals for approval as early as 30.12.2003 and repeated directions of this Court, the respondents rejected the claim of the petitioner. Having allowed the petitioner to work for about 26 years, the respondents cannot now deny approval and grant-in-aid, as such, the impugned proceedings are liable to be set aside.

8. Per contra, learned Government Pleader, appearing for the respondents, contended that the petitioner's appointment was not made in accordance with the prescribed statutory procedure. It was submitted that although permission was granted on 17.12.2003 to fill up the aided post, the management failed to comply with the mandatory requirements under Rules 12 and 13 of G.O.Ms.No.1 dated 01.01.1994, particularly with respect to the selection procedure and roster system. The vacancy was reserved for BC-A (Woman), and the appointment of the petitioner in deviation of the roster

requirement renders the appointment invalid. Learned Government Pleader further argued that there were inconsistencies in the petitioner's claims regarding the date and manner of appointment, indicating irregularity. Learned Government Pleader further submitted that even minority institutions are bound to follow statutory norms while making appointments to aided posts, and exemption from reservation is not absolute. He further contended that the conditions imposed in the proceedings dated 17.12.2003, including adherence to the roster, were never challenged and have attained finality.

9. Learned Government Pleader further contended that as the management has not followed the procedure prescribed under G.O.Ms.No.1, dated 01.01.1994, particularly, Rule 12 of the said G.O., which mandates publicity of recruitment notification by publishing the same in at least two News Papers having large circulation as required under Rules 12(2) and 12(4), apart from allowing candidates from Employment Exchange. As the management failed to adhere to the prescribed procedure, the entire selection process is vitiated. However, the respondent – Education Department has no objection to the petitioner continuing against an unaided vacancy to work under the management, but he is not entitled to be considered for absorption into grant-in-aid vacancy. The aforesaid rules are framed with a view to provide ample opportunity to the eligible candidates to participate in the selection process, and to maintain transparency in the selection process. Whereas the management had not adhered to the prescribed procedure, as such, petitioner cannot claim absorption against grant-in-aid vacancy.

10. Learned Government Pleader also placed reliance on G.O.Ms.No.23, Minorities Welfare (M&R) Department, dated 10.03.1999, wherein paragraph No.4 of the said G.O., prescribes the procedure for selection of the candidates in minority educational institutions. It provides that, if the Employment Exchange is unable to sponsor available candidates, the educational agency may make advertisements in the daily news papers having wide circulation calling for applications from the candidates after subjecting them to interview and selection by the Staff Selection Committee by constituting the same. In the instant case, the respondent – school has not published in the newspapers, as such, the petitioner cannot be absorbed as his very initial appointment itself is contrary to the Rules. Therefore, the rejection of the petitioner's claim was justified, and no interference is warranted in this writ petition.

11. Considered the submissions made on either side. On perusal of the rejection order dated 18.09.2024, it is evident that the petitioner's claim was rejected primarily on the ground of non-adherence to the rule of reservation, as the vacancy in question was earmarked for a BC-A (Woman), whereas the petitioner was appointed as an Attender against the said vacancy without following the prescribed roster. Another objection raised in the impugned order is that the petitioner was appointed without obtaining prior permission from the competent authority, on the premise that his initial appointment was in the year 2000, whereas permission was granted subsequently.

12. In this context, it is relevant to refer to G.O.Ms.No.1 dated 01.01.1994, whereby the State Government framed the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Management) Rules, 1993. Under Rule 12 of the said Rules, the procedure for appointment of staff is prescribed. For better appreciation, Rule 12(6) reads as follows:

“The selection of the posts in all private educational institutional shall conferred the communicate rotation roster. However this shall not apply to minority educational institution only if they are selecting a candidate belonging to the concerned minority community. Where such a candidate is fitted a vacancy belonging to S.C./ ST., then the S.C. / S.T., vacancy shall be carried forwarded to the next.”

13. Upon perusal of the above rule, it is clear that the requirement of following the rule of reservation is exempted in respect of minority educational institutions where the management selects candidates belonging to the concerned minority community. In the present case, the petitioner belongs to the Christian minority community and was appointed by a minority institution. Therefore, the said rule has no application, and the appointment of the petitioner cannot be rejected on the ground of non-adherence to the roster meant for a BC-A (Woman) candidate.

14. It is also relevant to note that immediately after the grant of permission, the management of CSI High School addressed a letter dated 18.12.2003 to the District Educational Officer seeking permission to fill up the posts with candidates belonging to the minority community, and there is no material to

show that the said request was either rejected or disputed. In view of the above, the objection relating to non-adherence to the roster is unsustainable.

15. With regard to the other objection relating to obtaining prior permission, it is to be noted that the management had obtained permission vide proceedings dated 17.12.2003 from the District Educational Officer for filling up various teaching and non-teaching posts. Pursuant thereto, the management addressed letters to the Employment Exchange and also to all the Churches of South India, Christian Minority Institutions calling for applications from the eligible candidates. After conducting a selection process comprising a written test and oral interview on 28.12.2003, the petitioner was duly selected. The proposal seeking approval of his appointment was thereafter submitted to the Regional Joint Director of School Education, Cuddapah, on 30.12.2003. As the said proposal remained pending, the petitioner approached this Court by filing W.P. No.31127 of 2011, which was disposed of directing the respondents to consider the case of the petitioners for absorption into aided vacancy, subject to fulfillment of other conditions governing the subject, disregarding the Government Memo dated 20.10.2004. Pursuant to the said directions, the management once again submitted a proposal for consideration of the petitioner's case. However, despite the specific directions of this Court, the petitioner's case was not duly considered and was rejected by proceedings dated 16.05.2014 on the ground that prior permission from the competent authority had not been obtained.

16. In regard to non adherence of the procedure, learned counsel for the petitioner placed reliance on Rule 12(8) which reads as under:

“All appointments made either teaching or non-teaching staff by aided or un-aided 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 the selection. The Competent Authority shall grant approval unless the selection has been in violation of these rules. 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 be with the educational agency”

17. Placing reliance on the above, learned counsel for the petitioner submitted that the proposals seeking approval were forwarded to the respondent – Regional Director of School Education on 30.12.2003 itself. However, no order has been passed refusing approval to the said proposals. Learned counsel further submitted that the above said Rule prescribes time line for considering the approvals by the competent authority. However, competent authority kept silent without passing any order.

18. Learned counsel for the petitioner also placed reliance on judgment of this Court in **Regional Joint Director of School Education, Guntur v. G.George Moses³**, wherein this Court, while considering Rule 15(4)(a) of the Rules held that if the authorities failed to grant denial of the approval within three months, the person so selected is entitled to continue as a teacher if he is not otherwise ineligible of the Rules. The said Rule is akin to Rule 12(8) of the Rules.

³ 1996 SCC OnLine AP 402

19. Learned counsel for the petitioner also placed reliance on judgment of the Hon'ble Apex Court in **Chandana Das v. State of West Bengal**⁴, wherein it was held that the rights of minority education institutions flow from the Constitution of India and have protection under Article 26 and 30 of the Constitution of India. Such rights cannot be diluted by State or its functionaries insisting the appointment should be made only with the approval of the Director or by following the mechanism generally prescribed for institution that do not enjoy the minority status and it is also stated that once it is not in dispute that the petitioners have been serving for a considerable length of time on a meager salary which the institution has been paying to them in the absence of the State Government recognizing the appointments and releasing grant-in-aid against their posts. The said needs to be taken into consideration. The Hon'ble Apex Court in the above said judgment also referred to the judgment in **Xavier's College Society v. State of Gujarat**⁵, wherein the relevant portion reads as under:

103. Another conclusion which follows from what has been discussed above is that a law which interferes with a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution is void as being violative of Article 30(1). It is, of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment without infringing Article 30(1). In the case of Rev. Father W. Proost this Court while dealing with Section 48-A of the Bihar Universities Act observed that the said provision

⁴ (2020) 13 SCC 411

⁵ (1974) 1 SCC 717

completely took away the autonomy of the governing body of the college and virtually vested the control of the college in the University Service Commission. The petitioners in that case were, therefore, held entitled to the protection of Article 30(1) of the Constitution. The provisions of that section have been referred to earlier. According to the section, subject to the approval of University appointment, dismissals, removals, termination of service or reduction in rank of teachers of an affiliated college not belonging to the State Government would have to be made by the governing body of the college on the recommendation of the University Service Commission. The section further provided that the said Commission would be consulted by the governing body of a college in all disciplinary matters affecting teachers of the college and no action would be taken against or any punishment imposed upon a teacher of a college otherwise than in conformity with the findings of the Commission.

20. Placing reliance on the above said judgment in *Xavier's College Society v. State of Gujarat's* case (cited supra), learned counsel submitted that the selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities cannot be denied such right of selection and appointment without infringing Article 30(1) of the Constitution of India and further submitted that so long as the persons chosen have the qualifications prescribed by the management, the choice must be left to the management and that is part of the fundamental right of the minorities to administer the educational institution established by them. Thus, in the instant case, though the publication was not made but as the educational institution, being a minority educational institute, had published the notification in the Churches of concerned community to invite applications from the candidates belonging to the said community. Mere deviation from the prescribed procedure regarding publication of the notification cannot, by itself, be said to vitiate the appointment, particularly in view of the petitioner's long and uninterrupted

continuance in service against the post to which he was selected and appointed. Further, as the competent authority did not refuse approval at the threshold and thereby permitted the management to continue the petitioner in service, the respondents cannot be permitted to raise such an objection after such a long lapse of time.

21. It is not in dispute that the petitioner was initially appointed in the year 1999 on a temporary basis. However, pursuant to the permission granted by the competent authority on 17.12.2003, he was subjected to a regular selection process, and after conducting a written test and oral interview, he was selected by a duly constituted selection committee. Therefore, the ground of rejection that the petitioner was appointed without concurrence of the competent authority is untenable. The impugned order fails to take into consideration the subsequent valid selection conducted in the year 2003 and erroneously proceeds as if the petitioner's appointment relates to 26.08.1999, even though proposals for approval have been pending since 30.12.2003.

22. A conjoint reading of the proceedings dated 17.12.2003, the management's letter dated 18.12.2003, and the communication dated 30.12.2003 addressed to the Regional Joint Director of School Education clearly establishes that the petitioner was selected in the year 2003 pursuant to the permission granted by the District Educational Officer and that proposals were duly submitted for approval of the competent authority. In such circumstances, after permitting the petitioner to work for about 26 years against an aided vacancy, the respondents cannot, at this stage, deny him the

benefit of approval and absorption. As such, the objection raised by the respondents regarding lack of prior permission from the competent authority is unsustainable.

23. For the foregoing reasons, the impugned proceedings vide Rc.No.9836/B3/A1/2015 dated 18.09.2024 is liable to be set aside.

24. Accordingly, the Writ Petition is allowed. Consequently, the impugned proceedings vide Rc.No.9836/B3/A1/2015 dated, 18.09.2024 is hereby set aside. The respondents are directed to regularize the services of the petitioner within a period of four months from the date of receipt of a copy of this order.

As a sequel, miscellaneous applications, pending, if any, shall stand closed.

Date: 19.08.2026
Dvs

JUSTICE BALAJI MEDAMALLI

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI

WRIT PETITION NO: 24719 OF 2024

Date: 19.08.2026

Dvs