

N. Tulasidas Vs Secretary, Education Department

Court: Andhra Pradesh High Court

Date of Decision: Nov. 20, 2013

Citation: (2014) 3 ALT 636

Judgement

@JUDGMENTTAG-ORDER

Dama Seshadri Naidu, J.

The present writ petition is filed seeking a direction to the respondents to absorb the petitioner in the vacant

aided Grade-I Hindi Pandit Post in the 4th respondent school in terms of G.O.Rt. No. 62, Education (SE-PS2) Department, dated 31.01.2006

forthwith, or as and when the Government issues orders for filling up vacancies in aided schools in the State of Andhra Pradesh. The petitioner has

also sought a consequential direction to the respondents not to fill up the vacant aided Grade-I Hindi Pandit Post in the 4th respondent school until

the issue of the petitioner's absorption is decided. The facts in brief are that the petitioner, having all the requisite qualifications, initially joined as

Grade-II Hindi Pandit on 27.08.1991 in an unaided vacancy in the 4th respondent school. The 4th respondent school has two aided posts

sanctioned, viz., Grade-I Hindi Pandit and Grade-II Hindi Pandit with teachers working in those sanctioned posts. In the year 1985 the State

Government, however, issued orders dispensing with the subject of Hindi for the students of VI and VII classes, as a result of which, the already

sanctioned post of Grade-II Hindi Pandit post in the 4th respondent school was withdrawn. The record reveals that later in the year 1990, the

subject was reintroduced by the Government but the post that had been withdrawn was not restored or re-sanctioned to the school.

2. Since the school has a large number of pupils, on the request of the management of the 4th respondent school, the Government permitted them

to appoint a Grade-II Hindi Pandit in the unaided vacancy, which came to be filled in with the petitioner as was stated above.

3. As far as the Grade-I Hindi Pandit is concerned, since the incumbent teacher was taking care of higher classes, for which Hindi was never

withdrawn as a subject at any point of time, she continued to occupy the said post till her retirement on 31.10.1998. It has come on record that

through proceedings dated 02.01.1999 (sic. 2-9-1991), the 4th respondent school sent proposals to the Government for approval/ratification of

the petitioner's appointment to unaided Grade-II Hindi Pandit post. In the interregnum, as the incumbent teacher in Grade-I Hindi Pandit retired

from service on 31.10.1998, through proceedings dated 06.11.1998 issued by the 4th respondent school, the petitioner was promoted and

absorbed in Grade-I Hindi Pandit post on the strength of the resolution passed by the management committee. Even this development has been

brought to the notice of the authorities concerned by the 4th respondent, which is said to have asked for the leave of the respondent authorities to

absorb the petitioner into Grade-I post instead.

4. Though the original proposals have been pending since 1991 for approval/ratification of the appointment of the petitioner in Grade-II Hindi

Pandit post, as the Government has not considered the same, the petitioner was constrained to file W.P. No. 4911 of 2000, which was disposed

of on 28.03.2000 by this Court directing the respondent authorities to consider the proposals dated 06.11.1998 submitted by the 4th respondent

and to pass appropriate orders within a period of two weeks. Eventually, the 2nd respondent issued proceedings dated 25.04.2000 rejecting the

petitioner's absorption on the ground that unaided and unapproved Grade-II Hindi Pandit post is not a feeder category to the post of Grade-I

Hindi Pandit post. Aggrieved thereby, the petitioner filed W.P. No. 11479 of 2000, which was disposed of on 03.07.2000, giving liberty to the

petitioner to file an appeal before the 1st respondent, which the petitioner did on 18.07.2000. It further emerges from the record that though the

issue was concerning the petitioner's absorption into Grade-I Hindi Pandit post as well, the 1st respondent issued memo dated 19.12.2000

approving his appointment as Grade-II Hindi Pandit in unaided vacancy. It is relevant to bear in mind that the proposal concerning the post of

unaided Grade-II Hindi Pandit was sent in the month of September, 1991, and eventually it was considered by the authorities in the month of

December, 2000. Here, it may have to be appreciated that the initial corresponding the school was to ratify the appointment of petitioner in Grade-

II post. Before the authorisation could take a division (sic. decision) on it, the petitioner was promoted on Grade-I Hindi Pandit. Hence, from then

onwards the issue involved both aspects-(1) Ratification as to Grade-II post, and (2) The position of the petitioner in the promoted post, i.e.,

Grade-I.

5. Relentless as the petitioner has been, the petitioner has filed another writ petition in W.P. No. 14849 of 2003, which again was disposed of on

10.12.2004 directing the respondent authorities to dispose of the petitioner's representation dated 03.01.2000 for his absorption into the post of

the aided Grade-I Hindi Pandit within a period of six weeks. When the 2nd respondent through his letter dated 16.03.2005 requested the 1st

respondent to issue necessary orders for the petitioner's absorption as was done in the case of other similarly placed persons, the 1st respondent

issued memo dated 30.05.2005 directing the petitioner to submit his explanation as to how he was eligible to be considered for absorption in aided

Grade-I Hindi Pandit post. On the submission of the petitioner's explanation dated 09.09.2005, the 1st respondent eventually rejected the

proposal through memo dated 30.09.2005. The rejection is said to be based on the ban imposed by the Government through memo dated

20.10.2004.

6. Under those facts and circumstances, the petitioner filed the present writ petition seeking his absorption into the vacant aided Grade-I Hindi

Pandit post as provided in G.O.Ms. No. 62 dated 31.01.2006, since he has already been working in the said post for a considerable time.

7. The 3rd respondent filed its counter affidavit contesting the case of the petitioner. Firstly, it is contended that the petitioner has no locus to

approach this Court seeking redressal of his grievance, inasmuch as it is only the Correspondent of the school concerned who could approach,

initially the authorities and thereafter this Court seeking the relief. It is pleaded that the 4th respondent management has not obtained any prior

permission from the District Educational Officer or from the Regional Joint Director of School Education to appoint the petitioner as Grade-II

Hindi Pandit in the unaided vacancy. It is further contended that even the so-called promotion of the petitioner into Grade-I Hindi Pandit aided

category was without any basis, since the 4th respondent management has not obtained any prior permission from the authorities concerned. Thus,

the respondent authorities have pleaded that the very entry of the petitioner into the service of the 4th respondent school is without any prior

sanction of the authorities and his subsequent continuation, more particularly his alleged promotion to the post of aided Grade-I Hindi Pandit, is

without any method or manner. Accordingly, the respondents have prayed that the writ petition is liable to be dismissed.

8. The learned counsel for the petitioner has taken me through the entire record and has submitted that though the petitioner has approached this

Court time and time again, the respondent authorities have remained un-responsive and rejected the case of the petitioner on one pretext or

another. He has underlined the fact that the petitioner has been working in the 4th respondent school for more than 22 years, teaching 1300

students from Classes VI to X. In fact, he has been discharging the duties of both Grade-II and Grade-I Hindi Pandits, since no other teacher has

been appointed after his entry in 1991, either under aided or unaided category.

9. Referring to the contentions of the respondent authorities in their counter affidavit, the learned counsel for the petitioner has pointed out that the

statement of the authorities that his initial entry into unaided Grade-II category was without any sanctioning on the part of the authorities does not

hold water. In fact, in the very counter affidavit, in para-11, pointed out the learned counsel, the authorities have pleaded that the petitioner's

appointment in the unaided Grade-II category was ratified by the Government through the memo dated 19.12.2000. He has also strenuously

refuted the contention that he does not have the locus to approach the Court ventilating his grievance, stating that it is ultimately he who suffered

and has been suffering in the light of the gross inaction of the respondent authorities. The 4th respondent management has time and again sent

proposals and represented to the authorities to consider the case of the petitioner in the interest of the pupils, but the authorities displayed totally a

lackadaisical approach keeping the matter pending for more than a decade. As such, it is contended that he has got the necessary locus to

approach the Court as well as the authorities seeking regularisation of his services into the aided category.

10. Insofar as the contention that there could not have been any promotional avenue from unaided Grade-II to aided Grade-I category is

concerned, the learned counsel for the petitioner has pointed out that on earlier occasion under identical circumstances, the very same authorities

have passed orders facilitating such transfer and absorption. To substantiate his claim, the learned counsel has referred to the proceedings of the

Director of School Education, Andhra Pradesh, dated 30.03.1994, whereby one Sri V. Krishna, working as Hindi Pandit Grade-II in the unaided

category, was absorbed into aided Grade-I Hindi Pandit post. Incidentally, the said vacancy in Grade-I Hindi Pandit category fell vacant due to

the incumbent leaving the organisation. In any event, there is a clear precedent, it is contended, to falsify the claim of the respondent authorities that

such a transition (sic. transfer) or absorption is not possible. The learned counsel for the petitioner has placed reliance on an un-reported judgment

of this Court dated 30.07.2013 in W.P. No. 9503 of 2005 and batch rendered by a learned Single Judge in support of his submissions.

11. Per contra, the learned Government Pleader has submitted with equal vehemence that the cause of the petitioner does not call for any judicial

intervention especially by exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. It is submitted, as a matter of

preliminary objection, that this Court on more than one occasion has held that it lies only in the domain of the management of the private school to

approach the authorities in the first place and, if necessary, later this Court, seeking implementation of the policy, including filling up of the aided

posts. The petitioner at best could, contended the learned Government Pleader, represent to the school management, but could not directly

approach either the authorities or this Court for whatever relief.

12. In support of his submissions, the learned Government Pleader has placed reliance on an unreported judgment dated 19.12.2005 passed in

W.A. No. 2407 of 2005. In the said case, a Division Bench of this Court has held, referring to the facts obtained therein, that since the

management has taken up the issue to the level of Supreme Court and fought for the grant in aid, if there is any non-implementation thereof, only

the school management could have the necessary locus standi to question the inaction of the Government authorities. As it is observed, in the said

case, instead of school management, a particular teacher approached this Court seeking compliance with the order of the Hon"ble Supreme Court.

Under those circumstances, the writ petition and subsequent writ appeal have been dismissed by this Court observing in the manner stated above.

13. Another case, on which the learned Government Pleader has placed reliance is an order 13.12.2005 rendered in W.P. No. 26554 of 2005. A

perusal of the order indicates that the petitioner therein, being a teacher working in unaided category, approached this Court alleging that she made

a representation to the authorities to consider her case for absorption and that the authorities have not acted on her representation. In fact, this

Court has held that it is essential for the management of the school first to make the necessary proposals seeking permission for filling up the

existing vacant aided post and that no employee of a school can directly approach the authorities in the Government for absorption or appointment

against any vacancies. Under those circumstances, it was held that it was the prerogative of the management to submit necessary proposals to

pursue it further. It is very evident from the above referred case that in the first place the management has not sent any proposals at all. In the

absence of such proposal, the teacher concerned cannot compel the authorities to act. In the present instance initially the petitioner was appointed

in 1991, the 4th respondent school immediately thereafter sent the proposal for absorption/approval and has continued to pursue the same till the

petitioner has chosen to file the writ petition. As such, both the cases that have been relied on by the learned Government Pleader can be

distinguished on facts and could be held that the ratio laid down therein by their Lordships does not have any application to the present case.

14. Referring to memo dated 19.12.2000, through which the approval was accorded to the appointment of the petitioner in unaided vacancy of

Grade-II Hindi Pandit, the learned Government Pleader has pointed out that clause (6) of the said memo is categorical in circumscribing the rights

of the petitioner. It is profitable to extract the same in view of its important bearing on the issue:

In the above circumstances, Government after careful examination of the appeal submitted by Sri N. Tulasidas, Grade-II (Un-aided) Hindi Pandit,

S.E. Railway Aided High School, Marripalem, Visakhapatnam, allow the appeal filed by him, and ratify the action of the management, S.E.

Railway High School, Visakhapatnam in creation of one post of Hindi Pandit (Grade-II) (Unaided) and appointment made in the said post by Sri

N. Tulasidas subject to condition not to claim aid now or in future Grade-II Hindi Pandit post and also fulfilment of the other conditions like

strength, Workload, etc.

15. It is true that there is a specific limitation imposed to the effect that the management could not claim aid now or in future to Grade-II Hindi

Pandit post. Susceptible as this condition to judicial scrutiny is, it does not call for any examination on that count. Suffice it to say that the condition

will have an application if aid is sought by the Manager of the school to a post which is unaided. As a matter of statutory requirement, the school

management having an aided post in its fold is required to seek the prior permission at the time of appointment of any teacher in the unaided

category. It is further required to get the said appointment ratified by the authorities. The ratification or refusal thereof depends solely on the

eligibility of the teacher recruited and any other concomitant factors. In my opinion, there could not have been any condition barring the right of

either the management or the incumbent teacher to have a claim to any future post, so long as such claim is not barred by any particular statute. In

essence, it is not a case of seeking aid to an unaided post or seeking conversion of an unaided post to an aided post.

16. It is undisputed that there were two aided Hindi Pandit posts in the 4th respondent school at one point of time, but subsequently it came down

to one solitary aided post. Despite the fact that Hindi subject was reintroduced to Classes VI and VII way back in the year 1990, the authorities

concerned have not thought it proper to reintroduce the aided post despite numerous pupils pursuing the subject. In any event, for the reasons to

be stated herein below the condition incorporated in clause (6) of the memo would not defeat the right of the petitioner to stake a claim to the

aided post provided he is qualified and such absorption is permissible under the existing statutory scheme.

17. In a recent judgment dated 30.07.2013, a learned Single Judge of this Court in W.P. No. 9503 of 2005 and batch has elaborately dealt with

the policy of the Government in not introducing aided post or in the alternative not filling up the aided posts that have already existed in private

schools, in the backdrop of Article 21 of the Constitution of India. It is relevant to observe here that one of the objections that has been taken by

the 1st respondent in rejecting the application of the petitioner for absorption either into Grade-II or into Grade-I Hindi Pandit post is that there

was a ban in operation.

18. To summarise, it could be stated that the first objection raised was that the petitioner's appointment was without the necessary sanction by the

authorities. As was stated earlier, the very counter affidavit of the respondent authorities amply indicated that his appointment into unaided Grade-

II category was ratified through memo dated 19.12.2000. The second objection raised was that there was no provision to promote a particular

teacher from unaided Grade-II to Grade-I category. The authorities, however, could not deny issuing such promotion and subsequent ratification

to another person, viz., Sri V. Krishna, through Rc. No. 1495/S4/94, dated 30.03.1994. For our present purpose, it may not be necessary to

dwell on the said appointment, which perhaps is a stray instance. It is a settled proposition of law that no person could take advantage of any

irregular appointment, if any made, as there could not be negative equity in the name of parity.

19. Thus, the issue boils down to this; whether the petitioner is entitled on his own under a particular provision of law to stake any claim to a

substantive post, rather than based on an error said to have been committed by the authorities concerned concerning some other appointments.

20. Much stress could not be laid on the contention of the petitioner that he ought to have been considered to be absorbed into Grade-I category

from Grade-II category on the basis on somebody else's appointment. In any event, what is required to be considered is whether the petitioner's

services should be regularised in aided category Grade-II Hindi Pandit post and whether in the absence of a sanctioned post in that category, any

direction could be given to the authorities to create one such post to accommodate the petitioner.

21. The statutory scheme and the extent of judicial directive that could be issued necessarily thus fall for consideration. Precisely these two aspects

have been very elaborately dealt with in order dated 30.07.2013 in W.P. No. 9503 of 2005 and batch. A perusal of the said order would indicate

that a series of writ petitions were filed questioning the memo dated 20.10.2004, through which the Government banned creating of aided posts or

filling up of existing vacancies in the Private Educational Institutions in aided category. Before proceeding further, it is to be stated that insofar as

the question of retrospective operation of the said memo of ban is concerned, it was eventually concluded by a judgment of the Hon'ble Supreme

Court that in Govt. of A.P. and Others Vs. Sri Sevadas Vidyamandir High School and Others, that it was only prospective.

22. It has emerged from the facts as were incorporated in the said Common Order dated 30.07.2013 in W.P. No. 9503 of 2005 that an issue

was raised contending that the ban in the light of the memo was applicable only in respect of aided post vacancies and not unaided vacancies and

that if the management of any school is serious, it is at liberty to fill up the post under unaided category, instead of insisting on having the aided

posts filled. Repelling both the contentions, the learned Single Judge, in the following extract-though long but necessary given its impact-has held:

I am not able to appreciate this contention of the learned Government Pleader. The very scheme of 1993 Rules, passed through G.O.Ms. No. 1,

Education (P.S. 2), dated 01.01.1994 was brought out to enable the private institutions to run their schools effectively charging reasonable fee

from the children. It is not open for the Government to claim that despite the impugned Memo, the private schools could have filled up the

vacancies with unaided staff. The impugned Memo certainly restricts the right of the private institutions to fill up the vacancies of grant-in-aid posts

which ultimately tinkers with Article 21A of the Constitution of India. Article 21A creates an obligation on the State to provide free and

compulsory education to the children between the age of 6 years and 14 years. In view of Article- 45 which obligates the State to provide

education till the completion of 6 years of age and in view of Article 21A which mandates the State to provide free and compulsory education for

children between the age of 6 years and 14 years, when the Government is not capable of maintaining institutions to impart education to every

child, Government cannot take away the grant-in-aid that was already conferred upon some posts in the schools. What the impugned Memo has

been attempting to do is withdrawing the grant-in-aid scheme slowly and step-by-step whenever an employee retired from service. I am afraid that

such a step on the part of the Government is violative of Article 21A of the Constitution of India.

The scheme envisaged grant-in-aid through the Grant-in-Aid Act provides norms. I am afraid that the benefit of grant-in-aid conferred upon the

institutions cannot be taken away by banning the filling up of grant-in-aid posts through the impugned Memo. The ban usually is a temporary affair,

but the ban created under the impugned Memo would appear to be a perpetual ban which is not permissible without amendment of the Act and the

Rules. Ordinarily, the Government institutions cannot be compared with private institutions and lack of parity between the organs of the two

institutions cannot be treated as an unreasonable clarification. However, in the present case, admittedly, Mandal Parishad and Zilla Parishad

Schools also have been receiving grant-in-aid. Consequently, so far as grant-in-aid schemes are concerned, those schools stand on the same

footing as private institutions. Filling up of the grant-in-aid posts in such schools and restraining the private institutions from filling up of the grant-in-

aid vacancies at the same time is indeed unreasonable discrimination prohibited by Article 14 of the Constitution of India. Even on this count, I

agree with the contention of the learned counsel for the petitioners that the impugned Memo is violative of Article 14 of the Constitution of India.

23. The upshot of the ratiocination of the above case is that the benefit of grant in aid conferred upon institutions cannot be taken away by banning

the filling up of the grant in aid post.

24. It is clear from the record that the petitioner has been qualified to hold the post in question. His initial entry into service was with the approval

of the competent authority. There is a clear vacancy in existence in aided category required to be filled up to cater to the needs of hundreds of

pupils who have been pursuing that compulsory subject, Hindi. The only impediment-the alleged ban-stood judicially invalidated. It is difficult to

discern any valid reason for the rejection of the petitioner's case for absorption into aided post of Grade-I Hindi Pandit. If the authorities are not

inclined to consider the case of the petitioner to be absorbed into the Grade-I post, it is clearly unjustifiable on the part of the authorities not to

regularise the services of the petitioner in Grade-II Hindi Pandit post. Despite the reintroduction of the Hindi subject in the school more than two

decades ago, the authorities have so far not restored the post.

25. In the light of the ratio laid down in Common Order dated 30.07.2013 in W.P. No. 9503 of 2005 and batch, it is imperative in the interest of

justice to direct the respondent authorities to restore the post of Aided Secondary (sic. second) Grade Hindi Pandit and consider the case of the

petitioner for absorption therein, subject to his suitability on other criteria to be met by the petitioner in the light of the statutory scheme obtained as

on to-day, within a period of three months from the date of receipt of a copy of this order.

26. The relief in this writ petition is confined to the post of Grade-II Hindi Pandit, in which the petitioner has been working for more than two

decades. Once the authorities comply with the directions in this writ petition, the petitioner is at liberty to renew his request to the respondent-

authorities concerned as regards his entitlement to be promoted to the post of Grade-I Hindi Pandit post, a regular aided vacancy, in which the

petitioner has been working since 31.10.1998, when the incumbent teacher retired from service. Any observations made in this writ petition

concerning the said post, i.e., Grade-I Hindi Pandit, shall not prejudice the cause of either the petitioner or the respondent-authorities in future. To

the extent indicated above, the writ petition is allowed. No order as to costs. As a sequel to it, miscellaneous petitions, if any pending in this writ

petition, shall stand closed.