

A. Sarah Vs. District Educational Officer, Anantapur District, Anantapur and Others

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Court : Andhra Pradesh

Decided On : Aug-18-2000

Reported in : 2000(6)ALD454; 2000(6)ALT648

Judge : N.V. Ramana, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : WP No. 18281 of 1999

Appellant : A. Sarah

Respondent : District Educational Officer, Anantapur District, Anantapur and Others

Advocate for Def. : Government Pleader for School Education and;Mr. K. Jagan Mohan Reddy, Adv.

Advocate for Pet/Ap. : Mr. K.V. Subba Reddy, Adv.

Judgement :

ORDER

1. Petitioner claims that St. Joseph's Aided Elementary School at Guntakal, the 2nd respondent, is a minority institution, and that she was appointed as Assistant

Teacher in that School on 20-1-1964. The 1st respondent-DEO, Anantapur, by his proceedings Re No, 122667 B2/1988 dated 14-6-1990 directed bifurcation of elementary section from the High School and further directed the school management to promote the senior-most teacher in the Elementary School as its Head Master. Petitioner claims that she is working in the elementary school since bifurcation and as per the seniority list of teacher prepared, she stands at serial No.4 whereas the 3rd respondent, Manikyam, stands at serial No.9. According to the petitioner, she was promoted as Head Mistress with effect from 27-6-1997, consequent on retirement of one B. Sarojamma, by proceedings RCNo.6/Spl/1997 dated 27-6-1997 of the 2nd respondent. Her only grievance is that without issuing any notice to her, the DEO issued the impugned proceedings dated 6-8-1999 directing the school management to appoint the 3rd respondent as Head Mistress.

2. She filed this writ petition seeking to quash the abovesaid proceedings dated 6-8-1999 of the 1st respondent.

3. On 30-8-1999, while admitting the writ petition, this Court granted interim stay of the impugned proceedings dated 6-8-1999.

4. First respondent-DEO, Anantapur, filed counter, inter alia, stating that the school in question is an aided institution and not a minority institution; the impugned proceedings are in accordance with the relevant rules and GOs., in force. Petitioner is not even a secondary grade teacher, and she is possessing elementary grade certificate with VIII class, and so she is not eligible to be appointed as Head Mistress. Contrary to G.O. Rt. No.896, dated 16-6-1999, the management has appointed the petitioner as Head Mistress.

5. The 3rd respondent filed her counter contending that the writ petition is liable to be dismissed for non-joinder of Government or the Director of School Education as a necessary party-respondent and also for the reason that the petitioner has not challenged the relevant rules. She stated that she took charge as Head Mistress of the school on 30-8-1999 pursuant to the proceedings dated 14-8-1999 of the second respondent.

6. Learned Counsel for the petitioner contended that the action of the 2nd respondent reverting her to the post of teacher from the post of headmistress pursuant to the proceedings of the 1st respondent DEO, which proceedings are issued at the instance of the 3rd respondent is illegal, contrary to the Rules, and opposed to the principles of natural justice and that no notice was given to her by the 2nd respondent before reverting her.

7. The learned Government Pleader for School Education appearing for the 1st respondent justified the proceedings of the 1st respondent and submitted that the petitioner is not having the requisite qualifications to hold post of headmistress and all the Rules and GOs., issued by the Government in this behalf will apply to the 2nd respondent-school.

8. Counsel for the 3rd respondent contended that the third respondent is the senior-most qualified teacher in the school and the petitioner is not qualified to hold the post of headmistress. It is submitted that the 3rd respondent assumed charge as headmistress on 30-8-1999.

9. The point for consideration is whether the reversion of the petitioner from the post of headmistress to the post of teacher is not in accordance with the relevant rules, and whether the petitioner is entitled to any relief in this writ petition.

10. Two teachers of a school are righting this legal battle for the post of headmistress in this case. Unfortunately, the management of the school-the 2nd respondent herein did not file its counter nor vindicated its stand in the matter.

11. A perusal of the material available on record and the facts narrated above would indicate that the 3rd respondent's appointment as headmistress is in accordance with the rules and seniority of the eligible and qualified teachers working in the school. The impugned proceedings of the DEO, Anantapur, in Rc.No.2344/A8/98 dated 6-8-1999 seems to have been issued as a sequel to the representation dated 2-8-1999 of one A.S. Prabhavathi, S.G. Assistant working in the school, claiming the post of headmistress of the school and also pursuant to the letter of the 2nd respondent-school seeking instruction/permission from the DEO to appoint the third respondent as headmistress of the school. In the

impugned proceedings dated 6-8-1999 of the DEO, number of other proceedings issued by him earlier to the 2nd respondent, instructing the 2nd respondent to follow the rules for appointment of headmistress, are adverted to. The DEO even quoted the proceedings dated 24-2-1987 in Rc.No.2374/B1-1/85 of the Director of School Education, Hyderabad, addressed to all the DEOs., and District Development Officers of Zilla Praja Parishads in the State which is to the effect that in primary schools where there are four or more elementary grade teachers, SGBT teacher has to be appointed as headmistress of the school. In G.O. Rt. No.896, Education Department, dated 16-6-1999, the Government directed that the appointment of headmistress in aided elementary and UP school shall be made by the management on the basis of seniority-cum-merit of the qualified teacher working under the same management. It is categorically stated by the 1st respondent-DEO in his counter-affidavit that the 2nd respondent-school is an aided institution, and not a minority institution, and all the Government Orders and directives will apply to the said school. The incumbents who are qualified to hold the post of headmistress and seniors to the 3rd respondent had already declined promotion as headmistress and the 3rd respondent is the next qualified and eligible secondary grade teacher working in the school to hold the post of headmistress. The petitioner is only possessing elementary grade certificate with VIII class, whereas the 3rd respondent is holding M.A., B.Ed., qualification. The petitioner is not even a Secondary Grade Teacher. Moreover, as per the instructions of the Director of School Education dated 24-2-1987 (referred to above), the petitioner cannot be appointed as headmistress as she is not the senior-most qualified and eligible teacher among the Secondary Grade Teachers working in the school.

12. The learned Counsel for the petitioner, relying on a Full Bench decision of this Court in Nagarjuna Grameena Bank v. N.G. Bank Officers Association, : 1999(4)ALT376 (FB), contended that the post of headmistress has to be filled on the basis of seniority-cum-merit and since the petitioner is senior to the 3rd respondent, preference has to be given to the petitioner for appointment as headmistress. In the above Full Bench decision, the learned Judges, while explaining the concept of 'seniority-cum-merit' for effecting promotions, ruled that even though a senior is less meritorious than his/her junior, preference shall normally be given to the senior for effecting promotions, and further held that

comparative assessment of merit of various candidates participated in the selection is not required to be made.

13. The above decision of the Full Bench, with great respect, has no application to the facts of this case. The learned Judges, in the above decision, never said that an unqualified and ineligible senior is also entitled for promotion. That is not the principle laid down in that decision. The petitioner might have joined the service of the school much earlier to the 3rd respondent, and might have been categorised as senior to R3. But, she is not having the qualification and eligibility criteria as laid down by the Government in G.O. Rt. No.896, Education Department, dated 16-6-1999 to hold the post of headmistress.

14. Coming to the second contention of the learned Counsel for the petitioner that no notice is given to the petitioner before reverting her to the post of teacher from the post of headmistress, it must be noted that the petitioner cannot be said to be ignorant of the long sequence of events prior to her reversion. Apart from that, the initial promotion of the petitioner as headmistress itself is contrary to the rules in force and the repeated directions of the DEO issued to the 2nd respondent and the DEO had set right the things as per rules. Therefore, no notice is required to be given to the petitioner before her reversion. What all the DEO did in this case is only to set-right the things as per Rules.

15. Yet another contention of the learned Counsel for the petitioner that the second respondent-school, as a minority institution, is free to choose and adopt any manner of promotion to the post of headmistress depending upon their needs even though it may be inconsistent with any statutory rules, has no legs to stand inasmuch as the 2nd respondent school is receiving aid from the Government and the school is not at all a minority institution. The said fact is categorically stated by the DEO 1st respondent in his counter-affidavit.

16. For the aforementioned reasons, the action of the respondents cannot be faulted on any ground, as the same is in accordance with the relevant rules and the Government Orders applicable for promotion to the post of headmistress. The petitioner failed to make out any case for interference by this Court under Article 226 of the [Constitution of India](#). The writ petition fails and the same, deserves to

be and, is hereby dismissed without costs.

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