

HON'BLE SRI JUSTICE NINALA JAYASURYA

**WRIT PETITION Nos.20124, 20156, 20186, 20205, 21232, 21259,
21330, 20288, 20686, 21428, 21512 and 22644 of 2021**

COMMON ORDER: (Heard and pronounced through Blue Jeans App (Virtual) mode, since this mode is adopted on account of prevalence of COVID-19 Pandemic).

As the issue involved in this batch of cases is similar, it is deemed expedient to dispose of the same by a Common Order.

2. Heard Smt.Kavitha Gottipati, Mr.P.Durga Prasad, Mr.G.V.L. Murthy & Mr.Giri Babu Marthi, learned counsel appearing for the respective petitioners. Also heard Mr.K.Bheema Rao, learned Government Pleader for Services-III appearing for the respondents.

3. All the petitioners are working as School Assistants/Secondary Grade Teachers in the respective schools in Prakasam District, the details of which are set out in the cause title. Aggrieved by the proceedings of the 2nd respondent in Rc.No.13029/11/2021-EST 3 dated 31.08.2021 wherein certain instructions were issued to the Regional Joint Directors of School Education/District Educational Officers in the State, the petitioners approached this Court, seeking appropriate directions.

4. Prior to filing of the present batch of Writ Petitions, some of the petitioners initially filed W.P.No.20816 of 2020 and batch challenging the Government Orders issued in G.O.Ms.No.54, School Education (Services-II) Department, dated 12.10.2020 wherein certain guidelines relating to the transfer of Teachers in the State of Andhra Pradesh were issued. It was *inter alia* contended in the said batch of Writ Petitions that the action of the respondents in taking steps to effect transfers without taking decision for merger of schools into Municipalities/Municipal Corporations/Nagar Panchayats is illegal and arbitrary.

5. Initially, interim orders were granted in the said batch of Writ Petitions directing the respondents therein not to show the vacancies as held by the petitioners therein, in the counseling. Subsequently, the said batch of Writ Petitions were dismissed on 25.01.2021.

6. Against the orders of dismissal, the aggrieved Teachers carried the matter by way of W.A.No.80 of 2021 and batch. The Division Bench of the Hon'ble High Court by orders dated 01.04.2021 dismissed the appeals, however with certain observations.

7. Thereafter, the 2nd respondent issued proceedings in Rc.No.13029/11/2021-EST 3 dated 15.06.2021 providing certain directions for conduct of counseling from 16.06.2021, in the light of the observations made by the Division Bench,. Challenging the said proceedings some of the petitioners herein filed W.P.No.11631 of 2021 and batch, *inter alia*, contending that the proceeding impugned in the said batch is not in tune with the observations of the Hon'ble Division Bench in W.A.No.80 of 2021 & batch etc., and therefore, the said proceedings are liable to be set aside. A learned Judge of this Court after considering the issues at length, by orders dated 14.07.2021 allowed the Writ Petitions, while setting aside the proceedings dated 15.06.2021.

8. After suffering an adverse order, the respondents, it appears, thought it appropriate to take steps to implement the directions of the learned Single Judge in W.P.No.11631 of 2021 and batch. Accordingly, the 2nd respondent issued proceedings dated 31.08.2021, which are impugned in the present batch of Writ Petitions.

9. Smt.Kavitha Gottipati while drawing the attention of this Court to the relevant portions of the order passed by the Hon'ble Division Bench in W.A.No.80 of 2021 and batch contends that the impugned proceedings are contrary to the observations of the Hon'ble Division Bench. She submits that subsequent to the orders passed by the Hon'ble Division Bench, the petitioners filed W.P.No.11631 of 2021 wherein the learned Single Judge found fault with the proceedings dated 15.06.2021 and set aside the same. She submits that the 2nd respondent instead of taking necessary action in terms of the observations made by the Hon'ble Division Bench in the light of the submissions made by the learned Advocate General on the basis of instructions and the subsequent directions of the learned Single Judge in W.P.No.11631 of 2021 and batch, issued the impugned proceedings, which are contrary to the earlier orders, in the said matters.

10. It is the submission of learned counsel that in the light of the orders passed in the batch of Writ Appeals as also in the subsequent batch of Writ Petitions, the respondent authorities are obligated to display all the vacancies existing as on 31.08.2021 in respect of all the categories. She submits that the respondents are required to carry out fresh counseling strictly in terms of G.O.Ms.No.54, dated 12.10.2020 and the instructions recorded in the order of the Division Bench. She submits that G.O.Ms.No.54, dated 12.10.2020 contemplate certain guidelines providing for notification/disclosure of all clear vacancies including vacancies arisen due to compulsory transfers, resultant vacancies arisen during counseling, vacancies existing due to un-authorized absence of Teachers for more than one year etc., While submitting that the counseling has to be conducted as per guideline Nos.11 & 13 of the said guidelines, he submits that the respondent authorities are under obligation to follow the same, in terms of

the said Government Order and more particularly in view of the orders passed in W.A.No.80 of 2021 and W.P.No.11631 of 2021 stating that the same have not been adhered to, she further reiterates that the respondents ought to have issued proceedings in respect of the counseling by duly notifying all the clear vacancies as on 31.08.2021, including those which arose due to death, retirement, vacancies arisen due to compulsory transfer etc., Further that as the Writ Petitions filed by the petitioners in W.P.No.11631 of 2021 and batch were allowed, the respondent authorities ought to have issued orders restoring them to their earlier place of work, but no orders have been issued to re-back the petitioners.

11. On the other hand, she contends further that contrary to the orders of the learned Single Judge even in respect of the present Notification issued vide proceedings dated 31.08.2021, Category-I and Category-II were not notified and the vacancies as shown in the earlier notification were retained. She also pleads that the respondent authorities are bent upon to somehow deprive the petitioners of their valuable rights and act detrimental to their interest, as they have approached this Court and succeeded in getting orders in their favour. While drawing the attention of this Court to a communication dated 09.09.2021 addressed by the 2nd respondent to the Principal Secretary to the Government, School Education Department filed along with a Memo dated 14.09.2021 vide USR No.46984 of 2021, the learned counsel would contend anticipation of some legal complications as stated in the said communication is a ruse and under the guise of the same, the respondents cannot circumvent the orders passed in the matters referred to above. Making the said submissions, the learned counsel seeks the relief as prayed for.

12. Mr.P.Durga Prasad, supplementing the above said contentions, advanced arguments contending that the impugned proceedings are not inconsonance with either the orders of the Hon'ble Division Bench dated 01.04.2021 in W.A.No.80 of 2021 or the learned Single Judge in W.P.No.11631 of 2021 dated 14.07.2021. While referring to guideline No.17(ii) of G.O.Ms.No.54 dated 12.10.2020, he submits that Category-III and Category-IV refers to left over vacancies as mentioned therein, but in view of the learned Advocate General's submissions/undertaking, observations of the Division Bench and the orders of the learned Single Judge passed after due consideration of the same in W.P.No.11631 of 2021, the respondents are required to issue counseling notification by notifying all the vacancies in Categories I to IV, by duly mentioning clear vacancies as per the G.O.Ms.No.54, dated 12.10.2020. He submits that the vacancies which were displayed in the earlier counseling sought to be filled up through manual process and interdicted by the Court were again notified in the present counseling, without giving the details of actual vacancies. He submits that the petitioners also submitted representations in this regard and the same did not yield any response. He submits that the resultant vacancies as on 31.08.2021 in respect of all the categories remaining after the earlier counsellings are required to be notified. He also points out certain discrepancies in display of vacancies and submits the acting contrary to the orders of the Hon'ble Court referred to above, the respondents issued the present proceedings and therefore, the same are not sustainable. Accordingly, he submits that the Writ Petitions deserves to be allowed. The arguments of the other counsel are in similar lines.

13. Opposing the said submissions of the respective counsel for the petitioners, the learned Government Pleader for Services-III strenuously contended that the submissions to the effect that the respondents deviated from the undertaking in the earlier round of litigation is not correct or tenable. He submits that the petitioners who approached this Hon'ble Court claiming that they are entitled to work in the respective Municipalities were initially allowed to continue and later, the said Writ Petitions were dismissed. In the meanwhile, the counselling pursuant to G.O.Ms.No.54, dated 12.10.2020 was completed, leaving the petitioners/Teachers in the Municipality areas. He submits that the Notification of clear vacancies as contemplated under Guideline No.11(i)(a) refers to vacancies available as on the date of issuance of Transfer Counseling Notification. While stating that paragraph 9 of the Counter Affidavit and Guideline No.11 answers the contentions of the petitioners, the learned Government Pleader supported the impugned proceedings by referring to averments made in paragraphs 17 to 19 of the Counter Affidavit. The learned Government Pleader with reference to the communication of the 2nd respondent dated 09.09.2021 filed along with Memo submits that there are no averments with regard to the said Memo in the Writ Petitions nor an amendment of the Writ Petition was sought for. He submits that the said communication was not questioned and therefore neither said communication nor the submissions made with reference to the same can be taken into consideration. He submits that the discrepancies with regard to vacancy position in respect of Kadapa District can be rectified and there are no issues with regard to other Districts. He further submits that, in fact, the petitioners have remedy of appeal/revision, as per the Guidelines for redressal of their grievances and instead of availing the said remedies the petitioners have approached this Court and the Writ

Petitions are liable to be dismissed on this ground. He accordingly pleads for passing appropriate orders by dismissing the Writ Petitions, so that the authorities would take steps for concluding the transfer counseling in all respects.

14. By way of a short reply, Smt.Kavitha Gottipati submits that the attempt on the part of the 2nd respondent to clarify the proceedings dated 31.08.2021 through the letter dated 09.09.2021 cannot be permitted. The said communication itself discloses the conduct of the 2nd respondent which is contemptuous and the attitude of the respondents to somehow circumvent the orders of the Hon'ble High Court passed on the earlier occasions. She submits that the intention of the respondents appears to be that the petitioners should be transferred to vacancies in the Categories III and IV which are actually meant for the Teachers who have not applied for the counseling or those who have submitted false information in the counseling as the petitioners approached this Court, seeking redressal of their grievances and got favourable orders. He submits that such an attitude on the part of the respondents is impermissible and their action runs contrary to the earlier orders of this Court and therefore is not sustainable. Accordingly, she prays for issuance of appropriate orders.

15. The contentions advanced by counsel on both sides were considered with reference to the earlier orders on which reliance is strongly placed and the materials placed along with Writ Petitions.

16. It is a matter of record and also not in dispute that the Hon'ble Division Bench while dealing with the grievance of some of the Writ Petitioners in the present batch of Writ Petitions passed orders in the earlier round of litigation in W.A.No.80 of 2021 & batch dated 01.04.2021, the relevant portion of which reads thus:-

"Para 20: Learned Advocate General also submits that he received instructions from the Government to the effect that in the event of appellants being not successful in the writ appeals, they will be retained in their present places of posting until the commencement of next academic year and between 16.06.2021 and 30.06.2021, counseling will be undertaken for 411 teachers who are involved in the present writ appeals to be accommodated in the left over vacancies. The teachers have completed more than 8 years of service and that is why they have to be transferred and for this purpose, web based counseling will be taken up as per the procedure laid down in G.O.Ms.No.54 dated 12.10.2020. He submits that the teachers will be given option to choose from the left over vacancies. He concedes that as the range of options would be limited, the Department is willing to give them one more opportunity. He has submitted that there are 497 schools that have become teacher-less and the teachers in this batch of cases will be posted to those schools through counseling. Whenever the next round of general counseling is taken up, these teachers will be given one more opportunity of exercise their options in such transfer counseling, so that they would have a wider range of options available including preferential categories. He has further submitted that though, normally, the teachers who do not complete two years of service would not be eligible to exercise option for transfers, in the instant case, the Department is willing to give them such an option if the teachers are prepared to go and work in the teacher-less schools at present. It is further submitted that consequent upon transfer of present batch of teachers, it will not be difficult to fill up the vacancies either on deputation or on adjustment basis."

17. At Para 31 the Hon'ble Division Bench observed that the respondents would scrupulously follow the submissions and concessions of the learned Advocate General, based on instructions received, which are recorded in Para 20 of the said judgment.

18. Though the respondents issued notification dated 15.06.2021 after disposal of the above said Writ Appeals, contending that the orders of the Division Bench were not adhered to in true letter and spirit, W.P.No.11631 of 2021 & batch were filed. The relief sought for in the said Writ Petitions, which is relevant in the present context, may be extracted for ready reference:-

".....pleased to issue an appropriate Writ Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent No.2 in issuing proceedings Rc.No.13029/11/2021EST 3 dated 15.06.2021 wherein directed the 3rd respondent to conduct counselling from 16.06.2021 onwards by restricting to choose places from the left over vacancies in category III and IV schools is illegal arbitrary unjust and contrary to the guidelines framed vide G.O.Ms.No.54 dated 12.10.2020 and the final orders passed by this Honble Court in Writ Appeal No.80 of 2021 and batch dated 01.04.2021 and consequently direct the respondents to proceed with the counselling by notifying all the vacancies including existing in all categories in the ensuing counselling as per the norms prescribed under G.O.Ms.No.54 School Edn. Services II Department dated 12.10.2020 and pass such other order....."

19. The learned Single Judge having considered the matter with reference to the orders of the Division Bench, more particularly Para 20 and Guideline No.11 and other Guidelines vis-à-vis the contentions advanced by the parties before him, while recording categorical conclusions, upheld the contentions to the effect that the procedure stipulated in Guideline No.11 of G.O.Ms.No.54 dated 12.10.2020 was not followed. The relevant portion of the order passed by the learned Single Judge reads thus:

"Hence, after considering the documents, pleadings and the submissions made this Court is of the opinion that the undertaking that was given to a Court is not followed. An undertaking given to a Court and which is recorded in the order of the Division Bench has to be followed both in its letter and spirit and very scrupulously. There cannot be even an iota of diversion. The Division Bench in fact noted in paragraph 31 that the respondents should "scrupulously follow the submissions and concessions". In the opinion of this Court the instructions are not followed scrupulously and completely. This Court is, therefore, of the opinion that the petitioners have made out a case for interference.

Accordingly, there shall be direction as prayed for. The action of the respondents in issuing proceedings dated 15.06.2021 limiting the counseling to categories III and IV is set aside. It is held to be contrary to the guidelines prescribed in G.O.Ms.No.54 and also the orders passed in W.A.No.80 of 2021 and Batch. The respondents are therefore directed to immediately carry out fresh counseling strictly in terms of G.O.Ms.No.54 and the instructions recorded in the order of the Division Bench."

20. A reading of the judgment of the learned Single Judge leaves no manner of doubt that the respondents are under legal obligation to notify the vacancies in respect of all the categories viz., Categories I, II, III and IV. Though the respondents have issued the proceedings dated 31.08.2021 referring to the left over vacancies purportedly following the procedure laid down in G.O.Ms.No.54, dated 12.10.2020, it is the contention of the petitioners that no instructions were issued by the 2nd respondent to the concerned officers to notify the clear vacancies as on 31.08.2021, in strict compliance with the G.O.Ms.No.54, dated 12.10.2020. As per the undertaking/observations in W.A.No.80 of 2021 and the subsequent orders of the learned Single Judge in W.P.No.11631 of 2021, the respondents have to follow Guideline No.11 of G.O.Ms.No.54 dated 12.10.2020. The submission of the learned Government Pleader, in this regard that the respondents have followed the said Guideline and in terms of the same, vacancies as on 01.10.2020 are to be notified cannot be accepted. Unless all the vacancies position that arose/exists as on the date of issuance of Notification for transfer counseling taken up pursuant to the orders passed in the earlier round of litigation is made known to the petitioners, they will not be in a position to exercise their options. Therefore, as rightly contended by the learned counsel for the petitioners, all clear vacancies existing as on 31.08.2021 are required to be notified.

21. In so far as the categories are concerned, the respondents have no option, except to notify the left over vacancies in respect of the Categories I, II, III and IV, in view of the orders of the learned Single Judge referred to above, which had attained finality. As seen from the proceedings impugned, no such attempt appears to have been made by the respondents to comply with the orders of the learned Single Judge to notify all the categories by

mentioning the clear vacancies. The impugned proceedings are not in tune with the earlier orders relied on by the petitioners. Therefore the same are liable to be set aside.

22. Further though an objection has been raised to the effect that the communication dated 09.09.2021 of the 2nd respondent cannot be looked into (which in fact was filed along with the material papers in W.P.No.21512 of 2021) on the premise that no specific pleas were raised in the Writ Petition with reference to the same, it cannot be simply discarded or lost sight of. The said communication is not disputed. A reading of the said communication would go to show that the left over vacancies that have arisen after 31.10.2020, if notified to the limited 400 Teachers, legal complications may arise from the Teachers who got more entitlement points than the said 400 Teachers, as these vacancies are not shown to them during General Teachers' Transfer Counselling, 2020 conducted in January, 2021. That cannot be an excuse for not notifying the left over vacancies and any such attempt on the part of the respondents cannot be countenanced, in the light of the orders referred to supra. The reasons sought to be projected in the said communication would not absolve the respondents of their obligation to notify all clear left over vacancies in all categories and any deviation would amount to circumventing the earlier orders which cannot be permitted, in the absence of any challenge to the same.

23. For the afore going reasons, the impugned proceedings are set aside. The respondents are directed to issue proceedings notifying all clear left over vacancies as on 31.08.2021 in respect of all categories, in accordance with Guideline Nos.2 and 11 of G.O.Ms.No.54 dated 12.10.2020 and complete the transfer counseling, as expeditiously as possible.

24. The Writ Petitions are accordingly allowed, to the extent as indicated above. No order as to costs.

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

NINALA JAYASURYA, J

Date: 31.01.2022

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HON'BLE SRI JUSTICE NINALA JAYASURYA

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