

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

School Education Department- Private Aided Management Schools – Filling up of aided pots in pursuance of interim orders passed by the Hon'ble High Court in IA No.1 of 2018 in WP.No.1041/2018 – Orders – Issued.

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SCHOOL EDUCATION (PS) DEPARTMENT

G.O.MS.No. 37

Dated: 14-06-2021

Read the following:-

1. G.O.Ms.No.1, Education (PS.2) Department, dt:01.01.1994.
2. Interim orders issued in IA No.1 of 2018 in WP.1041 of 2018 dated 29-2-2020 of the Hon`ble High Court of Andhra Pradesh.
3. Letter.No.ESE02-17/544/2020-PS1- CSE, dated. 30-5-2021 of the Director of School Education, A.P, Ibrahimpatnam

ORDER: -

In the Letter 3rd read above, the Director of School Education, Andhra Pradesh has stated that the Private Recognized Aided School Management Association, has approached the Hon'ble High Court by filing WP.No.1041 of 2018, challenging the Memo.No.756924 /PS/ A2/ 2017, Dated:12.09.2017 and consequential proceedings of the DSE vide Rc.No.PS-I/2010, dated:12.09.2017 and the Proc.No. 90/PS-I/2010-3, Dated:20.07.2017, pursuant to the note dated:09.09.2017.

2. In the reference 2nd read above, the Hon'ble High Court issued interim orders in I.A.No.1 of 2018 in W.P.No.1041 of 2018 as extracted below:

"Therefore, while suspending the Memo No. 756924 /PS/A2/ 2017, Dated:12.09.2017 by the 1st respondent and the consequential Memo in Rc.No.PS-1/2010, dated:12.09.2017 issued by the 2nd respondent, there shall be interim direction to the respondents 1 to 5 to commence the process of filling the aided posts vacant in the aided institutions in the State of Andhra Pradesh, pending disposal of the writ petition."

3. Earlier, challenging the ban Memo. No.12080/COSE/A2/2004-4, Dated. 20.10.2004, on creation/ filling up of aided posts, WP.No.9503/2005 & batch of Writ Petitions filed and in pursuance of the orders of the Hon'ble courts, Government have permitted all the District Education Officers/Regional Joint Directors of School Education in the state of A.P to grant temporary permission to all the Managements of Aided Schools covered in all court cases covered under the judgment of High Court of A.P in W.P.No.9503 of 2005 and batch, dated 30.07.2013, subject to outcome of W.Ps/W.As/SLPs etc., of any on certain conditions vide Memo.No.18836/PS/A2/2010, dated.03.12.2016.

4. Government, vide G.O.Ms.No.40, School Education (PS) Department, Dated 30.06.2017, have withdrawn above ban Memo.dt. 20.10.2004, duly according permission to the institutions covered in W.P.No.9503 of 2005 and batch (78 petitioners Managements) for filling up of the aided posts on permanent basis, vide Memo. No. 18836/PS/A2/2010-34, dated 30.06.2017.

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5. Pursuant to the above orders, the C&DSE, vide Procs.Rc.No.90/PS- I/2010-3,dated 20.07.2017, has issued certain guidelines, for filling up of posts in aided schools covered under W.P.No.9503/2005 and batch, and accordingly, aided posts filled in (17) schools of W.P.9503/2005 & batch cases and (12) schools of squarely covered cases.

6. Owing to the orders passed in WP.No.9503 of 2005 & batch, (316) petitioners filed WPs, with a plea to extend the orders issued in 9503 and batch cases. The Hon`ble High Court issued orders extending the judgment issued in W.P.9503/2005 and batch, to the (209) petitioner schools also. Subsequently, certain other aided managements have also been approaching the Hon`ble High Court and getting similar orders.

7. As per Rule 12 (1) of the G.O. 1st read above, the educational agency shall appoint staff as per the staffing pattern prescribed by Government from time to time. Government prescribed teacher pupil ratio 1:40 under Rule 10(12) of said G.O., for according permission/ recognition to the private institutions and hence, it has been taken into consideration to identify the need to fill up the aided vacancies.

8. In compliance to the norms prescribed under Right to Education Act, 2009 and the Rules issued in 2010, Government issued norms prescribing staffing pattern in G.O.Ms. No. 40, Education (SE/PS-1) Department dated. 18-06-2013 for aided schools specifically and ordered that if any teaching and non teaching posts are found surplus the same be rationalized within the district among aided schools. But certain managements have challenged the GO and the Hon`ble High Court issued interim orders on 13-08-2013 in WP No.25319 of 2013 and in certain other similar W.Ps that " the rationalization may be proceeded in accordance with and that however there shall be an interim direction not to finalize the rationalization until further orders." and in another WP No. 25014/2013, the Hon`ble High Court passed orders on 27-08-2013, "that the G.O.Ms No:40 Education dated: 18-06-2013 does not apply to the petitioner's institutions i.e., Minority Institutions". The said interim orders of the Hon`ble High Court are still in force. Hence the School Education Department could not go ahead with the staffing pattern as prescribed by G.O.Ms. No. 40, Education (SE/PS-1) Department dated. 18-06-2013.

9. Government after due consultation, have observed that promotions of teachers can not undertake in Aided Institutions either in terms of G.O.Ms.No.9, School Education (Ser.II) Department, Dated.23.1.2009 and G.O.Ms.No.11, School Education (Ser.II) Department, dated 23-1-2009 or G.O.Ms.No.40, School Education (SE.PS-I) Department, dated 18-06-2013, since the Hon`ble High Court, seized the matter, and also observed that rationalization can undertake in accordance with the G.O.Ms.No.40 dated 18-6-2013 but the same could not be finalized until further orders.

10. Since, further action as per G.O. Ms.No.40, School Education Department, Dated.18.6.2013 could not be taken up, the norms of Teacher-Pupil Ratio of 1:40 as per Rule 10(12) of G.O.1st read above, is being followed to fix the staffing pattern to fill up the aided vacancies at present.

11. The private aided managements are under the impression that they have a right to fill up all the vacant aided posts even though the enrolment is not commensurate with the enrolment. The private aided managements are ascribing the poor enrolment to the non filling up of the teachers posts and that they are requesting to fill up the posts first so that they would be able to show better performance. While submitting the stand of the private aided managements, the Director of School Education has brought it to the notice of the Government that, there is a consistent declining trend in the admissions in aided schools, is noticed over a period of time. Whereas, the enrolment is increasing in the Government run schools in the state and during the academic year 2020-21, there is an overall increase of (5,26,484) children in the government schools compared to previous year, i.e., 2019- 20 even though more number of teaching posts are lying vacant in Government managed schools. The enrolment in aided schools is decreasing even though the Government has been extending midday meal, free textbooks, notebooks, uniform, shoes, school bags etc., to the children studying in the aided schools and even though financial assistance @ Rs.15,000/- is being extended to each unique mother of the children studying in the aided schools under Jagananna Ammavodi scheme. The Director, School Education has collected all the basic data of all the private aided schools in April, 2021 and after analysis it is found that this declining trend is due to the overall poor performance of the aided institutions as most of them are not having proper infrastructure facilities.

12. It is not essential to fill up all the sanctioned vacant posts in the private aided schools without reference to the existing enrolment. If posts are filled up without reference to the need it would result in wastage of human and financial resource of the government. As per Article 3 of A.P. Financial Code, the expenditure should not be prima facie more than the occasion demands. Every Government servant is expected to exercise the same diligence and care in respect of all expenditure from public moneys under his control as a person of ordinary prudence would exercise in respect of the expenditure of his own money. If the Private Aided Management improves the enrollment in the school in future by improving their overall performance, the management may approach the government through the competent authorities for permission to fill up the sanctioned vacant posts from time to time. But seeking permission to fill up all the sanctioned vacant posts irrespective of enrolment is not feasible for consideration.

13. As per Rule 12 (1) of the GO 1st read above, the educational agency is permitted to fill up the posts as per the sanctioned staffing pattern approved by government from time to time and this particular clause of 'from time to time' is incorporated in the G.O. with the precise intention to regulate the filling up of the posts based on need and enrolment from time to time. While according permission to the educational agencies of the private aided managements to fill up the posts, the norm of 1:40 as per Rule 10(12) of the G.O. 1st read above has to be followed, since no further action can be proceeded as per GO.Ms.No.40, School Education Department, Dated.18.6.2013 where the staffing pattern was prescribed as per RTE norms.

14. The Division Bench of Hon'ble High Court of Andhra Pradesh in Writ Appeal No. 1578 of 2005 & batch and W.P.No.21793 of 2005 & batch, dated 29.12.2006 and the operative portion of judgment is extracted below:

" In view of the above conclusion, we do not consider it necessary to adjudicate on the vires of G.O.Ms.No.103, dated 5-8-2005. However, we feel that it will be more prudent for the government to examine the entire issue objectively and take corrective measures if it is found that the norms are contrary to the provisions contained in Rule 10 (12) or 10 (17) of the 1993 Rules.

In the result, the appeals are dismissed. The writ petitions filed by the management of the private schools and others are allowed. Now, the management of the private schools shall be free to appoint selected candidates and seek approval of such appointments from the competent authority.

The exercise of rationalization undertaken in furtherance of interim order dated 31-10-2005 passed by this Court and directions contained in letter dated 3-11-2005 issued by the Director of School Education are quashed. However, it is made clear that this order shall not prevent the competent authorities from undertaking fresh exercise for rationalization, which may lead to declaration of certain teachers' surplus and for absorption of such surplus teachers."

15. The Hon'ble Supreme Court of India in WP(C) No. 95 of 2010 in its orders , dated 12.04.2012, while upholding constitutional validity of the RTE Act 2009, has made the following observations:

" The State is also expected to first weed out those schools which are non performing or underperforming or non compliance schools and upon closure of such schools, the students and teaching and non teaching staff thereof should be transferred.., (Para 8 of the Judgment)."

Needless to observe that if there is inadequate response to the Government funded school, it is but appropriate that either the divisions there of or the school itself be closed and the students and staff of such schools be transferred.., (Para 8 of the Judgment)."

In our view even State Government must take opportunity to re organize its financial outflow at the micro level by weeding out non performing or under performing or non compliance schools receiving grant-in-aid so as to ensure that only such Government funded schools who fulfill norms and standards are allowed to continue(Para-8 of the Judgment)."

16. In pursuance of the orders of Hon'ble High Court in the reference 2nd read above and in the circumstances reported by the Director of School Education, in the reference 3rd read above, Government after careful examination, hereby issue the following orders:

a. The Director of School Education, shall commence the process of

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filling the vacant aided posts in all aided institutions by identifying the need each school wise based on the enrolment of the school as on the last working day of the academic year 2020-21 (19-04-2021 for primary and upper primary schools and 30-04-2021 for high schools) as reported by the managements in the child info of the Unified District Information of School Education (UDISE+). Accordingly, the Director of School Education shall issue order showing the need as per the TPR of 1:40 under Rule 10(12) of the G.O.1st read above, since there is no other norm presently available for deciding the staffing pattern of private aided schools in the state.

- b. Once the need is identified, the Director of School Education shall direct the competent authorities viz., Regional Joint Directors of School Education in case of high schools and District Education Officers in case of Primary and Upper Primary schools to identify the surplus teachers as per rule 10(12), and to deploy them as per Rule (12)(3) (A) of G.O.Ms.No.1, Education dated 01-01-1994 into the vacant sanctioned aided posts in the needy schools as per the need without exceeding to the number of sanctioned aided posts and after completion of this exercise, to permit the competent authorities to send proposal to the Government to accord permission to issue clearance certificate as required under Rule 12(3)(A) of G.O.Ms.No.1, Education dated. 1-1-1994 to take up recruitment if still need exists.
- c. Since, earlier the Commissioner and the Director of School Education has permitted to fill up the posts in certain managements covered under WP No 9503/2005 and batch in terms of G.O.Ms.No.40 Education dated 30-6-2017 and as per the orders issued by Government in Memo.No.18836/PS/ A2/ 2010-32 to 34, dated. 30-6-2017 and as per the orders issued in CSE Procs.Rc.No.90/PS-1/2020-1 to 3, dated. 20-7-2017 without following the norm of 1:40 and since the posts were already filled up, the Director of School Education shall now identify if any excess posts were permitted to be filled up duly arriving the need as per Rule 10(12) of G.O.Ms.No.1, Education dated. 01-01-1994 and adjust them in the future vacancies in those schools.

17. The Director of School Education, A.P, shall take further necessary action accordingly, in the matter, and furnish a detailed report to the Government after completion of the above exercise, for taking further necessary action.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

B.RAJSEKHAR
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Director of School Education, A.P., Ibrhaimpatnam, Krishna District.
All the Regional Joint Director of School Education in the State
All the District Educational Officers in the State.
SF/SC

// FORWARDED :: BY ORDDER //

SECTION OFFICER