

***HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD**

**± WRIT PETITION NOS: 7036, 7562, 7700, 7725, 7731, 7734, 8003, 8109,
8481 & 9455 of 2025**

%09.05.2025

W.P.No.7036 of 2025 & Batch

#Between:

SRI POTTI SRIRAMULU UPPER PRIMARY SPSUP SCHOOL
Gudur, Tirupathi District erstwhile SPSR Nellore District S/o Late Masthanaiah
Aged 58 years R/o D No 213917 N R Peta Guduru Tirupati District Rep by its
Correspondent Manapati Ravindra Babu

.....Petitioner/s

\$And:

THE STATE OF AP Represented by its Secretary Education department
Secretariat Velagapudi Amaravathi Guntur District and others

....Respondents

!Counsel for the Petitioners : Sri N. Subba Rao, learned Senior
Counsel appearing on behalf of Sri Devi Prasad Mangalapuri, learned
Counsel for the Writ Petitioner in W.P.No.7562 of 2025, Sri S.V.S.S. Siva
Ram, learned Counsel appearing on behalf of Sri K.P.S. Sailesh Reddy,
learned Counsel for the Writ Petitioners in W.P.Nos.7700, 7036, 7725, 7731,
7734, 8109, 8481 & 9455 of 2025;and Sri B. Sreeteja, learned Counsel
appearing on behalf of Sri P. Pavan Kumar, learned Counsel for the Writ
Petitioner in W.P.No.8003 of 2025

^Counsel for the Respondent : Sri Gurram Ramachandra Rao,
G.P for Education

<Gist:

>Head Note:

? Cases referred: NIL

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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Secretariat Velagapudi Amaravathi Guntur District and others

....Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED: **09.05.2025**

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

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 order? Yes/No

GANNAMANENI RAMAKRISHNA PRASAD, J

**THE HONOURABLE SRI JUSTICE GANNAMANENI RAMAKRISHNA
PRASAD**

**WRIT PETITION NOs: 7036, 7562, 7700, 7725, 7731, 7734, 8003, 8109,
8481 & 9455 of 2025**

COMMON ORDER:

Heard Sri N. Subba Rao, learned Senior Counsel appearing on behalf of Sri Devi Prasad Mangalapuri, learned Counsel for the Writ Petitioner in W.P.No.7562 of 2025, Sri S.V.S.S. Siva Ram, learned Counsel appearing on behalf of Sri K.P.S. Sailesh Reddy, learned Counsel for the Writ Petitioners in W.P.Nos.7700, 7036, 7725, 7731, 7734, 8109, 8481 & 9455 of 2025;and Sri B. Sreeteja, learned Counsel appearing on behalf of Sri P. Pavan Kumar, learned Counsel for the Writ Petitioner in W.P.No.8003 of 2025 and Sri Gurram Ramachandra Rao, learned Government Pleader for Education.

2. These Writ Petitions have assailed the action of the Official Respondents herein which had introduced Online Test method for selecting and appointing Teachers in various Schools which are receiving Grant-in-aid.

3. For this purpose, the facts stated in the W.P.No.7562 of 2025 are referred to, inasmuch as Sri N. Subba Rao, learned Senior Counsel for the Writ Petitioners, has referred to the facts from the said Writ Petition.

4. The prayer sought in W.P.No.7562 of 2025 is as under:

“...pleased to grant an order, direction or writ more so in the nature of WRIT OF MANDAMUS declaring the proceedings in R.C.No.143/C2/2024 dt. 19.03.2025 issued by 4threspondent and consequential proceedings R.C.No.858/(A2) B1/2025 dt. 19.03.2025 issued by the 5threspondent is illegal, arbitrary and run contrary to the Education act and the rules made under GO.MS No.1 dt. 1.01.1994 and in contravention of RTE act and

the rules made thereunder. To declare the actions of the respondents in issuing the proceedings in R.C No.143/C2/2024 dt. 19.03.2025 issued by 4th respondent and R.C.No.858/(A2) B1/2025 dt.19.03.2025 issued by 5th respondent is in conflict with the orders passed by this high court in WP no.31288 of 2023 dt.05.12.2023 and order made in C.C.No.2605 of 2024 dt. 18.09.2024 consequently Honourable court may be pleased to set aside the proceedings of the 4th respondents proceedings in R.C.No.143/C2/2024 dt.19.03.2025 and the proceedings of the 5th respondents R.C.No.858/(A2) B1/2025 dt.19.03.2025 and to pass...”

5. The above prayer would indicate that the Writ Petitioner in W.P.No.7562 of 2025 is challenging the Proceedings bearing R.C.No.143/C2/2024, dated 19.03.2025 (Ex.P.1). The said Proceedings are challenged on the ground that the said Proceedings issued by the District Educational Officer, Guntur would run counter to the Provisions of G.O.Ms.No. 1, Education (P.S.2) Department, dated 01.01.1994. Through the said G.O.Ms.No.1, dated 01.01.1994, the Andhra Pradesh Government has promulgated the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools in Private Management) Rules, 1993 (hereinafter referred to as the Rules, 1993).

6. The said Rules, 1993, would govern various aspects of the running of Schools under the private managements in the State of Andhra Pradesh including the Aided and Unaided as well as the Minority and Non-minority Schools.

7. Rule 12 of the Rules, 1993, deals with Appointment of Teaching and Non-Teaching Staff and Rule 13 deals with the constitution of the Staff Selection Committee, which reads as follows:

“Rule-12:

Appointment of Staff:-

(1) The educational agency shall appoint staff as per the staffing pattern prescribed by Government from time to time. All staff shall conform to the qualifications prescribed by Government from time to time;

(2) All the staff teaching as well as non-teaching shall be recruited through Staff Selection Committee to be constituted by the educational agency in accordance with these rules;

(3) All the posts shall be advertised in at least two News Papers having large circulation of which one shall be in Telugu;

[(3A) Before filling-up of the aided teaching or non-teaching posts, the educational agency shall necessarily obtain clearance from the Competent authority, to the effect that, there are no surplus posts in the concerned district, and if there are suitable surplus candidates, they should be deployed against the said vacancies as per the subject requirements. The competent authority shall however obtain the permission from the Government before issuing clearance for filling up of any aided posts.]

(4) All educational institutions receiving grant in aid from Government shall notify vacancies to the Employment Exchange and in addition, advertisements in the News Papers, that they shall also be required to call the candidates sponsored by Employment Exchange for test and interview provided that the persons applying to the post in response to the advertisement in the news papers should have got registered their names in any Employment Exchanges in the State.

(5) Aided Schools shall also be required to have a nominee of the District Educational Officer not below the rank of Deputy Educational Officer in the Staff Selection Committee. The educational agency shall fix the selection process (test/interview) in consultation with the District Educational Officer or his nominee and shall afford the D.E.O's nominee a reasonable opportunity of being present. The selection however, shall not be vitiated only on the ground of the absence of D.E.O's nominee if the educational agency has offered reasonable explanation. The burden of proving this shall lie with the educational agency.

(6) The selection of the posts in all private educational institutions shall conform to the communal 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 in a vacancy belonging to S.C/S.T., then the S.C/S.T., vacancy shall be carried forward to the next point.

[(7) The Educational Agency shall be free to appoint employee/staff to an un-aided post as per subject requirements, provided they have the prescribed qualification to hold the posts. The service conditions of un-aided teaching and non-teaching staff shall be contractual in nature between the educational agency concerned and the appointee. Disputes, if any, in this shall be adjudicated in a civil court of competent jurisdiction/Educational Tribunal (as and when constituted) and without reference to competent authority or the Government. However, in respect of aided posts, the provision of sub-rules (4)/(5) and (6) shall apply]

[(8) All appointments made either teaching or non teaching staff by aided or unaided 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 of 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 lie with the educational agency;]

(9) The educational agency shall make the appointments only on the approval as per sub-rule (8) above;

(10) Nothing in this rule shall prevent an educational agency from making a temporary appointment in a casual vacancy of unaided post provided that such appointment is not for a period exceeding 60 days.

Rule-13:

Staff Selection Committee: -

[(1) The Staff Selection Committee for the purpose of filling up of an aided post other than promotion shall consist of the following persons as members:

(a) President of educational agency or his nominee;

(b) The Headmaster, who is ex-officio Correspondent/ Secretary/Manager of the Institution;

(c) Two subject experts, to be selected by the educational agency from the panel approved by the District Educational Officer Of these at least one should be the Headmaster of a recognized school.

(d) An Officer of the Educational Department not below the rank of Deputy Educational Officer nominated by the District Educational Officer concerned.

(2) The president of the educational agency can either be the Chairman; or nominate one of the members of the Staff Selection Committee to be the Chairman.

(3) The quorum for the Staff Selection Committee meetings shall be four of which the presence of District Educational Officer's nominee is compulsory.

8. Vide G.O.Ms.No.43, School Education (PS) Department, dated 09.08.2018, Rule 12 of the Rules, 1993 came to be amended in the year 2018 and Rule 13 was consequently omitted.

9. Essentially, the amendment was made to Rule 12 vide G.O.Ms.No.43, School Education (PS) Department, dated 09.08.2018 by virtue of which a new method for the selection process was introduced. This method of selection was based on the State Level Computer Based Test/Examination. The provision for Interview has been dispensed with since the Test/Examination is computer-based and on a State Level basis. The other dynamics of Computer Based Examination/Test are also prescribed in the G.O.Ms.No.43, dated 09.08.2018.

10. The new method of selection of Teachers by conducting a State Level Computer Based Test/Examination vide G.O.Ms.No.43, dated 09.08.2018, became the subject matter of challenge in a batch of Writ Petitions (in W.P.No. 28919 of 2018 and batch).

11. In the batch of Writ Petitions in W.P.No.28912 of 2018 and batch, the Division Bench of this Hon'ble High Court, vide Judgement dated 16.04.2019, was pleased to set aside the G.O.Ms.No.43, School Education (PS) Department, dated 09.08.2018 in its entirety.

12. The relevant portion of the Order of the Division Bench of this Hon'ble High Court, dated 16.04.2019, in W.P.No.28912 of 2018 and batch, is usefully extracted hereunder:

"P O I N T N O . 3

Though the respondents raised several contentions with regard to minority status of the petitioners, this Court, in the present petitions cannot decide the same, as the constitutional validity of G.O.Ms.No.43 is itself challenged before this Court and if this Court strikes down the G.O, which is applicable only to the minority educational institutions whether aided. However, only the minority educational institutions who obtained certificate from the competent authorities as defined under Section 2(1)(a) of the National Commission for Minority Educational Institutions Act, 2004, which deal with establishment, recognition and administration of minority educational institutions providing an appeal against the order passed by the competent authority. But, in the present facts, it is unnecessary to delve upon such an issue. It is for the government to take appropriate action against the institutions which are not declared as minority educational institutions as per the provisions of National Commission for Minority Educational Institutions Act, 2004. These questions cannot be decided in the present petitions and the same is left open to the State to take appropriate action in this regard.

"In view of the foregoing discussion, writ petitions are allowed declaring G.O.Ms.No.43 as void and unconstitutional, as it is violative of fundamental right guaranteed under Article 30(1) of the Constitution of India."

13. Due to the quashing of G.O.Ms.No.43 in its entirety, needless to state that the text of G.O.Ms.No.43 became redundant and a dead-letter in its entirety, and that the Judgement of the Division Bench has attained finality. In this view of the matter, the earlier text of Rule 12 of the Rules, 1993 had got automatically revived.

14. It is the case of the Writ Petitioners that the District Educational Officers of various Districts have tried to revive the content of the dead-letter of

G.O.Ms.No.43 by Executive Proceedings in an indirect manner without any lawful basis.

15. It is the contention of the learned Counsel for the Writ Petitioners that the effect of G.O.Ms.No.43 cannot be brought back into life either directly or indirectly by Executive Orders or Executive Instructions after the said G.O had been unequivocally set aside by the Division Bench on 16.04.2019 in W.P.No.28912 of 2019 and batch.

16. There is no dispute with regard to the fact that Rule 12 came to be amended *vide* G.O.Ms.No.43, dated 09.08.2018, and that through the same G.O., Rule 13 of the Rules, 1993, also came to be repealed. When the Constitutional validity of this G.O.Ms.No.43 came to be challenged before the Division Bench of this Hon'ble High Court in W.P.No.28912 of 2018 and batch, the said G.O. was set aside in its entirety *vide* Judgement dated 16.04.2019.

17. It is also an admitted fact that the Judgement of the Division Bench, dated 16.04.2019 which set aside the G.O.Ms.No.43 in its entirety, has attained finality. It is also an admitted fact that the Government of Andhra Pradesh had not brought into effect any Rule or Regulation for introducing the State Level Computer Based Test/Examination for appointment of Staff (Teaching and Non-teaching) in various Government Schools and for Aided Posts of Teachers.

18. Therefore, it is the submission of the learned Counsel for the Writ Petitioners that the Impugned Proceedings in this batch of Writ Petitions,

subjecting candidates to Computer Based selection process, is not backed by any valid Statute, Rule or Regulation.

19. It is also the contention of the learned Counsel for the Writ Petitioners that what has been expressly set aside, and which had eventually attained finality, cannot be reintroduced through an indirect method or through a backdoor method without there being any legal justification.

20. Since it is the contention of the learned Counsel for the Writ Petitioners that the Government of Andhra Pradesh had attempted to indirectly introduce a new system of Examination for selection of Teaching and Non-teaching Staff in accordance with the dead-letter of a defunct Government Order bearing G.O.Ms.No.43, it becomes relevant to examine the actual text of G.O.Ms.No.43 by which Rule 12 was sought to be amended and Rule 13 was sought to be deleted. Therefore, the amended Rule 12 in terms of G.O.Ms.No.43 reads as under:

"In the said rules, for rule 12, the following shall be substituted, namely:-

"12. Procedure for filling up of the posts in Aided Institutions:-(1) *The merit-cum-roster based recruitment system as is existing be continued. There shall be a separate roster system for each school. The posts shall be filled up accordingly. 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 against a vacancy belonging to S.C./S.T., then the S.C./S.T vacancy shall be carried forwarded to the next recruitment.*

(2) The rationalisation exercise shall be taken up every year in the month of October based on the Aadhaar seeded UDISE enrolment data as on 30th September of that year. The recruitment procedure to fill up vacancies shall be taken up only after completing the promotions, which shall be done on a regular basis every year.

(3) *The District Educational Officer or the Regional Joint Director, as the case may be, shall estimate the number of posts to be filled in respective unit /School by way of direct recruitment based on teacher-pupil ratio requirement subject wise only after affecting promotions.*

(4) *Regional Joint Director of School Education/District Educational Officer has to confirm that there are no surplus teachers/posts in the district and submit the school-wise posts, required to be filled up in respective unit/ school, by way of direct recruitment to the Commissioner of School Education.*

(5) *The Commissioner of School Education, shall issue notification for filling up of posts for all aided schools of the State duly informing Governinment.*

(6) *Out of the total posts to be filled in the district, 80% of posts shall be filled with local candidates of the district remaining 20% would be open to all.*

(7) *The applicants for non-teaching posts will have separate examination as decided by the Commissioner of School Education from time to time.*

(8) *The selection process for teaching and non-teaching follows:*

(a) *The selection process shall be based on a State Level computer based test/examination. There shall be no interview.*

(b) *The procedure of examination including total marks, subjects and the duration of examination shall be decided by the Government.*

(c) *Required operational guidelines shall be issued by Commissioner of School Education. The selection process shall be completed within the time schedule prescribed by the Commissioner of School Education.*

(d) *Candidates should qualify in the Teacher Eligibility Test (TET) for recruitment to Aided post.*

(e) *The Educational qualifications/ Age limit shall be same as the teachers being recruited for Government/Local body schools.*

(f) *An officer, not below the rank of Additional Director O/o Commissioner of School Education shall be appointed as convenor for conduct of A-CRT (Aided common recruitment test) selection process. The Commissioner of School Education shall nominate the person to look after the entire recruitment process."*
[Vide G.O.Ms.No. 43, S.E (PS) Dept., dated 9-8-2018.]

21. Sri N. Subba Rao, Ld. Senior Counsel has also drawn the attention of this Court to an Order passed by this Court in another batch of Writ Petitions by Ld. Single Judge by which the Ld. Single Judge of this Court has directed the Official Respondents to follow Rule-12 of the Rules, 1993 by issuing certain directions vide Order dated 05.01.2023 in W.P.No.30927 of 2022 and batch. The relevant portion of the Order of the Ld. Single Judge dated 05.01.2023 in W.P.No.30927 of 2022 and batch is usefully extracted hereunder:

“9. In view of the above stand taken by the Government, all the Writ Petitions are disposed of with the following directions :

i) The respondent-authorities are hereby directed to permit the petitioners-institutions to fill up all the Aided vacancies in terms of G.O.Ms.No.1, Education, dated 01.01.1994 and also as per the Schedule prescribed under Sections 19 & 25 of the Act, 2009 ;

ii) In future also, whenever vacancies arise, the institutions have to make applications to the Competent authorities for filling up the vacancies ;

iii) On such applications, the Competent authorities shall inform the institution about the availability of qualified surplus staff, within a period of four (04) weeks from the date of application and allot said surplus staff on permanent basis ;

iv) If surplus staff are not available, the Competent authority shall inform the same and permit the petitioners-institutions to fill up the vacancies in accordance with the above said Rule, preferably within a period of two (02) months ;

*v) So far as minority institutions are concerned, the above procedure is not applicable insofar as allotment of surplus staff are concerned, in view of the Judgments of Division Bench of this Court rendered in **Modern High School, Zamisthanpur V. Government of Andhra Pradesh and Others¹** and **Ester Axene Res. High School and Others V.***

***State of Andhra Pradesh and Others. 2002 (1)
ALD 96; MANU/AP/0045/2019.***

vi) The entire exercise shall be completed by the respondent-authorities within a period of three (03) months from the date of receipt of a copy of this order ;”

22. Following the said Order another Writ Petition which was filed by the Writ Petitioner in W.P.no.7562 of 2025 came to be disposed of by the Ld. Single Judge in W.P.No.31288 of 2023 vide Order dated 05.12.2023 (Ex.P.9), in which, Ld. Single Judge had extracted the relevant portion Para-9 of the Order dated 05.01.2023 in W.P.no.30927 of 2022 and batch. Ld. Senior Counsel has drawn the attention of this Court to various provisions of the Rules, 1993, which were brought into effect vide G.O.Ms.No.1 Education (PS.2) Department dated 01.01.1994. Ld. Senior Counsel has drawn the attention of this Court to Rule-2(b) of the 1993 Rules with regard to the definition of ‘Educational Agency’. He had also drawn the attention of this court to Rule-12 Sub Rule (1) and Rule-10 Sub Rule (2). Ld. Senior Counsel has taken this Court through the Sub Rules (3) (a), Sub Rules 4 to 6, and Sub Rule 8 and also Rule-13. He would submit that the reference to G.O.Ms.No.75 School Education (PS-2) Department dated 23.09.2002 (Ex.P.3) (Reference No.2) in the impugned Order dated 19.03.2025(Ex.P.1) has no relevance to the issue on hand at all. He would submit that placing reliance on G.O.Ms.No.75 School Education (PS-2) Department dated 23.09.2002 (Ex.P.3) would itself indicate complete non-application of mind on the part of the District Educational Officer in passing the impugned Order dated

19.03.2025. He would submit that the said G.O.Ms.No.75 School Education (PS-2) Department dated 23.09.2002 (Ex.P.3) was issued as a onetime measure and therefore, the same has no relevance to the issue on hand. Ld. Senior Counsel has also drawn the attention of this Court to Section 7 of the Education Act which indicates that the Management is responsible for implementation of the Act.

23. Sri S.V.S.S.Siva Ram, Ld. Counsel appearing on behalf of Sri K.P.S. Sailesh Reddy, Ld. Counsel for the Writ Petitioners (in W.P.Nos.7036, 7700, 7725, 7731, 7734, 8109, 8481 & 9455 of 2025) has submitted that the Deputy Educational Officer (Respondent No.5 in W.P.No.7036 of 2025) therein had in fact issued Proceedings vide Letter Rc.No:01/Spl-Aided Recruitment/DYEO-GDR/2025 dated 13.02.2025 prescribing the Rules and procedure to be followed for conducting the Written Test for recruitment to the Teacher posts. Ld. Counsel for the Writ Petitioners would submit that when the Writ Petitioners were making efforts to conduct the Written Test, the impugned Proceeding dated 22.03.2025 came to be issued by the District Educational Officer (Respondent No.4 in W.P.No.7036 of 2025) seeking to conduct a Computer Based Test (CBT) without following the Staff Selection Committee procedure as mandated under Rule 12 and Rule 13 of the Rules, 1993. He would submit that this is a sudden 'U-Turn' taken by the Official Respondents without any legal-basis. Ld. Counsel for the Writ Petitioners has also assailed the power of the Respondents to deviate from the Rules prescribed under G.O.Ms.No.1 dated 01.01.1994.

24. Sri Gurram Ramachandra Rao, Ld. Government Pleader for Education has filed Counter-Affidavit sworn by the Regional Joint Director of School Education, Guntur District in W.P.No.7562 of 2025. Along with the Counter-Affidavit, a Stay Vacate Application also has been filed. He has drawn the attention of this Court to the impugned Memo dated 19.03.2025, under which, the Respondent No.2 has proposed to conduct Computer Based Test (CBT) to avoid conflict among the candidates. It is to be noted that vide the Interim Order dated 24.03.2025 in W.P.No.7562 of 2025 in Para No.6, this Court had held as under:

“6. Having regard to these facts, this Court, prima facie, is of the view that the Official Respondents have deviated from the procedure which has been laid in Rules 12 & 13 of the Rules 1993. Accordingly, the impugned Proceedings bearing Rc.No.143/C2/2024 dated 19.03.2025 (Ex.P.1) shall remain suspended till the next listing. The examination which is now sought to be conducted may go on but the Official Respondents shall not undertake any further processing with regard to the examination, which is scheduled today and would have been already commenced, until the next listing or until the further Orders of this Court.”

25. Ld. Government Pleader for Education had submitted that the G.O.Ms.No.43 dated 09.08.2018, insofar as the Computer Based Examination procedure is concerned (in terms of the amended Rule-12 (8)) is concerned, the Division Bench has not expressly set aside the said procedure. In Para-17 of the Counter-Affidavit filed by the Respondent No.3 in April-2025, the Respondents would also admit that a Staff Selection Committee has to be formed by the Institution and District Educational Officer; that the

advertisement then has to be given for recruitment of posts; and, that the test/interview shall be conducted with the District Educational Officer or their nominee. However, at this stage, Ld. Counsel for the Respondents would submit that as there is no provision in the Rules to conduct a Computer Based Test and also to prevent the possibility of the Institutions in indulging correct practices in writing the written test, in the interest of teachers, the Official Respondents herein have conceived a transparent mode of testing and since the same is being done bonafide, the District Educational Officer or the Competent Authority can always prescribe such procedure.

26. It is also stated by the Ld. Government Pleader that about 711 Applications have been received when the Official Respondents have notified the selection process online. This figure is vehemently disputed by the Ld. Senior Counsel appearing for the Writ Petitioners. He would also submit that the method of test is prescribed in G.O.Ms.No.1 Education (PS-2) Dept., dt. 01.01.1991 and therefore the Official Respondents have a degree of latitude to decide the method of examination and also with regard to short-listing of the Applications.

27. In the light of the above facts, the following issues arise for consideration:

- i. Whether the method suggested by the District Educational Officer, dated 19.03.2025 (Ex.P.1), is in effect the same as that of G.O.Ms.No.43, dated 09.08.2018 (which stood quashed in its entirety)?*

- ii. If so, whether the Government is permitted to either directly or indirectly introduce a system that stood set aside by an Order of the Division Bench of this Hon'ble High Court dated 16.04.2019, in W.P.No.28912 of 2018 and batch?*
- iii. Whether it is permissible for the Executive to introduce a method through an Executive Instruction or an Executive Order, which stood expressly set aside by the Division Bench of this Hon'ble High Court?*
- iv. Whether the Impugned Proceeding dated 19.03.2025 bearing Rc.No.143/C2/2024 (Ex.P.1) is sustainable in law, in the light of the Order of the Division Bench striking down the G.O.Ms.No.43, S.E. (PS) Dept., dated 09.08.2018 and also in the light of the Order passed by the Ld. Single Judge dated 05.01.2023 in W.P.No.30927 of 2022 and batch?*

ANAYALSIS:

28. Although, Ld. Senior Counsel had extensively referred to various provisions of the Education Act as well as the Rules-1993, which have also been referred to herein above, for the sake of brevity, this Court has not extracted the entire provisions of the statute. Although, several contentions have been raised by the Ld. Counsel for the Writ Petitioners as well as the Ld. Government Pleader, the issues fall in a very narrow compass as indicated above. The State of Andhra Pradesh has promulgated the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools in Private Management) Rules, 1993 and had brought the said Rules into effect through the G.O.Ms. No.1 (PS-2) Department, dated 01.01.1994. Rule-12 of the Rules 1993 deal with 'appointment of teaching and non-teaching staff'. On 09.08.2018, Rule-12 was amended vide

G.O.Ms.No.43, S.E. (PS) Dept., dated 09.08.2018. This Rule had dispensed with the written examination-cum-interview and had introduced Computer Based System of examination apart from encompassing the minority institutions also into the fold of Computer Based Testing (CBT). It was this amended Rule-12 vide G.O.Ms.No.43, S.E. (PS) Dept., dated 09.08.2018 that came to be assailed before the Division Bench of this Hon'ble Court. The Division Bench of this Hon'ble Court, vide Order dated 16.04.2019 in W.P.No.28912 of 2018 and batch, was pleased to allow the Writ Petition by setting aside the amendment made to Rule-12 that was brought into the effect vide G.O.Ms.No.43, S.E. (PS) Dept., dated 09.08.2018. This Order has attained finality. Thereafter, this Court had upheld the provisions of Rule-12 and had also reiterated that the procedure laid down in Rule-12 must be followed for the purpose of appointing teaching and non-teaching staff through the Staff Selection Committee and that the said procedure prescribes conduct of Written test along with Interview. It is also contemplated that the educational agency shall conduct the selection process when once the representative on behalf of the Official Respondents, including the subject experts, are appointed.

29. In the light of the above discussion, and also by taking into account the facts which have attained finality, particularly where the earlier procedure of conducting Written Test and Interview for making appointments of Teaching and Non-Teaching staff had been dispensed with vide G.O.Ms.No.43, S.E. (PS) Dept., dated 09.08.2018, had been set aside by the Division Bench of

this Court and also in the light of the fact that the order has attained finality, this Court is of the opinion that until and unless the legislature makes an amendment to the Rules 1993, by introducing Computer Based Test (CBT) expressly dispensing with the system of Written Test and Interview, the Executive is not entitled to introduce a new system.

30. Howsoever laudable the object of the proposed conduct of Computer Based Test (CBT) may be, the same cannot be introduced without being backed-up by a legislation or a subordinate legislation. It certainly cannot be done through an executive fate either in the form of an executive instruction or executive order.

31. When the system which had been introduced for conducting Computer based test had been expressly set aside by striking down G.O.Ms.No.43, S.E. (PS) Dept., dated 09.08.2018, the state cannot introduced the same system indirectly by an executive order or an executive instruction, for, what you cannot do directly, you cannot do it indirectly either.

32. Although, the Court takes note of the increase in the competition and also increase in the number of applications for filling up the teacher posts, the state may take steps in bringing in a suitable legislation or subordinate legislation for introducing the new system that may be commensurate with the current needs and exigencies. Till such time, the State has not brought in a legislation or subordinate legislation by amending the Rule-12 and by deleting the Rule-13 of the Rules-1994, the State cannot introduced the Computer Based Test (CBT).

33. In the light of the above discussion and analysis, the issues framed hereinabove are answered in the following manner:

i. Whether the method suggested by the District Educational Officer, dated 19.03.2025 (Ex.P.1), is in effect the same as that of G.O.Ms.No.43, dated 09.08.2018 (which stood quashed in its entirety)?

33.1. The current method of introducing computer based test in terms of the impugned Order is in effect the same as that of G.O.Ms.No.43 dated 09.08.2018, which stood quashed in its entirety.

ii. If so, whether the Government is permitted to either directly or indirectly introduce a system that stood set aside by an Order of the Division Bench of this Hon'ble High Court dated 16.04.2019, in W.P.No.28912 of 2018 and batch?

33.2. In the light of the above answer, this Court holds that the Government is not permitted to either directly or indirectly introduce the same system which stood quashed by this Court, vide Order dated 16.04.2019 in W.P.No.28912 of 2018 & batch.

iii. Whether it is permissible for the Executive to introduce a method through an Executive Instruction or an Executive Order, which stood expressly set aside by the Division Bench of this Hon'ble High Court?

33.3. In the absence of a legislation, the Government is not permitted to introduce the system, that stood expressly set aside, either through an executive instruction or through an executive order.

iv. Whether the Impugned Proceeding dated 19.03.2025 bearing Rc.No.143/C2/2024 (Ex.P.1) is sustainable in law, in the light of the Order of the Division Bench striking down the G.O.Ms.No.43, S.E. (PS) Dept., dated 09.08.2018 and also in the light of the Order passed by the Ld. Single Judge dated 05.01.2023 in W.P.No.30927 of 2022 and batch?

33.4. In view of the above, this Court categorically holds that the impugned Proceedings, compelling the private management to undertake the process of computer based test/examination is bad in law.

34. In this view of the matter, all these Writ Petitions stand allowed. The Impugned Proceedings (in all the Writ Petitions) directing the educational institutions to subject the applicants for the post of teachers to a Computer Based Test are hereby set aside. However, having regard to the fact that the schools are now on summer recess and that by the date the Schools would be re-opened, there is a requirement for the Schools to appoint the Teachers at the earliest for the purpose of preparedness. For the purpose of achieving this preparedness, there shall be a direction to the Official Respondents to follow the procedure laid down in Rules 12 and 13 of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993 by completing the process within a period of three (03) weeks from today.

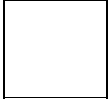
35. Interlocutory Applications, if any, stand closed in terms of this order.

GANNAMANENI RAMAKRISHNA PRASAD, J

Date: 09.05.2025

DSV/MNR/JKS

L.R Copy to be marked



HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

WRIT PETITION NOs: 7036, 7562, 7700, 7725, 7731, 7734, 8003, 8109,
8481 & 9455 of 2025

Date: 09.05.2025
DSV/MNR/JKS

L.R Copy to be marked