

THE HON'BLE SRI JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

—
WRIT APPEAL Nos.969 and 972 of 2006

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COMMON JUDGMENT: (Per Hon'ble Sri Justice A.Ramalingeswara Rao)

Heard the learned Government Pleader for the appellants and the learned Counsel for the first respondent in W.A.No.969 of 2006 and respondent Nos.1 and 2 in W.A.No.972 of 2006. These two Writ Appeals relate to the same point and hence are being disposed of by this common order.

W.A.No.969 of 2006 and W.A.No.972 of 2006 are directed against the common order of the learned single Judge in W.P.No.19002 of 2003 and W.P.No.7283 of 2003 dated 15.07.2005 respectively.

Learned single Judge allowed the Writ Petitions filed by the first respondent in W.A.No.969 of 2006 and respondent Nos.1 and 2 in W.A.No.972 of 2006 (hereinafter referred to as, the writ petitioners), seeking fixation of appointment dates of the petitioners in W.P.No.7283 of 2003 in the vacancy of aided S.G.T posts as 13.06.1991 and 31.07.1991 instead of 16.12.1993, and seeking fixation of the date of promotion of the petitioner in W.P.No.19002 of 2003 as S.A.II from 13.06.1991 instead of 16.12.1993.

The writ petitioners were initially appointed as Secondary Grade Teachers in the school of the second respondent in W.A.No.969 of 2006 and third respondent in W.A.No.972 of 2006 (hereafter referred to as, the respondent school). Though proposals were sent by the respondent school to the third appellant seeking permission for absorption/promotion in the aided vacancy, it appears that the said proposals were not traceable in the office of the third appellant due to fire accident. However, when vacancies arose in the aided posts, the writ petitioners were promoted in June and July, 1991. The third appellant issued

proceedings in Rc.No.7309/D1/93, dated 16.12.1993, ordering promotion and absorption of the writ petitioners with effect from the date of the said order. Though the respondent school submitted a representation on 28.12.1993 to the third appellant seeking modification of orders ratifying the action with effect from the dates of actual promotion/absorption, instead of from the date of the order i.e., 16.12.1993, no action was taken in issuing the revised orders. The writ petitioners, therefore, filed the Writ Petitions and the learned single Judge held that there is no dispute that there are clear grant-in-aid vacancies in the year 1991 and the writ petitioners have to be absorbed into the grant-in-aid posts from the date of their appointment by the respondent school. It was also held that when the respondent school issued proceedings absorbing the first and second petitioners in W.P.No.7283 of 2003 and the sole petitioner in W.P.No.19002 of 2003 into grant-in-aid posts with effect from 13.06.1991, 01.08.1991 and 13.06.1991 respectively, they are entitled to absorption into grant-in-aid posts with effect from the above said dates instead of 16.12.1993, the date on which the approval was granted by the competent authority. Learned single Judge rejected the contention of respondent Nos.1 to 3 in the Writ Petitions that the respondent school has not sent the proposals immediately after appointing the petitioners into grant-in-aid posts and submitted them nearly after lapse of one year. Challenging the said order of the learned single Judge, respondent Nos.1 to 3 in the Writ Petitions filed these Writ Appeals.

The facts in these cases are not in dispute. The sole petitioner in W.P.No.19002 of 2003 was promoted as S.A.II with effect from 13.06.1991, whereas the petitioners in W.P.No.7283 of 2003 were absorbed in the vacancy of aided post with effect from 13.06.1991 and 01.08.1991 respectively. It is the case of the appellants that the proposals were not sent by the respondent school before absorbing the writ petitioners and they were sent belatedly. Hence, orders were issued on 16.12.1993 ratifying the action of the respondent school with effect

from the date of issuance of the said order. Now, the case of the appellants is that the writ petitioners can be absorbed in the respective posts only from the date of issuance of the order i.e., 16.12.1993, but not earlier to the said date, as there are no orders permitting their absorption.

Learned Counsel for the writ petitioners submitted that the writ petitioners have been working in the aided posts from the dates of their respective promotion/absorption and it is unjust to deny them the benefit of aided posts.

However, during the course of arguments, learned Counsel for the writ petitioners gave up the claim of salary under the aided post for the period from their dates of promotion/absorption to 16.12.1993 and submitted that the writ petitioners would be satisfied if the said period is counted for the purpose of seniority and other benefits.

We are of the view that the opinion expressed by the learned single Judge that due to lapses on the part of the Government in not approving the promotion/absorption of the writ petitioners, the writ petitioners cannot be made to suffer, does not call for any interference. The writ petitioners are entitled for counting their seniority from the dates of their respective promotion/absorption in the aided vacancies. However, since the writ petitioners approached this Court after a decade of the order passed by the Government on 16.12.1993, they are not entitled for the salary in the aided posts during the interregnum of their holding the post and the order dated 16.12.1993. We, accordingly, modify the order of the learned single Judge and hold that the writ petitioners/first respondent in W.A.No.969 of 2006 and respondent Nos.1 and 2 in W.A.No.972 of 2006 are entitled for counting their service in the aided post for the purpose of seniority and other benefits, but not entitled to the arrears of salary, if any.

The order of the learned single Judge is modified to the extent

indicated above, and the Writ Appeals are partly allowed. The miscellaneous petitions, if any, stand disposed of. There shall be no order as to costs.

(DILIP B. BHOSALE, J)

(A.RAMALINGESWARA RAO, J)

23.02.2015

vs