

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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W.P.No.17913 of 2000

Between:

K.V.Subba Rao

.. Petitioner

and

The District Educational Officer, West Godavari District, Eluru and 3 others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 14.8.2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

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| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

W.P.No.17913 OF 2000

ORDER:

The writ petition is filed under Article 226 of the Constitution of India seeking to issue a writ of *Mandamus* to declare that the petitioner is entitled for regularisation of his services in Secondary Grade Teacher (S.G.T.) Cadre against grant-in-aid post with effect from the date of his first appointment i.e, 21.07.1989 with all consequential benefits including computation of total length of service from that date for purposes of pension and other benefits by holding the action of the respondents in regularising his services only with effect from 01.04.1997 and seeking to recover the alleged salaries in grant-in-aid from the date of first appointment till 31.03.1997 thereby virtually depriving and nullifying the nine years of service rendered by him with no fault of him vide proceedings Rc.No.68/A4/97 dated 25.06.2000 issued by the District Educational Officer, West Godavari District, Eluru, as illegal and arbitrary.

2. The averments in the affidavit filed in support of the writ petition would show that the petitioner, after completing Intermediate and Teacher Training Course (T.T.C.), was appointed as S.G.T. in respondent No.4 Institution i.e., S.R.K.K.Hindu Aided Elementary School, Vinjaram, Polavaram Mandal, West Godavari District, in grant-in-aid post in regular scale of pay of Rs.1010-1800 w.e.f. 21.7.1989 and since then, working in the said post without any complaint. It is stated that when his services were sought to be terminated, he approached this Court in W.P.No.5091 of 1990 and this Court, by an order dated 11.4.1990, directed the respondents to continue him as S.G.T. in respondent No.4 Institution. Ever since then, the petitioner was paid salary regularly in grant-in-aid post and

was granted regular periodical increments. While so, the issue of regularising the services of teachers appointed in deviation of G.O.Ms.No.524, Education (PS) Department, dated 20.12.1988 came up for consideration before this court in W.P.No.15921 of 1989 and batch wherein this Court directed the Government to constitute a committee either region wise or state wise, to go into the performance of service records and basic qualifications of teachers who were appointed by the private management during the said period. The said order also indicate that the respondents concerned therein will extend the time for grant-in-aid for the post held by these teachers to the teachers found suitable for continuation with effect from 01.04.1997 provided they have been appointed in clear vacancies in the sanctioned posts. In pursuance of the above judgment, the Government issued G.O.Ms.No.301, Education (PS-1) Department, dated 25.9.1997 constituting a State Level Committee to scrutinise the alleged irregular appointments of teaching and non-teaching staff made by the private managements to judge the suitability of the candidates appointed by the private management and make its recommendations to the Government for taking further action. In pursuance of the same, the name of the petitioner was placed before the State Level Committee and the same was cleared for purpose of regularisation. Based on the above recommendations, the Government issued G.O.Ms.No.92, Education (SE/PS-1) Department, dated 03.12.1999 wherein the name of the petitioner was included at Serial No.16 for the purpose of regularisation of his service. While things stood thus, respondent No.1 herein i.e., District Educational Officer, West Godavari District, Eluru issued proceedings in Rc.No.68/A4/97 dated 25.6.2000 regularising his services with effect from 01.04.1997 and directing respondent No.4 to recover the salary already paid in the grant-in-aid. Challenging the same, the present writ petition is filed.

3. Learned counsel for the petitioner submits that the petitioner was admitted as S.G.T. in grant-in-aid post in regular scale of pay with effect from 21.7.1989. The increments were released from time to time and he was allowed the revised pay scale of 1993. Since the appointment was on grant-in-aid, the regularisation should be with effect from the date of appointment i.e., 21.7.1989 and not with effect from 01.04.1997. It is stated that it is unjust to regularise the services from 01.04.1997 though he was appointed in grant-in-aid post in regular scale of pay in the year 1989 itself. He further submits that even assuming that appointment of the petitioner is from 01.04.1997, the order of respondent No.1 in directing respondent No.4 to recover the salary paid is totally unheard of and the same is contrary to the judgment of the Apex Court in **Shyam Babu Verma and others v. Union of India and others**^[1].

4. Learned Government Pleader for School Education (Andhra Pradesh) filed his counter denying the averments in the writ petition. According to him, since the petitioner was appointed contrary to G.O.Ms.No.524, dated 20.12.1988, the order of recovering the grant-in-aid salaries paid cannot be said to be illegal. He further submits that since the initial appointment itself was illegal, there is nothing wrong in regularising his services with effect from 01.04.1997.

5. A perusal of the material placed before this Court shows that initially, the petitioner was appointed on 21.7.1989 in grant-in-aid post as he was having requisite qualifications. The said appointment of the petitioner was not approved by the Government on the ground that the selection was not in accordance with the rules prescribed in G.O.Ms.No.524, dated 20.12.1988. Aggrieved by the orders of the competent authority, the petitioner filed W.P.No.5091 of 1990 and vide order dated 11.4.1990 in

W.P.M.P.No.6504 of 1990, the respondents were directed to continue the petitioner as S.G.T. in respondent No.4 Institution and continue to pay the salary to the petitioner till disposal of the writ petition. Based on the interim order passed by this Court, the respondents paid salary in grant-in-aid from 11.4.1990 to 31.3.1997. Meanwhile, this Hon'ble Court, in W.P.No.15921 of 1989 and batch filed questioning G.O.Ms.No.524, dated 20.12.1988, passed the following order:

"(1).....

(2).....

(3) *The respondents concerned will extend the benefit of grant-in-aid for the posts held by these teachers, to the teachers found suitable for continuance, with effect from 1.4.1997 provided they have been appointed against clear vacancies and sanctioned posts.*

....."

In view of the orders passed by this Court, a State Level Committee was constituted. The committee recommended irregular appointments made by the private aided institutions for approval. The petitioner was one amongst those persons who was recommended for appointment though his initial appointment was found to be irregular. It is to be noted that while disposing of the writ petitions, this Court has categorically held that the respondents in the writ petitions would extend the benefit of grant-in-aid for the posts held by those teachers found suitable for continuance, with effect from 01.04.1997 provided they have been appointed against clear vacancies and sanctioned post. The said order has become final as the same was not challenged. It is not in dispute that the petitioner was appointed against clear vacancy and also in the sanctioned post. In view of the orders passed by this Court in W.P.No.15921 of 1989 and batch, respondent No.1 has rightly regularised the services of the petitioner from 01.04.1997 onwards.

6. The second question that falls for consideration is whether

respondent No.1 was justified in ordering recovery of the salary paid to the writ petitioner from the year 1989 to 1997?

7. It is to be seen that the petitioner, who was appointed as a teacher in regular scale of pay in the year 1989, worked without any blemish till his services were regularised in the year 1997. It is not the case of the respondents that the petitioner was claiming salary without working in the school. It is not even the case of the respondents that the petitioner indulged in dubious methods for getting a job in the said school. Having extracted the work for nearly eight years, this Court is of the view that respondent No.1 was not justified in ordering recovery of the salary paid to the petitioner. In similar situation, the Apex Court, in **Shyam Babu Verma's case, (1 supra)**, held at para No.11 as under:

"Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

Having regard to the circumstances referred above and in view of the judgment of the Apex Court referred above, this Court is of the view that it shall be just and proper to direct the respondents not to recover any grant-in-aid salary which was already paid to the petitioner.

8. Accordingly, the Writ Petition is allowed in part directing the respondents not to take any steps to recover the grant-in-aid salary paid to the petitioner during his period of employment i.e., from 1989 to 1997, while upholding the regularisation of the services of the

petitioner from 01.04.1997 onwards. There shall be no order as to costs.

9. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE C.PRAVEEN KUMAR

Date: 14.8.2015
AMD

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THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

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W.P.No.17913 of 2000

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DATE: 14.08.2015

AMD

[\[1\]](#) (1994) 2 Supreme Court Cases 521