

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

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WRIT PETITION No.2975 OF 2006
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ORDER:

This Writ Petition came to be filed seeking issuance of a writ of *mandamus* declaring that the petitioner is entitled to arrears of Grand-in-Aid for the period from 01.09.1985 to 31.10.1989 (50 months) and consequently, direct the respondents to pay the amount with penal interest.

2. The facts in issue are as under:

The petitioner was appointed as School Assistant on 13.03.1985 and was working as School Assistant from the date of her appointment. In pursuance of the policy decisions, the State Government issued G.O.Ms.No.535, dated 28.10.1986, whereunder S.R.R.M. High School, Vital Nagar, Chirala, in which the petitioner is working, was admitted to Grant-in-Aid from 01.09.1985 subject to the terms and conditions stipulated therein. In terms of the said GO, a sum of Rs.68,890/- was made available for payment of salaries and allowances of staff members for the period from 01.09.1985 to 28.02.1986. Later, the State Government reviewed the earlier orders including G.O.Ms.No.535, dated 28.10.1986, and issued G.O.Ms.No.326, dated 17.10.1989 admitting nine posts to Grant-in-Aid. From the date of issuance of G.O.Ms.No.326, dated 17.10.1989, staff of S.R.R.M. High School were being paid salaries and allowances regularly. It is stated that in spite of issuance of G.O.Ms.No.326, dated 17.10.1989 the Government is not considering the request of the petitioner for payment of arrears of salary. Citing various cases, whereunder this Court allowed the request of the staff of the schools, which

were admitted to Grant-in-Aid, the present writ petition is filed seeking the same relief.

3. Learned Government Pleader for School Education filed counter affidavit, opposing the relief claimed by the petitioner. It is stated in the counter that the Government have admitted unaided posts/unaided schools into grant-in-aid, which were existence in the entire State as on the date of issuance of G.O.Ms.No.326, dated 17.10.1989 and the salaries and allowances were being paid with effect from 01.11.1989. Hence, it is urged that the petitioner is not entitled for arrears as claimed in the writ petition.

4. The learned Counsel for the petitioner brought to the notice of this Court that GVK High School, Tadikonda, Guntur District, which was also admitted to grant-in-aid along with S.R.R.M High School, Vital Nagar, Chirala, filed W.P.No. 15879 of 1990 challenging the G.O. The said writ petition was allowed and W.A.No. 1745 of 1995 preferred by the State was dismissed by a Division Bench of this Court confirming the Judgment of learned single Judge vide Judgment dated 11.06.1996, holding that the respondent in the writ appeal is entitled to the arrears of grant-in-aid and the same cannot be denied on the ground of paucity of funds. It was further held that the Government cannot deny to pay the arrears without challenging the order of this Court and by enacting A.P. Act No. 34 of 1995 so as to nullify the Judgment of single Judge is *ultra vires* to the extent it purports to set aside the impugned Judgment.

5. The learned Counsel for the petitioner submitted that as against the decision of this Court in W.A.No. 1745 of 1995, the Government of Andhra Pradesh carried the matter to the Hon'ble

Supreme Court by way of Civil Appeal No. 2422 of 1997 and the Apex Court while dismissing the above Civil Appeal (AIR 2000 SC 2651) held as under:

“The learned Single Judge allowed the writ petition holding that the respondent school was entitled to payment of arrears of grant-in-aid and quashed G.O.Ms.No. 138 dt. 25.4.1994. Then the State came forward with a legislation---after the said judgement, by way of Andhra Pradesh Act 34 of 1995 (Published in the Gazettee on 20.9.1995) with retrospective effect from 17.10.1989 which permitted denial of ‘arrears’ of grant-in-aid whenever such arrears were claimed under ‘any judgement, decree or order of Court or other authority or any order issued by Government’. In the Writ Appeal, the State relied upon the said legislation to get over the judgement dt. 27.7.95 of the learned Single Judge directing arrears of grant-in-aid to be paid but the Division Bench held that the legislature could not set aside the judgement of the High Court by Act 34/95. The judgment was confirmed and the Writ Appeal was dismissed. It is against the said judgement this appeal is preferred by the State. During the pendency of this appeal stay of High Court’s order was refused.”

The Supreme Court further held as under:

“We next come to para 12 of GO 326 dated 17.10.1989. This GO contained a list of 59 schools like the respondent wherein it was stated that the Committee had given favourable recommendation in favour of the writ petitioner and other institutions. The GO stated that these institutions would be entitled for release of grant-in-aid w.e.f. 1.11.89 to 29.2.90 for the year 1989-90. It, however, contained a note in para 12 as follows:

“Regarding payment of arrears to the school now admitted to grant-in-aid, orders will be issued separately.” In our view, the word ‘now’ used in this GO does not mean that these schools are identified as entitled to grant-in-aid for the first time in 1989 in this GO 326. This is clear from the fact that like Section 3 of Act 22/88, this GO also speaks of

arrears. If indeed the previous orders relating to admission to grant-in-aid were intended to be given a go bye as contended before us for the State, the Government would not have referred to the question of payment of arrears in this GO 326. Therefore, the word 'now' in our view, is used only to identify those schools etc., referred to in Annexure to the GO 326 and as cleared by the Committee and was not intended to create a new prospective right to receive grant-in-aid after 1989. Such identification would therefore clearly relate back to 22.7.85 which was the date from which Act 22/88 became retrospective."

6. Learned Government Pleader for Education relied upon the decision of Hon'ble Supreme Court in Appeal (Civil) No.3043 of 2008 in support of his arguments. But, the said judgment is not applicable to the case on hand since it was a case where the appointments were made without following due process of law and the Court held that if the appointments were made without following the due process of law, it is only the management, which has to bear the consequences. But, the situation on hand is different.

7. It is not in dispute that the school, in which the petitioner was working, was admitted to Grant-in-Aid and nine posts were given to Grant-in-Aid by the Government, whereunder the Hon'ble Supreme Court in the judgment referred to above, clarified in paragraph No.12 stating that the G.O.Ms.No.326, dated 17.10.1989 shall not be understood that the schools mentioned in the G.O. are identified as entitled to Grant-in-Aid for the first time in the year 1989. In view of the decision of the Hon'ble Supreme Court, petitioners are entitled for arrears of Grant-in-Aid for the period from 01.09.1985 to 31.10.1989. In fact, in identical

circumstances, a learned single judge of this Court in W.P.No.14896 of 2001 granted the relief claimed by the petitioners/Teachers therein.

8. Accordingly, the Writ Petition is allowed directing the respondent authorities to pay the arrears of Grant-in-Aid to the petitioner for the period 01.09.1985 to 31.10.1986, without interest.

Consequently, Miscellaneous Petitions, if any, pending in this writ petition shall stand closed. No order as to costs.

JUSTICE C. PRAVEEN KUMAR

Date:03.12.2015
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