

**THE HON'BLE SRI JUSTICE RAMESH
RANGANATHAN**

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTI

WRIT PETITION No.5926 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This writ petition is filed by the State against the order of the A.P.Administrative Tribunal in O.A.No.4182 of 2010 dated 05.02.2013.

The 1st respondent herein, a retired Secondary Grade Teacher, filed the O.A. to declare that she is entitled for treating the gap period from 01.11.1994 to 06.03.2001 as leave to which she is entitled; and the subsequent period from 07.03.2001 to 28.02.2008, during which period she was awaiting posting orders, as compulsory wait in terms of FR 9(13) of the Fundamental Rules with all consequential benefits.

The 1st respondent was originally appointed as a Secondary Grade teacher in the year 1977. Because of her ill-health, she applied for leave from 01.11.1994 and claims to have extended the leave from time to time. It is the case of the petitioners herein that the Chief Executive Officer of the Zilla Parishad, by proceedings dated 09.06.1997, asked her to join duty, but she failed to do so. It was only on 07.03.2001 that she requested to be permitted to join duty. After the matter was referred to it, the Government, by memo dated 09.10.2001, sought a detailed report. The first respondent submitted another representation on 09.01.2002 and, as the said representation was also referred to the second petitioner herein, she invoked the jurisdiction of the Tribunal by filing O.A.No.11095 of 2002.

In its order, in O.A.No.11905 of 2002 dated 19.01.2007, the Tribunal held that it was not convinced that she had produced a proper fitness certificate based on which she could claim that she should immediately be given posting orders; and there were other ailments with reference to which no fitness certificate was produced. The O.A. was disposed

of directing the 3rd petitioner herein to submit a detailed report, to the 1st petitioner herein, enumerating the circumstances of the case of the 1st respondent as disclosed in the various representations submitted by her; and obtain orders within a period of six weeks. The Government was directed to consider the proposals of the District Educational Officer, Nalgonda and pass appropriate orders within a period of 12 weeks thereafter.

The Government, vide memo dated 30.01.2008, accorded permission to the 1st respondent to join duty with immediate effect. The period of absence from 01.11.1994 to 06.03.2001 was regularized as dies-non for all purposes viz. increments, leave and pension as per FR 18 of the Fundamental Rules. Aggrieved thereby, the 1st respondent invoked the jurisdiction of the Tribunal by way of the present O.A. By the order under challenge in this writ petition, the Tribunal directed the petitioners herein to treat the gap period of the applicant from 01.11.1994 to 06.03.2001 as leave to which she was entitled to or extraordinary leave; and to treat the period from 07.03.2001 to 28.02.2008 as 'compulsory wait' for the purpose of pension with all consequential benefits, including pay and other allowances for that period. The petitioners herein were directed to fix the pension of the 1st respondent and submit the pension papers to the Accountant General.

Learned Government Pleader for Services would submit that, in view of the earlier order of the Tribunal in O.A.No.11095 of 2002 dated 19.01.2007, the Tribunal could not have, by its order in O.A.No.4182 of 2010 dated 05.02.2013, conferred on the 1st respondent the benefit of leave for the period from 01.11.1994 to 06.03.2001 and, for the period subsequent to 2001, as compulsory wait; in its earlier order, the Tribunal had specifically held that the fitness of the 1st respondent was required to be examined, and it was not convinced of her having produced a proper fitness certificate; and, in such circumstances, she was not entitled to be given the benefits which the Tribunal had granted in her

favour.

Sri P.Suresh Reddy, learned Senior Counsel, appearing on behalf of the 1st respondent, would draw attention of this Court to FR 18 of the Fundamental Rules in support of his submission that, in terms of FR 18, the 1st respondent was entitled to be granted leave for a period of 5 years; in terms of Note 2 thereof she was entitled for being granted extraordinary leave for the remaining period; and, as such, the period from 2001 to 2008 ought to have been considered as extraordinary leave. Learned Senior Counsel, on instructions from the 1st respondent, would submit that she gives up all her claims for payment of arrears of salary till the date of the order of the Tribunal in O.A.No.11095 of 2002 dated 19.01.2007; and granting her extraordinary leave for the aforesaid period, in terms of FR 18 and Note 2 thereof, would only result in her being extended the benefit of notional increments, till 19.01.2007, for the purpose of pension.

While the submission of the learned Government Pleader for Services, that the order of the Tribunal in O.A.No.11095 of 2002 dated 19.01.2007 is binding inter-parties has considerable force, it is wholly unnecessary for us to delve on this aspect any further, in view of the submission of Sri P.Suresh Reddy, learned Senior Counsel, that the 1st respondent makes no claim for arrears of salary prior to the order of the Tribunal i.e., prior to 19.01.2007.

FR 18 of the Fundamental Rules prohibits the Government, even in exceptional circumstances, to grant leave of any kind for a continuous period beyond 5 years. However Note 2 thereof enables extraordinary leave on medical grounds upto 36 months to be also taken into consideration. From 07.03.2011, when the 1st respondent sought to join duty, till the earlier order of the Tribunal dated 19.01.2007 the petitioners shall consider the 1st respondent's claim in terms of FR 18 and Note 2 thereof. Suffice it to make it clear that the 1st respondent shall not be entitled for arrears of salary and other monetary benefits, (other than notional increments for the purposes of pension), for the period prior

to the order of the Tribunal in O.A.No.11905 of 2002 dated 19.01.2007. As the Government memo dated 30.01.2008 makes no reference to the 1st respondent's fitness subsequent to the order of the Tribunal dated 19.01.2007, we see no reason to deny her payment of salary and other benefits from the date of the earlier order of the Tribunal in O.A.No.11095 of 2001 dated 19.01.2007.

The petitioners herein shall examine the 1st respondent's claim for being extended the benefit of leave in terms of FR 18 and Note 2 thereof for the period from 07.03.2001 till 19.01.2007, and for being extended the benefit of notional increments for the said period merely for the purpose of pension. The petitioners shall pass a reasoned order, and communicate the same to the 1st respondent at the earliest, in any event not later than three (3) months from the date of receipt of a copy of this order.

The writ petition is, accordingly, disposed of. Miscellaneous Petitions, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

10th March 2015.
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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
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WRIT PETITION No.5795 of 2015

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Date: 10.03.2015

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