

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.28086 OF 2005

ORDER:

This Writ Petition, filed under Article 226 of the Constitution of India, prays for declaration that the petitioner is entitled to arrears of Grant-in-aid for the period commencing from 01.09.1985 to 31.10.1989.

2. Heard Sri B.V.S.S.B.K.Ranjit, learned counsel, appearing for the petitioner and learned Government Pleader for Education, appearing for the respondents.

3. According to the petitioner, he was appointed as Grade-I Telugu Pandit on 25.09.1980 in S.R.R.M.High School, Cheerla, Prakasam District and he has been working as such ever since the date of his initial appointment. The said S.R.R.M. High School was established on 14.02.1969 and upgraded as Upper Primary School on 05.07.1971 and thereafter, upgraded as High School on 22.09.1980 and admitted to grant-in-aid from 01.09.1985. The State Government, vide G.O.Ms.No.535, Education (SSE) Department, dated 28.10.1986, accepted the proposals of the Director of School Education for admitting the said high school to grant-in-aid from 01.09.1985, subject to the terms and conditions stipulated in the said order. Subsequently, vide G.O.Ms.No.326, Education (SSE.I) Department, dated

17.10.1989, orders were issued admitting 9 posts by adding the Head Master post in grant-in-aid to S.R.R.M.High School. In the said governmental order, clause 12 stipulated that regarding payment of arrears to the schools admitted to grant-in-aid, orders would be issued separately. Consequent upon the said orders, salaries and allowances are being paid in terms of grant-in-aid regularly from 1989 onwards. In the present writ petition, it is the case of the petitioner herein that the respondents did not pay the salaries and allowances for the period from 01.09.1985 to 31.10.1989 and though the state government specifically asserted in the above mentioned governmental order that separate orders would be issued as regards payment of arrears to staff members of the high school, no orders have been passed so far. It is further alleged that the state government is deliberately dragging on the matter on one way or the other.

4. During the course of hearing, it is brought to the notice of this Court that a similarly placed employee, one Smt.S.Rehana Parvin, School Assistant, working in the same school filed writ petition, being W.P.No.2975 of 2006, before this Court praying for the similar relief i.e., payment of arrears of grant-in-aid for the period from 01.09.1985 to 31.10.1989 (50 months). A copy of the order dated 03.12.2015 passed by this court in the said writ petition is also placed on record by the learned counsel for the

petitioner. A perusal of the said order reflects that this court allowed the said writ petition, directing the respondent authorities to pay the arrears of grant-in-aid to the petitioner therein for the period from 01.09.1985 to 31.10.1986, without interest. The petitioner in the present writ petition also stands on the same footing.

5. The learned Government Pleader has vehemently opposed the grant of relief in favour of the petitioner on the ground of delay in approaching this court. It is further submitted by the learned Government Pleader that for the abnormal delay in approaching this court, no valid explanation is offered by the petitioner. While contending so, it is submitted by the learned Government Pleader that the writ petition deserves to be dismissed on the ground of abnormal delay.

6. In fact, a reply affidavit has been filed by the petitioner and paragraph Nos.4 and 5 of the said reply affidavit read as under:

“4. I humbly submit that in the above said G.O.Ms.No: 326, dated: 17.10.1989, the respondent Government made it clear in Para No: 12 regarding payment of arrears to the schools now admitted to grant-in-aid, orders will be issued separately. Therefore we have been waiting the long period for separate orders as per the assurance given by the Government in the above said G.O. However, we also made several oral and

written representations to the respondents for arrears. At that time the officials of the office of the 3rd respondent informed me several times separate orders will be given shortly after clearing the cases pending on the file of the Hon'ble High Court and Supreme Court. I humbly submit that after disposing the several cases, the same department officials informed me the Government will issue G.O. to extend the benefits of the Judgments of the Hon'ble Supreme Court and Hon'ble High Court to the entire teachers who did not approach the Hon'ble Courts. Therefore I along with other teacher and staff of my school kept quiet without approaching the Hon'ble Court and waiting for the orders of the Government as per the Para 12 of the above said G.O.Ms.No: 326, dated:17.10.1989.

5. *I humbly submit that one of the teacher in my school by name Ms. Rehana Parveen filed W.P.No: 2975 of 2006 with the same prayer and the same was allowed by this Hon'ble Court. Apart from that several batch of Writ Petitions with the same prayer were allowed by the Hon'ble Supreme Court and Hon'ble High Court. Ms. Rehana Parveen is the School Assistant in our School. Therefore the same judgment is applicable to our case also. Apart from that the other staffs both teaching and non teaching also filed several cases seeking arrears.”*

7. In this context, it may be appropriate to refer to the judgment of the Hon'ble Apex Court in **Tukaram Kana Joshi & Ors vs. MIDC & Ors.**¹, which extensively dealt with the aspect of delay while entertaining the writ petitions. In the

¹ (2013) 1 SCC 353

said judgment, the Hon'ble Apex Court held that delay and latches is one of the facets to deny exercise of discretion and it is not an absolute impediment and the Hon'ble Apex Court further held that if whole thing shocks the judicial conscience then the Court should exercise the discretion more so, when no third party interest is involved. The Hon'ble Apex Court further held that no hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of party who moves it after considerable delay and is otherwise guilty of latches and in the event that the claim made by the applicant is legally sustainable, delay should be condoned. The Hon'ble Apex Court further ruled that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred.

8. In the instant case, there is absolutely no involvement of any third party rights. It is also required to be noted that similarly situated person had already approached this Court by way of filing W.P.No.2975 of 2006 and this Court, by way of an order dated 03.12.2015, allowed the said writ petition, directing payment of arrears of grant-in-aid for the period from 01.09.1985 to 31.10.1986. Therefore, this Court does not find any justification on the part of the respondents to deny the benefit to the petitioner who is similarly circumstanced.

9. For the aforesaid reasons, writ petition is allowed, directing the respondent authorities to pay the arrears of grant-in-aid to the petitioner for the period from 01.09.1985 to 31.10.1989, without any interest.

10. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

16.11.2016
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