THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITIONS NOs.22486 OF 2000, 3841 and 5129 OF 2001

COMMON ORDER:

1. These writ petitions are being disposed of by way of common order since the issue raised in all these writ petitions is one and the same.

2. These writ petitions are filed seeking a Writ of Mandamus declaring the action of the respondents in not assigning the petitioners the correct seniority from 7.6.1989 in terms of judgments in W.P.No.2239 of 1989 dated 20.4.1993 and W.P.No.3387 of 1989 dated 20.11.1992 read with judgment in W.A.No.753 of 1993 and batch dated 18.10.1994 and in assigning the seniority only from 27.11.1995, as arbitrary and illegal, and consequently, to direct the respondents to rectify the seniority of the petitioners by showing their seniority with effect from 7.6.1989, with all consequential benefits.

3. In all these writ petitions, the petitioners were initially appointed as Trained Graduate Teachers/Physical Directors in the schools run by the 2nd respondent-society. All the petitioners were appointed in pursuance of the recruitment notification and selection. Though the petitioners were termed as contract employees, but the regular selection process was adopted while selecting them. When the case of the petitioners was not considered for regularization, they filed W.P.Nos.2239 and 3387 of 1989 to declare the action of the respondents in giving artificial break for one day after completion of 89 days as arbitrary and illegal, and to issue a direction to regularize their services. This Court vide orders dated 20.4.1993 and 20.11.1992 respectively allowed the said writ petitions deprecating the

practice of giving artificial break at the end of 89 days and directing that the cases of the petitioners shall be considered for regularization. A batch of the similar writ petitions were disposed of. Aggrieved by the same, the 2nd respondent filed a batch of appeals viz., W.A.No.753 of 1993 and batch. At the time of hearing writ appeals, the then Advocate-General submitted that the petitioners are the persons, who were appointed in pursuance of the advertisements issued inviting the applications from eligible candidates, and they were selected and appointed in a regular way and no further directions are necessary in their case. The Division Bench of this Court disposed of the writ appeals directing the respondents concerned to consider the cases of the teaching and non-teaching staff in terms of G.O.Ms.No.212, Finance & Planning (FW. PC.III) Department, dated 22.4.1994. In pursuance of the judgment of the Division Bench of this Court, the services of the petitioners came to be regularized vide order dated 27.11.1995. However, this regularization was made with prospective effect. The petitioners submitted representations to regularize them with effect from date of their initial appointment and to assign seniority from the date of their initial appointment. When such representations were not considered, the petitioners filed these writ petitions.

4. Heard Sri S. Lakshma Reddy, learned Counsel for the petitioners and the learned Assistant Government Pleader for Social Welfare for the 1st respondent.

5. It has been submitted by the learned Counsel for the petitioners that all the petitioners were recruited in pursuance of the advertisement and after undergoing regular selection process and for all purposes, their appointment should be treated as regular appointment, but for the nomenclature of contract teachers, rest of the formalities i.e., reservation in

the advertisement and selection process, was followed as though it was a regular recruitment process. Further, it has been submitted that the practice of giving artificial break at the end of 89 days is arbitrary, and this practice is highly deprecated by various judgments of this Court and also the Hon'ble Apex Court and therefore, the services of the petitioners should be regularized from the date of their initial appointment.

6. In fact, the writ petitions filed by the petitioners on the earlier occasion were allowed by this Court directing the respondents to regularize their services from the date of their initial appointment. Subsequently, by virtue of judgment in Writ Appeals, the orders of the learned Single Judge had been merged with that of the common judgment in W.A.No.753 of 1993 and batch, dated 18.10.1994. The learned Counsel for the petitioners has also relied upon the judgment of this Court in W.P.No.20455 of 1999 dated 20.9.2000 wherein learned Single Judge of this Court in similar circumstances directed that the services of the teachers, who were recruited like that of the petitioners, should be regularized from the date of their initial appointment. The respondents therein had preferred W.A.No.1403 of 2000 challenging the orders of the learned Single Judge and the said writ appeal was dismissed on 26.8.2002 confirming the orders of the learned single Judge. The learned Counsel for the petitioners contends that the petitioners herein are similarly situated to that of the petitioners in W.P.No.20455 of 1999 and at least their services rendered from 1989 to 1995 should be counted for the purpose of pensionary benefits.

7. It has been submitted on behalf of the respondents that the orders of the learned single Judge in writ petitions, in which the petitioners were parties had been merged with the judgment in Writ Appeal No.753/1993 and batch, dated 18.10.1994, and that the Hon'ble Division Bench of this

Court has directed to consider the case of the petitioners for regularization in terms of G.O.Ms.No.212, dated 22.4.1994, and when once the services of the petitioners have been regularized vide orders dated 27.11.1995 in terms of G.O.Ms.No.212, dated 22.4.1994, the question of regularizing their services with retrospective effect would not arise and therefore, no further interference is called for from this Court. It is further submitted that the petitioners having slept over the matter for six long years approached this Court by way of filing the present writ petitions in the year 2000 and 2001 and that the said fact would disclose that the petitioners had agreed and accepted the date of their regularization orders passed on 27.11.1995 with prospective effect and therefore, no interference is called for from this Court and the writ petition should be dismissed only on the ground that the petitioners had approached this Court after six long years from the date of their regularization of their services.

8. I have considered the rival submissions made by the parties. If the petitioners are similarly situated like that of the petitioners in W.P. No.20455 of 1999, and this Court directed the respondents therein to regularize the services of the petitioners therein from the date of initial appointment, I do not see any reason why such benefit should not be given in the instant case at least for the purpose of pensionary benefits. In respect of seniority, promotion and monetary benefits are concerned, the petitioners are not entitled to claim the same from the date of their initial appointment. Since the petitioners had been appointed in pursuance of the advertisement and the selection process, this Court is of the view that for the services rendered by them from 1989 to 1995, benefits cannot be denied. Only for the purpose of pensionary and terminal benefits, the services rendered by the petitioners from 1989 to 1995 should be counted.

Accordingly, the respondents are directed to regularize the services of the petitioners herein from the date of their initial appointment. However, the services rendered by the petitioners from 1989 to 1995 should be counted only for the purpose of pensionary and terminal benefits.

9. With the above direction, the Writ Petitions are disposed of. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

(ABHINAND KUMAR SHAVILI,J)

13th December, 2017
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THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITIONS NOs.22486 OF 2000, 3841 and 5129 OF 2001

13.12.2017

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