

**HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SMT. JUSTICE ANIS**

WRIT PETITION No. 36486 OF 2013

ORDER: *(Per Hon'ble Sri Justice Sanjay Kumar)*

The erstwhile Government of Andhra Pradesh and its authorities in the Education Department filed this Writ Petition aggrieved by the order dated 09.07.2013 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A.No.5185 of 2013.

2. The said O.A. was filed by the first respondent herein assailing the proceedings dated 23.05.2013 issued by the District Educational Officer, Karimnagar, refusing her request to treat the gap period from 01.01.2013 to 25.03.2013 as on duty. She sought a consequential direction to the authorities to treat the said gap period as on duty with full pay and allowances in accordance with the judgment dated 24.10.2008 passed by this Court in W.P.No.19201 of 2008.

3. By order dated 16.12.2013, this Court granted interim suspension of the order passed by the Tribunal which is under challenge. W.V.M.P.No.1761 of 2014 was filed by the first respondent to vacate the aforestated order.

4. Perusal of the record reflects that the first respondent, a Secondary Grade Teacher, opted for the Zilla Parishad High School, Marpaka, Vemulawada Mandal, Karimnagar District, in the counseling which took place in December, 2013,

for effecting promotions to the post of School Assistant. She was accordingly promoted as a School Assistant (Biological Science) and posted at Zilla Parishad High School, Marpaka, Vemulawada Mandal, Karimnagar District, under proceedings dated 19.12.2012. However, when she got herself relieved and reported for duty at Marpaka on 01.01.2013, she was informed that there was no vacancy available in the post of School Assistant (Biological Science) at the said school. She thereupon informed this to the District Educational Officer, Karimnagar, and requested that she may be posted at the existing vacancy in the Zilla Parishad High School, Rudravaram, Vemulawada Mandal, as the incumbent has retired upon attaining the age of superannuation on 31.12.2012.

5. As there was no response to her request, she filed O.A.No.265 of 2013 before the Tribunal seeking a direction to the authorities to post her as School Assistant (Biological Science) at Zilla Parishad High School, Rudravaram, Vemulawada Mandal. The Tribunal passed an interim order therein on 04.01.2013 directing the authorities to forthwith issue orders posting the first respondent as School Assistant (Biological Science) in the existing vacancy at Zilla Parishad High School, Rudravaram, Vemulawada Mandal. Despite the same, she was not admitted to the post and it was only after filing of a contempt case that she was ultimately posted at

Rudravaram, Vemulawada Mandal. As she was kept out of service from 01.01.2013 to 25.03.2013 in this process, she sought regularization of this gap period and to treat it as on duty. However, her request was rejected by the District Educational Officer, Karimnagar, under proceedings dated 23.05.2013. She thereupon approached the Tribunal by way of the subject O.A.

6. Taking note of the fact that the gap period arose on account of the non-implementation of the interim order in O.A.No.265 of 2013, the Tribunal directed the authorities to treat the gap period as on duty with all consequential benefits. Aggrieved thereby, the authorities filed the present writ petition.

7. Perusal of the order under challenge reflects that the Tribunal did not afford an opportunity to the authorities to file their counter. No doubt, the Tribunal ought to have permitted the authorities an opportunity of being heard before passing a final order in the impugned O.A. However, even in the present writ petition, the authorities do not refute the factual aspects set out *supra*.

8. Though it appears that the first respondent was posted at a distant location under the proceedings purportedly issued on 01.01.2013, Sri Ch.Jagannadha Rao, learned counsel, would point out that the said proceedings were

dispatched by ordinary post only on 07.01.2013. The sanctity of these proceedings is therefore open to question.

9. In any event, as the authorities thereafter accommodated the first respondent at Rudravaram in terms of the interim order passed by the Tribunal, it is not open to them to take advantage of these proceedings, whereby the first respondent was purportedly posted at a distant location. That apart, this Court finds that the issue is squarely covered by the earlier judgment of a Division Bench of this Court in W.P.No.19201 of 2008. That was also a case where the gap period arose due to the delay in posting a Secondary Grade Teacher who was promoted as a School Assistant.

10. On the above analysis, this Court finds no error having been committed by the Tribunal in the present case warranting interference.

11. The Writ Petition is devoid of merit and is accordingly dismissed. Interim suspension dated 16.12.2013 shall stand vacated.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

ANIS, J

Date: 21.02.2017
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**HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SMT JUSTICE ANIS**



WRIT PETITION No. 36486 OF 2013

21st day of February, 2017

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