

THE HON'BLE SRI JUSTICE SANJAY KUMAR

AND

THE HON'BLE SRI JUSTICE N.BALAYOGI

WRIT PETITION No. 12123 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 14-09-2011 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (for short, 'the Tribunal'), in O.A.No. 6229 of 2009. The said O.A. was filed by the respondent herein seeking regularization of the period from 02-08-2003, when her services were terminated, up to 02-05-2006, when she was reinstated in service, as on duty with all consequential benefits. She also assailed the proceedings dated 10-09-2009 issued by the District Educational Officer, Ranga Reddy District, rejecting her request for regularization of this period on the principle of 'No Work No Pay'. By the order dated 14-09-2001, the Tribunal allowed the O.A., setting aside the proceedings dated 10-09-2009 issued by the District Educational Officer, Ranga Reddy District, and directing the authorities to treat the period from 02-08-2003 to 02-05-2006 as on duty and to extend to the respondent all consequential benefits within a timeframe.

By order dated 24-04-2013, this Court granted *interim* suspension of the order passed by the Tribunal which is under challenge.

W.V.M.P.No. 3529 of 2016 was filed by the respondent to vacate the afore-stated order.

Heard the learned Government Pleader for Services appearing for the petitioners and Sri Ch.Jagannatha Rao, learned counsel for the respondent.

As comprehensive arguments were advanced by both counsel, the main Writ Petition is taken up for disposal with their consent. The

respondent was appointed as a special teacher on 10-09-1996. Her services were terminated under proceedings dated 25-07-2003 on the ground that she did not secure the requisite marks. Aggrieved thereby, she filed O.A.No. 5360 of 2003 before the Tribunal. The said O.A. was allowed *vide* order dated 09-02-2005. This order was implemented by reappointing the respondent as a special teacher under proceedings dated 02-05-2006. The issue presently is with regard to how the period from 02-08-2003 to 02-05-2006, when the respondent was out of service, is to be treated. The Tribunal accepted the plea of the respondent that some of the persons who were also terminated from service were extended the benefit of reinstatement but such relief was denied to her. On the ground of this discrimination, the Tribunal set aside the proceedings dated 10-09-2009 issued by the District Educational Officer, Ranga Reddy District, and granted relief to the respondent. Learned Government Pleader would however state that another similarly situated teacher was given relief by the Tribunal in O.A.No. 12933 of 2009 only to the extent of directing the break period in her service being taken into account for the purpose of seniority, pay fixation, service benefits and increments without actual monetary benefits. He would further state that though this Court, in W.P.No. 7237 of 2014, confirmed the order passed by the Tribunal in O.A.No. 413 of 2010 granting identical relief to a similarly situated teacher as in the present case, there is a distinguishable factor inasmuch as the authorities had failed to raise the issue of non-entitlement to wages for the period that the teacher did not render service, in that case. He would therefore contend that as that issue was raised in the present case before the Tribunal, the judgment of this Court in W.P.No. 7237 of 2014 would have no application. Another contention urged by the learned Government Pleader is that the respondent in the present case earlier filed O.A.No. 5360 of 2003 before the Tribunal in relation to her removal from service wherein she specifically prayed for continuance

in service as a teacher with all consequential benefits. Learned Government Pleader would point out that while disposing of the O.A., by order dated 09-02-2005, the Tribunal did not grant any consequential benefits to her but merely directed her reappointment within a timeframe.

This Court finds merit in the last submission made by the learned Government Pleader. When once the respondent was denied the relief of consequential benefits in her earlier O.A. and she allowed the order passed by the Tribunal in O.A.No. 5360 of 2003 to attain finality, it is not open to her to seek the same relief by way of a second O.A. When the issue of 'No Work No Pay' was raised before the Tribunal in terms of the proceedings dated 10-09-2009 issued by the District Educational Officer, Ranga Reddy District, the Tribunal ought to have considered that aspect of the matter. It is not in dispute that the respondent remained out of service from 02-08-2003 to 02-05-2006 and did not actually work during that period. That being so, given the totality of the afore-stated facts, we are of the opinion that the respondent can only be extended **notional** benefits for the period in question, in terms of counting the same for retirement benefits and for the purpose of pay and pension fixation. She shall however not be entitled to any actual monetary benefits for the said period.

The Writ Petition is allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J.

N. BALAYOGI, J.

09th February, 2017.
JSK