

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No. 22779 OF 2017

ORDER :

This writ petition is filed seeking writ of mandamus declaring the action of the respondents in not taking appropriate steps for fixation of pay of the petitioner in terms of PRC 2015, annual increments and other benefits as illegal, arbitrary and consequently to direct the 7th respondent to send the proposals for fixation of pay as per PRC - 2015 and as directed by the 5th respondent in DO Lr. R.No.C12598/C1/2011, dated 27.09.2016, Lr.Rc.No.12598/C1/2011, dated 25.1.2017 and Rc.No.1760/C1/2017, dated 25.05.2017 and to direct the respondents 3 to 6 to fix the salary of the petitioner in terms of PRC 2015.

The sum and substance of the case of the petitioner is that he was appointed as Secondary Grade Teacher (Urdu) in existing aided vacancy in the 7th respondent school by following due process of law and at present he is working as such in the ORM School, Haranadhapuram, Nellore City. Though several allegations are made against the Correspondent of the 7th respondent-school, the limited grievance of the petitioner is that, in view of enmity with him, the Correspondent of the 7th respondent-School has not sent

the proposals though the District Educational Officer-5th respondent has issued final notice dated 27.09.2016 to the Correspondent of 7th respondent-school, directing him to send the proposals for payment of yearly increments, PRC 2015. The 5th respondent also issued another notice dated 07.10.2016 along with Form-I notice asking him to submit his explanation within two weeks from the date of receipt of notice as to why he should not be terminated from service for the lapses referred to by the District Educational Officer, Nellore. Subsequently, the Correspondent of the 7th respondent has sent only the proposals of his wife Susheela for pay fixation as per PRC-2015 but failed to send the proposals pertaining to the petitioner and another teacher. Due to non submission of proposals of all teachers, the benefits of pay fixation as per PRC 2015 could not be extended to the Head Mistress Susheela. The 5th respondent, has issued another final notice dated 25.01.2017 directing the Correspondent of 7th respondent to sanction Annual Periodical increments/PRC pertaining to the petitioner and another teacher immediately. Though the 5th respondent-District Educational Officer has issued another letter dated 25.05.2017 to the Correspondent of 7th respondent to directing him to send the proposals of PRC 2015, the same has not been comply with by the 7th respondent. Aggrieved by the same, present writ petition is filed.

Counter affidavit is filed by the 7th respondent denying the averments in the affidavit filed in support of the writ petition. Though several allegations are made against the writ petitioner, the brief averments which are necessary for disposal of the writ petition are that when the petitioner made representation dated 19.01.1998 requesting to designate him as Head Master, the same was rejected by the District Educational Officer, Nellore on 06.09.1999 as one Smt. P.Terasamma was working as Head Mistress of the School by that time. That basing on certain allegations against the petitioner, this respondent passed an order in Rc.No.1/2003, dated 21.10.2005 for stoppage of two increments with cumulative effect due to filing of false petitions against the Management and also harassing the female teachers in the 7th respondent school. It is stated that when the petitioner and the Union Leaders made false allegations against this petitioner and same was published in news papers, the Collector & District Magistrate, SPSR Nellore issued proceedings dated 31.12.2012 terminating his correspondent-ship and in his place, the MEO, Nellore was appointed as a Special Officer to manage the affairs of this respondent School. Aggrieved by the action of the District Collector, this respondent filed WP No.4640 of 2013, wherein the petitioner was shown as 6th respondent and this Court while admitting the writ petition, passed interim order suspending the

proceedings of the District Collector dated 31.12.2012 and also directed the authorities to consider the claim of the 6th respondent therein (writ petitioner herein) for his transfer to any other institution. That the DEO, who is the competent authority has issued proceedings in Rc.No.12598/C1/2011, dated 01.11.2014 after examining the request of the writ petitioner herein, rejected his claim for transfer on the ground that there is no SGT (Urdu) post in any aided school in the District, though as per G.O.Ms.No.1 Education Department dated 01.01.1994 r/w G.O.Ms.No.39, Education Department dated 17.06.2013, there is a provision under certain circumstances to transfer a Teacher from one aided school to another aided school only in the District by the competent authority. When once the DEO, Nellore has rejected his claim for transfer, now again the DEO, Nellore cannot transfer the petitioner from SGT (Urdu) of one Aided Elementary School to another Aided Elementary School to SGT (Telugu). When there is an allegation against the writ petitioner and one Smt. D.Vidyavathi that both of them have obtained jobs on fake certificates, the DEO, Nellore directed both the teachers to produce their original educational qualification certificates within seven days vide his letter dated 16.09.2015, but so far they have not produced the same. That though several reminders sent to the petitioner, he failed to obey the directions of this respondent as well as the Competent

Authorities. It is stated that the writ petitioner served a copy of proceedings of the DEO, Nellore dated 22.12.2016 on 30.12.2016 stating that as per the representation of the Special Officer, ORM Aided Elementary School, Haranadhapuram, Nellore dated 10.12.2015, the request of the petitioner for his transfer was examined in relation to his educational qualifications in Telugu Medium and posted as SGT, Telugu in the clear existing vacancy caused due to attaining the age of superannuation to ORM Aided Elementary School, Haranadhapuram, Nellore. That the DEO, Nellore is not competent on his own admission to transfer SGT (Urdu) Pandit from one aided school to another aided school without prior concurrence of the Government and also that one SGT (Urdu) Teacher after completion of 34 years of service, cannot be posted as Telugu Pandit. The said transfer was in the middle of the academic year and that no alternate arrangement was made before affecting his transfer, as such, the Urdu Medium pupils are suffers at large in view of his transfer in the middle of academic year. This respondent made a complaint and the same is pending. Though he was transferred in the year 2016, he filed the present writ petition now seeking a relief of fixation of his pay as per PRC-2015 cannot be granted in view of above facts and circumstances. It is further stated that since the petitioner is not discharging his functions under the control of the 7th respondent, at the

intervention of the official respondents, this respondent sent his LPC or SR to the ORM Aided school and his salaries are now being paid to the ORM Aided school as per his LPC and SR, as such, sending proposals for PRC-2015 does not arise. It is further stated that after receipt of notices dated 27.09.2016, 07.10.2016 and 25.01.2017 including other notices, this respondent had submitted suitable reply with a request to the authorities to consider the averments in the explanation/reply and further requested if the authorities came to the conclusion that the writ petitioner is entitled for revised pay scales, to pass necessary orders enabling this respondent to send the service particulars for granting of relief as claimed by him, but there was no proper response from the authorities and in the meanwhile, the petitioner was transferred from the 7th respondent aided school to another Elementary School un-authorisedly, without any consent or prior intimation to this respondent and also without following the due process of law and hence sought for dismissal of the writ petition.

3. Heard learned counsel for the petitioner and learned Assistant Government Pleader for School Education appearing for respondents 1 to 6.

4. Learned counsel for the petitioner while reiterating the averments in the affidavit filed in support of this writ petition, submits that though several notices have been issued to the

Correspondent of the 7th respondent School for sending proposals of fixation of PRC 2015 in respect of the petitioner, the same have not been send by the 7th respondent. He submits that the Correspondent of 7th respondent is intentionally not sending the proposals of fixation of PRC 2015 of the petitioner, though he was issued final notice and Form-1 by the competent authority.

5. On the other hand, learned counsel appearing for the 7th respondent submits that the petitioner has not produced certificates in proof of his educational qualifications in spite of issuing several reminders. He submits that he is in the habit of giving complaints against the Correspondent of this respondent on false and frivolous allegations. He contends that he was transferred to the another aided school without knowledge of this respondent and that he is not now working under the control of this respondent, as such, sending of proposals for fixation of PRC, 2015 does not arise.

6. In view of above factual background, it is to be seen that admittedly there appears to be tussle between the petitioner and the Correspondent of the 7th respondent since long back with regard to sanction of leaves, increments and other financial benefits due to the petitioner. When there was a quarrel between the petitioner and the correspondent of the 7th respondent school, on the representations of the A.P.Teachers Federation to the District Educational Officer

and the District Collector, the District Collector, Nellore, after conducting a detailed enquiry, issued an order terminating Sri P.Ashok Kumar as Correspondent of the 7th respondent School and appointed Mandal Educational Officer to perform the activities vide Procs.Rc.No.12598/C1/2012, dated 31.12.2012. Aggrieved by the said orders, the Correspondent of 7th respondent filed WP No.4640/2013, wherein this Court, while admitting the writ petition passed interim order dated 15.02.2013 as follows:

“Hence, there shall be interim suspension as prayed for, it is directed that in case, the 6th respondent submits an application for his transfer to any other institution, the concerned authorities shall take appropriate steps, even if the Secretary and Correspondent of the Institutions, does not endorse upon it.”

7. Subsequently, the 6th respondent in the aforesaid writ petition, who is writ petitioner herein made a representation dated 16.07.2014 to the District Educational Officer, Nellore to transfer from the 7th respondent school to any other school. However, the said request of the petitioner was rejected by the District Educational Officer vide proceedings dated 01.11.2014 on the ground that there is no SGT (Urdu) Post in any aided school in the District. The 5th respondent- District Educational Officer, SPSR Nellore has issued proceedings in Rc.No.12598/C1/2011, dated 23.12.2016 transferring the petitioner to ORM Aided Elementary School, Haranadhapuram, Nellore. Admittedly, the 6th respondent- Mandal Educational Officer and Special Officer, had addressed

a letter dated 04.01.2017 to send the LPC and SR of the petitioner to the school where the petitioner was transferred, in order to claim salary and same was sent by the Correspondent of the 7th respondent school, as such, there cannot be any grievance to the 7th respondent as far as transfer of the petitioner to the ORM school is concerned, because for the reason that he has not questioned the proceedings of the transfer of the petitioner so far.

8. The 5th respondent issued proceedings dated 25.01.2017 to the 7th respondent to sanction Annual Periodical increments/PRCs to the petitioner along with another teacher and subsequently issued notice dated 25.05.2017 to the 7th respondent for sending proposals relating to PRC 2015 for sanction of the aforesaid benefits to the petitioner, but the 7th respondent has failed to oblige the orders of the 5th respondent.

9. The only ground urged in the counter affidavit of the 7th respondent for not sending the proposals of the petitioner for fixation of PRC 2015 is that though he replied to the notices sent by the 5th respondent, has not received any orders for the same and that if he receives any orders from the 5th respondent for sending of proposals for fixation of PRC, 2015 and other service benefits, he will send the same to the concerned school where the petitioner is working at present. But the Correspondent of the 7th respondent has not placed

any such material to show that he sent reply to the notices issued by the 5th respondent nor he filed any copies of the same. However, the 7th respondent has not sent the said proposals of the petitioner so far and admittedly by the time of filing of the writ petition, the petitioner is aged about 57 years. It is pertinent to note that the Correspondent of the 7th respondent has sent the proposals of PRC 2015 of his wife Smt.K.Susheela, by virtue of orders of this Court in WP No.10663 of 2017 dated 19.04.2017. Therefore, the Correspondent of the 7th respondent having sent the LPC and SR of the petitioner to the ORM Aided school, inspite of receiving several notices along with Form-I notice, he cannot escape from his responsibility of sending proposals for fixation of PRC 2015 and other service benefits, in respect of the petitioner. Though several allegations are made against the writ petitioner stating that he is not entitled for fixation of PRC-2015 and other service benefits, but it is not for the 7th respondent to state the same and it is for the competent authority to decide the same and not at this stage in this writ petition. Moreover, the 7th respondent has not challenged any of the notices issued to it by the 5th respondent-District Educational Officer, including the Form-I notice, as such, it is not open to the 7th respondent to claim that the petitioner is not entitled for fixation of Pay as per PRC-2015. The only

reason that appears for not sending proposals is there appears to be enmity between petitioner and 7th respondent.

10. Since the claim of the petitioner is valid and the duty is cast upon the 7th respondent School, having received notices from the official respondents for sending of proposals for fixation of PRC-2015, the Correspondent of the 7th respondent is obligated to send the same.

Accordingly, 7th respondent School is directed to send the proposals of the petitioner to the concerned School-ORM Aided School, where the petitioner is presently working, for fixation of PRC-2015 and other service benefits as expeditiously as possible preferably within a period of four weeks from the date of receipt of a copy of this order and the respondent authorities are directed to consider the fixation of pay of the petitioner as per PRC-2015, within a period of six weeks thereafter.

With the above direction, this writ petition is allowed to the extent indicated above. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

A.RAJASHEKER REDDY, J

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.22779 OF 2017



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