

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.15971 of 2004

ORDER:

The action of the respondents in rejecting monetary benefits to the petitioner vide G.O.Rt.No.110, School Education (PS-1) Department dated 24.02.2003, read with G.O.Ms.No.129, Edn., dated 12.10.2001, is the subject matter of challenge in this Writ Petition.

2. The petitioner herein was appointed as LDC in A.V.V. Multipurpose High School in aided post with effect from 01.07.1968 and was getting salary in grant-in-aid till 16.06.1976, i.e., the date on which he was placed under suspension on the allegation of misappropriation. Later, he was dismissed from service on 04.03.1977. Criminal cases came to be registered against the petitioner and the Principal of the said school for misappropriation of amount, which led to filing of charge sheets vide C.C.Nos.327, 364, 366, 368 and 554 of 1980 on the file of the I Additional Munsif Magistrate, Warangal. O.S.No.77 of 1978 was also filed before the 2nd Additional Senior Civil Judge, Warangal for recovery of the amount alleged to have been misappropriated. Aggrieved by the orders of suspension and dismissal, petitioner herein filed an appeal before the Joint Director of School Education. As the School and Junior College were attached, appeals were decided by the Director of Higher Education, who, by his order, dated 05.01.1978, directed the school management to reinstate the petitioner into service. However, on a representation made by the school management that

the provisions of the A.P. Recognized Private Educational Institutions (Control) Act, 1975 are not applicable to non-teaching staff, orders of reinstatement were withdrawn through proceedings dated 21.02.1978. However, on appeal filed before the Government and basing on the orders passed by the Government, the Director of School Education issued orders directing the school management to reinstate the petitioner into service with immediate effect, without prejudice to the judicial proceedings pending in Courts. Since the school management has not implemented the orders, the petitioner preferred an appeal before the Minister of Education. At that time, Government issued instructions to the Director of Higher Education to keep the orders of reinstatement of the petitioner in abeyance vide proceedings dated 29.06.1979. However, on 12.10.2001, through G.O.Ms.No.129, Edn., dated 12.10.2001, the petitioner was directed to be reinstated into service. The Principal of the school, who was also charge-sheeted, was also reinstated into service on 05.01.1978. The criminal case filed by the Police came to be rejected and the petitioner was acquitted of the charges. The suit filed against the petitioner for recovery of amount alleged to have been misappropriated was also dismissed. From the averments made above, it is clear that reinstatement orders of the petitioner were kept in abeyance from 1979 to 2001 and thereafter in the year 2001, he was directed to be reinstated into service. In view of the orders of reinstatement passed in the year 2001, the petitioner herein made a representation dated 27.06.2002 requesting the Government for full

pay and allowances for the entire period of suspension and also for fixation of seniority from the date of his appointment, i.e. 01.07.1968. While considering the seniority of the petitioner in the cadre of Junior Assistant from the date of his first appointment, the Government, however, rejected the request of the petitioner for monetary benefit on the ground of “No work: No Pay”. Challenging the same, the present Writ Petition came to be filed.

3. Learned counsel for the petitioner would submit that the petitioner cannot be found fault with, for not passing of orders by the authorities before whom the proceedings were pending since 1979. The request of the petitioner came to be rejected on the principle of “No work: No Pay” on the ground that he was gainfully employed elsewhere. Having held that petitioner is entitled for all service benefits notionally from 16.06.1976 till the date of joining, by treating the entire period as on duty for the purpose of service benefits and compensation, the authorities ought to have awarded monetary benefits as well.

4. By an order, dated 14.12.2004, this Court in WPMP No.30315 of 2004 passed the following order:

“Having regard to the fact that the petitioner was already acquitted, there is no justification to withhold the payment. Accordingly, there shall be interim direction as prayed for.”

5. A counter-affidavit came to be filed by the Secretary, School Education, disputing the averments made in the affidavit filed in support of the Writ Petition, stating that petitioner is not entitled for any benefits in view of the policy of "No work: No Pay. Apart from that, it has been stated that the petitioner has been discharging duties as Correspondent of an aided school, by name Sri Sitarama Upper Primary School, Matwada, Warangal, during the period of his suspension and dismissal, and, as such, he is not entitled for any benefits, since he was gainfully employed elsewhere. The averments in the counter-affidavit also refer to the allegation of misappropriation while working in Sri Sitarama Upper Primary School, Matwada, Warangal. In respect of the irregularities committed in the said school, a report came to be lodged and the Police investigated into the said case. It has been stated that the petitioner also filed W.P.No.1435 of 2005 seeking suspension of the operation of D.O. letter addressed to the Director General of Police, Hyderabad dated 08.04.2003. It is also stated that a case in Cr.No.6 of 2005 came to be registered by the Superintendent of Police, Warangal, for the offences punishable under Sections 406, 409 and 420 IPC of Matwada Police Station and the same is still pending investigation. It is also stated in the counter-affidavit that as the petitioner tampered with the records, removed pages, interpolated with the writings in the records, he is not entitled for any relief.

6. Though various grounds are raised in the counter-affidavit, learned counsel for the respondents mainly contended that the petitioner is not entitled for any monetary relief, since he has not worked during the said period and that he was gainfully employed during the said period. The said argument is strongly refuted by the learned counsel for the petitioner, stating that the theory of gainful employment cannot be made the basis to deny the benefits to the petitioner.

7. From a perusal of the record and the orders passed by the Government, it is clear that though monetary benefits are denied to the petitioner, he was reinstated into service with a direction to the District Educational Officer, Warangal to fix pay as on the date of joining duty on notional basis and adjust him in the existing or arising vacancies under his control, at the earliest. The Regional Joint Director, School Education, Warangal, was also requested to allow service benefits to the petitioner from 16.06.1976 till the date of joining of duty, treating him as on duty notionally under F.R.54. From the above, it is clear that, while giving all the service benefits, which the petitioner is entitled to, of course on notional basis, the monetary benefits came to be rejected on the ground that of “No work: No Pay”. Though the learned standing counsel for the respondents strongly urged that the petitioner was gainfully employed elsewhere, but the same was not made the basis while denying the monetary benefits vide G.O.Rt.No.110, School

Education (PS-1) Department dated 24.02.2003. It may be true that some cases came to be registered against the petitioner in the year 2005, but the issue on hand relates to the period 1976-2001. Criminal cases came to be registered against the petitioner during the said period for misappropriation of funds in the school where the petitioner was working. Charge sheet came to be filed against the petitioner and the Principal of the School and O.S.No.77 of 1978 was also filed for recovery of the amount alleged to have been misappropriated, but, in none of the proceedings, the Management of the School or the Government was successful. The petitioner was acquitted in all the cases filed and the appeals filed by the State Government against the judgment of acquittal were also dismissed. The suit filed for recovery of the amount was also dismissed, which have become final.

8. The only ground on which the petitioner was denied monetary benefits was on the principle of No work : No pay. Admittedly, the petitioner was not responsible for not doing work. G.O.Ms.No.129, Edn., dated 12.10.2001, which has been filed along with the counter-affidavit and also the averments in the counter-affidavit clearly show that the matter of suspension and dismissal from service was delayed by the Director of Higher Education instead of Director of School Education since the Principal was also involved in the case. Vide Proc.Rc.No.5180/IC-4/76, dated 10.04.1979, the Management of the School directed reinstatement of the petitioner into service with

immediate effect. Challenging the same, the Management preferred appeal to the Government. Vide memo dated 29.6.1979, the Government kept the reinstatement orders of the petitioner in abeyance, in view of the cases pending in Courts. Thus, the reinstatement of the petitioner was kept in abeyance from 1979 onwards. The petitioner, admittedly, was not responsible for the same. Meanwhile, the cases filed by the Police and also the appeals filed by the State came to be dismissed in the year 1990. The suit was dismissed in the year 1998. The petitioner submitted certified copies of those judgments to the authorities for reinstatement into service. Even then, there was no action on the part of the respondents till 2001. However, after careful consideration of the documents submitted by the petitioner, the abeyance order was revoked and the petitioner was directed to be reinstated into service with all the service benefits and pension. In fact, G.O.Ms.No.129, Edn., dated 12.10.2001, speaks about the monetary benefits from the date of joining only. This G.O., denying monetary benefits to the petitioner, was confirmed in the subsequent G.O., i.e. G.O.Rt.No.110, School Education (PS-1) Department dated 24.02.2003, on the principle of “No work: No pay” and the same is the subject matter of challenge in the present Writ Petition.

9. Though the plea that he was gainfully employed was not made the basis while issuing G.O.Rt.No.110, dated 24.02.2003, wherein he was denied payment on the principle of “No work : No pay”, but only

in the year 2007 the plea of gainful employment was taken in the additional counter filed. As the basis for filing the writ petition was denial of monetary benefits on the ground that “No Work : No Pay” and not on the basis of gainful employment, it will not be proper for this Court to deny payment basing on the averments made in the additional counter filed by the respondents. Further, the ground on which the petitioner was not reinstated into service was due to pendency of criminal cases filed by the Management for alleged misappropriation of the amounts in the school where he was working and also a civil suit for recovery of money. As seen from the Government Orders all the criminal cases ended in an acquittal and the suit filed for recovery of money was also dismissed. The appeals filed before this Court against the order of the acquittal were also dismissed.

10. In **Commissioner, Karnataka Housing Board v. C. Muddaiah**¹, the Apex Court, while dealing with the issue of “No work: No pay” held that even in the absence of statutory provision, normal practice is “No work: No pay”. However, in appropriate case, a court of law may, *may must*, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The court, in a given case, may hold that the person was willing to work but he was illegally and unlawfully not allowed to do so. The court

¹ (2007) 7 SCC 689

may in the circumstances, direct the authority to grant him all benefits considering “as if he had worked”. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a court of law and if such directions are issued by a court, the authority can ignore them even if they had been finally confirmed by the Apex Court.

11. In view of the judgment referred to above and since the reason for the petitioner not doing any work in the school was pendency of the proceedings before the Government for a long time in spite of favourable orders being passed by the authorities, the Writ Petition has to be allowed.

12. Accordingly, the Writ Petition is allowed.

13. Miscellaneous petitions, pending if any, shall stand closed in the light of this final order. There shall be no order as to costs.

JUSTICE C.PRAVEEN KUMAR

17.03.2017

MRR/gkv