

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 2899 of 2001

O R D E R:

All the petitioners herein are teaching and non-teaching staff working under the management of respondent No.3, which is controlled and funded by respondent No.1-port Trust. Respondent No.3 -Educational Society was established with a motive to impart education to the children of the staff (petitioners). Similarly, other major ports like Kandla, Paradeep etc., are also running Educational Institutions to the children of their employees. As per approval of respondent No.2, all the ports and DLBs have been implementing Central Government Pay Scales to the employees of the Educational Institutions run by them. Likewise, all these petitioners are also entitled for the same pay scales being revised from time to time, but, respondent No.1-Port Trust is not implementing the same to the employees of respondent No.3. It is pertinent to note that all infrastructure and other necessary equipments to run the school were provided by respondent No.1. Questioning the same, the petitioners herein filed a writ petition in WP No.5069 of 1990 before this Court and during the pendency of the said writ petition, respondent No.1

addressed a letter to respondent No.2 recommending merger of the petitioners in respondent No.2-Port Trust. In view of the same, the petitioners were asked to withdraw the said writ petition and accordingly, the said writ petition was withdrawn on 29.07.1998. Thereafter, several representations made by the petitioners were proved futile.

2. The case of the petitioners is that the real employer of the petitioners is respondent Nos.1 and 2 and to overcome the legal issues and also other service benefits, respondent No.1 created respondent No.3-Educational Society and hence, all the petitioners are entitled for the pay scales on par with the employees of respondent No.1-Port Trust, but the same benefits are not extended to the petitioners solely on the ground that respondent No.3 was created for running the school for the benefit of the children of the petitioners. The fact remains that respondent No.3-Educational Society has no separate entity and financially independent existence. Hence, the action of respondents is questioned in this writ petition under Article 226 of the Constitution of India, seeking *Mandamus* directing respondents to treat all the petitioners as employees of

respondent No.1 and extend the benefit of implementing Central Government Pay Scales from time to time, pensionary and other benefits as are available to respondent No.1-organisation with effect from the date of their initial appointment.

3. Heard Sri Vedula Srinivas, learned counsel for petitioners and Sri K.Srinivasa Murthy, learned Standing Counsel for respondents and perused the material available on record.

4. Learned counsel for petitioner would submit that respondent No.3-Educational Society is running to provide education to the children of the employees of respondent No.1 and that the entire activities of respondent No.3 is fully funded by respondent No.1. Further, if the wheel is lifted, it would be seen that the real employer of petitioners is respondent No.1 but not respondent No.3, since it is its subsidiary unit. Further, the Central Government pay scales were recommended to benefit the other employees working in the educational societies run by DLBs and port trusts by treating them as its employees, whereas respondent No.1 is not implementing the same. Similarly, the petitioners are also entitled for the same benefit.

5. On the other hand, the learned Standing Counsel for respondents would submit that under A.P.Education Act, the Educational Societies and Agencies are permitted to run the schools and accordingly, respondent No.1 has formed respondent No.3 Educational Society by providing only infrastructure to it, for the benefit of the children of the employees of respondent No.1-Port Trust and that at no stretch of imagination, it can be said that respondent No.1 is the employer of petitioners and hence, the writ petition is liable to be dismissed.

6. As seen from the material on record, it is noticed that respondent No.1 obtained permission to run respondent No.3-Educational Society under A.P.Educational Act and admittedly, all the petitioners are employed by respondent No.3. Though it is contended by the learned counsel for petitioners that all the other employees of the schools run by port trusts and DLBs were merged into their respective port trusts and central Government Scales have been recommended to them, no documentary proof is produced to that effect. In the absence any evidence to that effect and merely because respondent No.3-Educational Institution is run by respondent No.1, it cannot be said that the

petitioners can be treated as employees of respondent No.1-Port trust.

7. In the counter affidavit filed by respondents, it is clearly mentioned that respondent No.3 is a society registered under Societies Registration Act and the revised scales and DA have been implementing from time to time by respondent No.3as and when announced by the Government of Andhra Pradesh. If such is the case, this court has no hesitation to hold that the question of implementing the wage revision to the petitioners on par with employees of respondent No.1 does not arise. Therefore, this court is of the considered view that there is no force in the contentions raised by learned counsel for petitioners and the writ petition is liable to be dismissed.

8. In the result, the writ petition is dismissed. No costs.

9. Miscellaneous Petitions, if any, pending in this writ Petition shall stand closed.

ABHINAND KUMAR SHAVILI, J

24th September, 2018
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