

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITIONS Nos.7666 & 14496 OF 2007

COMMON ORDER:

1. Since the issue involved in these petitions is one and the same, both the writ petitions are heard together and are being disposed of by this common order.

2. W.P.No.7666 of 2007 is filed seeking to issue a writ of Mandamus declaring the proceedings in Rc.No.3657/A4/2004, dated 17.2.2007 of the Regional Joint Director of School Education, Kakinada as illegal and arbitrary, and to set aside the same, and consequently, to declare that the petitioner-N.M. Deevenathalli is eligible to be promoted as School Assistant (Science) in the 5th respondent-School, and further to direct the official respondents to follow the orders of the District Educational Officer, Vizianagaram dated 8.12.2006 in Lr.Rc.No.71/B4/2004, and to direct the official respondents to promote the petitioner as Science B.Ed Teacher in the existing vacancy in R.C.M. St. Theresa's Girls High School, Srungavarapu Kota.

3. W.P.No.14496 of 2007 is filed seeking to issue a writ of Mandamus declaring the action of the respondents in not paying the salaries and other allowances including increments attached to the post of School Assistant in which post, the petitioner-K.S.

Manjula has been discharging her duties w.e.f. 1.7.2004 as illegal, and arbitrary, and consequently, to direct the respondents to pay the salaries and other allowances including increments attached to the post of School Assistant w.e.f. 1.7.2004 with interest to the petitioner.

4. The facts and the status of the parties in W.P.No.7666 of 2007 are referred to hereinafter for the sake of convenience.

5. Heard Sri P. Srinivasa Rao, learned Counsel for the petitioner, the learned Government Pleader for School Education, Sri K. Bhaskar Rao, Sri P.R. Prasad and Sri S. Gopal Rao, learned Counsel for the respondents.

6. The petitioner-N.M. Deevenathalli joined in service as Secondary Grade Teacher on 18.6.1988 in an unaided post in the 5th respondent-school. Later, she was absorbed in an aided post on 19.10.1989. Earlier to her joining, she passed B.Sc. and B.Ed., Degree examinations. The Government sanctioned two social studies B.Ed Posts, one Science B.Ed post and three Secondary Grade teacher posts to the 5th respondent-School. The petitioner is fully qualified for promotion as Science B.Ed., Teacher in the vacancy that arose consequent upon the retirement of Smt. K.V. Ramana. The petitioner submitted several applications in that

regard to the official respondents. However, the Regional Joint Director of School Education issued orders dated 17.2.2007 approving the promotion of the 6th respondent-K. S. Manjula, a Secondary Grade Teacher in the school as B.Ed., Assistant in Mathematics w.e.f 1.7.2004. Challenging the same, the petitioner-N.M. Deevenathalli filed W.P.No.7666 of 2007.

7. The 6th respondent-K.S. Manjula in W.P.No.7666 of 2007 filed W.P.No.14496 of 2007 contending that she passed B.Sc., B.Ed. (MPC) and she was initially appointed as Secondary Grade Teacher in RCM St. Theresa's Girls High School, S. Kota, Vizinagaram on 1.9.1994 and she was promoted as School Assistant by order dated 15.6.2004 since she is qualified to teach physical sciences in Higher Classes and she joined as School Assistant on 1.7.2004, and then the management of the school requested respondents Nos.1 and 2 to approve her promotion from the date of her joining. Thereafter, consequent upon the retirement of Smt. K.V. Ramana, School Assistant, the 6th respondent was promoted, and the 1st respondent issued proceedings dated 17.2.2007 approving the promotion of the 6th respondent as B.Ed Assistant (Maths). Now, it is the grievance of the 6th respondent that she has been working as School Assistant w.e.f. 1.7.2004 but the official respondents are not paying the salaries and other allowances including increments attached to the said post.

8. The 6th respondent also filed additional affidavit contending that her promotion was approved vide proceedings dated 17.2.2007 of the 1st respondent and she is entitled for the salaries as she has been working as B.Ed. Assistant (Maths).

9. It is pertinent to note that on 16.4.2007 while admitting W.P.No.7666 of 2007, this Court passed interim order directing the parties to maintain Status quo. On 9.9.2008, in W.P.No.14496 of 2007, this Court passed interim order directing the respondents therein to consider the fixation of the salary of Smt.K.S. Manjula as per the proceedings of the respondents dated 22.8.2007, if she is otherwise eligible as per law and pass appropriate orders within a period of four weeks. The order dated 25.10.2013 on the proceeding sheet in W.P.No.14496 of 2007 discloses that the said Manjula has not been paid her salary commensurate to her cadre.

10. The District Educational Officer filed counter-affidavit contending that the Management of the School sent proposals to the Department for approval of promotion of K.S. Manjula, SGT, who qualified B.Sc with Maths, Physics and Chemistry as optional and B.Ed., with methodology in Maths and Physics. Further, the management got permission to fill up the B.Ed Assistant post, which fell vacant on the retirement of K.V. Ramana, with the School Assistant in Mathematics as per G.O. Ms.No.49, Education

Department, dated 26.2.1998. In the meantime, the petitioner-N.M. Deevanathalli appealed for her promotion as B.Ed Assistant (Biological Post) as she is senior to K.S. Manjula in the cadre of SGT. But the petitioner-Deevanthalli is qualified to hold the post of B.Ed Assistant post with subject Biological Science only. But as per G.O.Ms.No.49, Education dated 26.2.1998, the first B.Ed Assistant post shall be filled up with qualified Maths Assistant. The department permitted the Management to submit proposals keeping in view the subject requirement as per G.O.Ms.No.49, dated 26.2.1998 for filling up of the vacant B.Ed Assistant post with the candidate qualified for School Assistant (Maths) i.e., K.S. Manjula and as such, the Regional Joint Director of School Education, issued proceedings dated 17.2.2007 approving the promotion of K.S. Manjula as B.Ed Assistant (Maths) w.e.f.1.7.2004.

11. In the counter-affidavit, it is further submitted that the 6th respondent-K.S. Manjula filed W.P. 14496 of 2007 seeking payment of salaries to the post held by her and it is not a problem to pay the salaries and other allowances attached to the post of School Assistant in which the 6th respondent was promoted unless the order of status quo passed by this Court on 16.4.2007 is vacated.

12. A perusal of the material on record discloses that the 6th respondent was absorbed in the aided post of School Assistant by

the management with effect from 1.7.2004. The 1st respondent also approved the same vide proceedings dated 17.2.2007. The 6th respondent has been continuously working as School Assistant. It was also brought to the notice of this Court by the parties that the petitioner was also absorbed in the aided vacancy of School Assistant during the pendency of this writ petition.

13. Now, the only question that remains to be considered in this writ petition is whether the management was right in absorbing the 6th respondent in aided post of School Assistant, which arose consequent upon the retirement of Smt. K.V. Ramana, who was a physical science teacher, ignoring the case of the petitioner, who claims to be the senior to the 6th respondent.

14. The learned Counsel for the 6th respondent has relied on G.O.Ms.No.49, dated 26.2.1998, which is annexed to the counter-affidavit filed by the 2nd respondent. Relying upon the said G.O., it has been contended that the posts of School Assistants are to be filled up in the order of School Assistant Maths, School Assistant Science and School Assistant Social Science, and since the 6th respondent possessed B.Ed in Maths, the management of the school has rightly absorbed the 6th respondent against the aided vacancy of School Assistant, which arose consequent upon the retirement of Smt. K.V. Ramana, and the 1st respondent-authority

was also pleased to approve the appointment of the 6th respondent vide proceedings dated 17.2.2007, and as the petitioner-Deevanathalli filed W.P.No.7666 of 2007 and obtained status quo orders on 16.4.2007, the 6th respondent is not being paid salaries.

15. Admittedly, the petitioner is qualified to hold the post of B.Ed Assistant with Biological sciences. The post, which had fallen vacant, is of Physical_Science. It is not the case of the petitioner or the 6th respondent that they are having B.Ed qualification with physical science. When the vacancy of physical science had arisen, it is for the management to take appropriate decision to fill up the said post as per the requirement of the institution and as per G.O.Ms.No.49, dated 26.2.1998. As per the cyclical order vide G.O.Ms.No.49, the School Assistant (Maths) is placed ahead of Science. As the 6th respondent is qualified and eligible to hold the said post of School Assistant (Maths), the Management filled up the said vacancy with the 6th respondent. From this, it is obvious that the absorption of the 6th respondent in aided post of school assistant was made as per the requirement of the management and as per the cyclic order in G.O.Ms.No.49, dated 26.2.1998. Therefore, this Court is of the view that no illegality has been committed by the management in absorbing the 6th respondent in the aided vacancy of School Assistant and no illegality has been committed by the 1st respondent in approving the absorption of the

6th respondent as School Assistant. The 6th respondent is entitled for the salaries, allowances and the increments attached to the post of School Assistant w.e.f. 1.7.2004.

16. Accordingly, W.P.No.7666 of 2007 is dismissed. W.P.No.14496 of 2007 is allowed and the 6th respondent-K.S. Manjula is entitled to the salaries, allowances and the increments attached to the post of School Assistant held by her w.e.f. 1.7.2004. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Dated: 20th September, 2018.
Nn.



HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

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20th September, 2018

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