

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.18263 OF 2000

ORDER:

The petitioner, who worked as a Record Assistant in the 3rd respondent-School, filed this writ petition originally praying to issue a Writ of Mandamus declaring the action of the 3rd respondent school management in not paying the salaries attached to the post of Record Assistant from the date of reinstatement i.e., February, 2000 onwards, as illegal, arbitrary and improper and later the prayer was amended as follows, as per the order of this Court in WPMP No.2316 of 2006 dated 01.02.2005:

- “a) that the Hon'ble Court may be pleased to fix my salary per month for the post of Record Assistant both under the Minimum Wages Act and also under the Rules framed under the A.P. Education Act and direct the respondent No.3 to pay the arrears of salary due to me from 6-9-95 up to this date with 12% interest per annum and pass such other order or orders alternatively to direct the respondent No.3 to pay the total arrears of salary for the said period an amount of Rs.2,79,268/- with interest at 12% per annum till the date of payment as more particularly set out in the statements of salary due to the petitioner for the said period.
- b) The Hon'ble High Court may be pleased to call for the records relating to the order of removal of the petitioner dated 31-7-2002 passed by the respondent No.3 and declare that the said order of removal dated 31-7-2002 as illegal, unconstitutional and arbitrary and consequently direct the third respondent to continue the petitioner as Record Assistant from 1-8-2002 and also to pay the monetary benefits of salary and allowances payable to the petitioner from 6-9-95 up to this date and pass such other order or orders as the Hon'ble Court deems fit.
- c) The Hon'ble Court may be pleased to direct the respondents 3 & 4 to pay monetary compensation

of Rs.2,00,000/- for causing mental agony, harassment and humiliation to the petitioner during the said period of service.

- d) And pass such other order or orders as deemed fit in the interest of justice pending WP.No.18263 of 2000 on the file of the High Court.”

2. The brief facts of the case are that the petitioner was selected and appointed as Record Assistant in pursuance of the notification dated 20.07.1994 issued by the 3rd respondent with prior approval of the Regional Joint Director, Guntur vide proceedings dated 23.08.1995. He was paid salary of Rs.650/- against the salary amount of Rs.2,300/- as recorded in the Acquittance Register of the 3rd respondent-School. While working as such, he was not allowed to continue in the said post and not paid salaries. Therefore, he made a representation to the respondents and other authorities including the District Collector, but in vain. The petitioner approached this Court by way of Writ Petition No.23779 of 1999. This Court by order dated 11.02.2000 directed the 3rd respondent-School to allow the petitioner to join duty as Record Assistant and continue in the said post. Accordingly, the 3rd respondent-School allowed the petitioner to join duty in the month of February, 2000 and continued as Record Assistant in the School, but the petitioner was not paid salaries since February, 2000. Being aggrieved by the non-payment of salaries, the present writ petition came to be filed.

3. Sri T.Ramakrishna Rao, learned counsel appearing for the petitioner, would contend that the 3rd respondent is not allowing the petitioner to discharge his duties as Record Assistant and he was not allowed to sign on the Attendance Register and not paid salary. As per the orders of this Court passed in W.P.No.23779 of 1999 dated 11.02.2000, the petitioner was allowed to join duty immediately in the month of February, 2000 and he was continued as Record Assistant in the 3rd respondent-School. But, he was not paid the salary from February, 2000, at least the salary of Rs.650/- per month paid to him earlier to his termination instead of Rs.2,300/- per month, for which the petitioner signed in the Acquittance Register. He would further contend that actually the petitioner is entitled for the scale of pay attached to the post of Record Assistant as per G.O.Ms.No.73, Labour Employment Training and Factories (Lab.II) Department, dated 21.12.2011, which is applicable to non-teaching staff working in private educational institutions including tutorial institutions and Computer coaching and Learning Centres, wherein the Record Assistant is allowed the pay scale of Rs.1535-2840/- and that he is entitled to be paid the said pay scale from February, 2000 immediately after his joining as per the orders of this Court, but the same is not paid. The learned counsel also would contend that the petitioner is entitled for salaries payable to the Record Assistant working in the Government schools as per 'equal pay for equal work'

enshrined in Article 39(d) of the Constitution of India and he sought a direction to the respondents to pay the salaries from February, 2000. For non-payment of salaries, the petitioner was put to financial troubles and in distress condition and his family and children are subject to starvation and made to suffer, thereby he was deprived of his livelihood as enshrined in Article 21 of the Constitution of India.

4. Per contra, Sri N.Sriram Murthy, learned counsel for the 3rd respondent, while reiterating the averments in the counter of the 3rd respondent, would contend that the petitioner was allowed to join duty in February, 2000 as per the orders of this Court passed in Writ Petition No.23779 of 1999 dated 11.02.2000 and he was paid salaries as per his entitlement i.e. Rs.650/- per month. Thereafter, the petitioner refused to receive the salaries for the reasons best known to him. Therefore, the salaries were sent through cheques by registered post with acknowledgement due to the petitioner, but the same were returned unserved. The petitioner is in the habit of denying the instructions of his superiors and the headmistress, claiming that his re-appointment was through Court and threatened them that he would drag them to the Court and the petitioner was resorting to emotional blackmailing and went against all the teachers and the headmistress. The petitioner is not discharging the duties diligently and there is no fault on the part of the 3rd respondent in paying the salaries. The petitioner is

working as Record Assistant against the unaided post and he was entitled to be paid the contractual amount only and he is not entitled for any pay scales. The petitioner filed this writ petition suppressing the fact that his salaries were sent through cheques by registered post with acknowledgment due and he deliberately and intentionally got it returned and he was refusing to receive the salary amounts, which amounts to 'supressio vari and suggestion falsi' and on this ground alone, the writ petition is liable to dismissed. The petitioner was removed from service on 31.07.2000 by following due procedure as per law. He filed another Writ Petition No.25334 of 2004 questioning the removal order before this Court and the same is allowed.

The learned counsel would further contend that the school is run by the Lions club in the larger interests of public without any aid except to the extent of four posts viz., one Telugu Pandit, one Hindi Pandit and two B.Ed. Assistants. The entire expenditure is borne by the Lions club and it is charging a paltry sum of Rs.500/- or Rs.600/- annually and the same is hardly sufficient to meet the day-to-day expenditure of the school. Hence, hefty salaries on par with regular Government employees could not be paid to the persons appointed against the un-aided vacancies, that too non-teaching staff. The contention of the learned counsel for the petitioner that as per G.O.Ms.No.73 dated 21.12.2011 which is applicable to the non-teaching staff working in

private educational institutions including tutorial institutions and Computer coaching and Learning Centres, the post of Record Assistant carries a pay scale of Rs.1535-2840/-, is not applicable to the 3rd respondent management and the said G.O. was issued under the provisions of Minimum Wages Act. The provisions of the Minimum Wages Act as per the schedule are applicable to the private educational institutions, as the said G.O. was kept in abeyance insofar as private educational institutions, until notified separately. Hence, the petitioner is not entitled for payment of minimum pay scale. As per clause (b) of Rule 16 of the A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993 which was issued through G.O.Ms.No.1, Education (P.S-2), dated 01.01.1994, the governing body has to fix the salaries of the staff keeping in view the financial position of the institution. As per Rule 17 of the Rules, 1993, the Educational Agency is free to appoint employee/staff to an un-aided post as per their requirements, provided they have the prescribed qualification to hold the posts. The service conditions of un-aided teaching and non-teaching staff shall be contractual in nature between the educational agency concerned and the appointee. The disputes, if any, in this regard shall be adjudicated in a Civil Court of competent jurisdiction/ Educational Tribunal (as and when constituted) and without reference to competent authority or the Government. On this

ground also, the writ petition is not maintainable and the petitioner has to approach the competent Civil Court for payment of arrears of salary if any.

5. The 2nd respondent – District Educational Officer, filed counter stating that the A.P. Educational Institutions (Establishment, Recognition, Administration and Control of salary) Rules, 1988 was issued through G.O.Ms.No.524 Education (Rules) Department dated 20.12.1988. As per clause (b) of Rule 16(2), the governing body of the school alone is competent to fix the salaries of the staff keeping in view the financial position of the institution. As per Rule 17(5), the governing body shall fix the salary structure of the staff taking into account the revenue position of the institution and other requirements mentioned under sub-rule (4) of Rule 18 for which amounts are to be earmarked and approximately 50% of the total revenue collection as fee from students shall be earmarked for payments of regular salaries to the staff and 15% of revenue shall be earmarked for providing various benefits like teachers' provident fund, group insurance scheme, etc. As per the Government Orders, the Managements have made their own arrangements for the payment of salaries to the persons employed in un-aided posts according to their financial position. Nowhere, it was mentioned that salaries of the teachers appointed in un-aided posts have to be paid on par with other employees in aided post. The persons

appointed in un-aided posts will work only with an understanding in between them and management. The petitioner, who is working in an un-aided post, is governed by the understanding with regard to the payment of salary. The respondents have no jurisdiction regarding the payment of salaries of the persons working in un-aided posts. Hence, the official respondents 1 and 2 are not proper and necessary parties to the writ petition.

6. In the facts and circumstances of the case and having heard the learned counsel, this Court found that admittedly the petitioner was allowed to join duty on 25.02.2000 as per the orders of this Court passed in W.P.No.23779 of 1999 dated 11.02.2000 and since then he had worked as Record Assistant till his termination from service on 31.07.2000. For which, he is entitled for payment of the salary of Rs.2300/- per month as recorded in the Acquittance Register, but the same is not paid. The Acquittance Register is not placed before this Court in spite of specific order of this Court on 16.04.2012. But, it appears that the paltry sum of Rs.650/- per month towards salary was sent through cheques by registered post with acknowledgment due to the petitioner and he refused to receive the same. The petitioner is not entitled for minimum wages as notified through G.O.Ms.No.73 dated 21.12.2011 under the provisions of Minimum Wages Act even though the private educational institutions are mentioned in the schedule, but the same is

kept in abeyance. But, however, as per Rules 16 and 17 of the A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993, the governing body is competent to fix the salaries of the teaching and non-teaching staff of the institution, keeping in view of the financial position of the institution. But, the fact remains that he was to be paid Rs.2,300/- as per Acquittance Register and that could be taken as contractual agreed amount to be paid to the petitioner as Record Assistant and the same was not paid to the petitioner from February, 2000, after he was allowed to join duty and he was removed from service for filing the present writ petition for payment of salary, on 31.07.2000. In spite of the contempt notice in C.C.No.1403 of 2012, the Acquittance Register is not placed before this Court evidencing that the actual amounts of salary paid towards petitioner's salary. Therefore, an adverse inference could be drawn against the 3rd respondent-Management and an amount of Rs.2,300/- as contended by the petitioner could be taken as salary payable to the petitioner. The petitioner is not entitled for equal pay for equal work on par with the employees working in Government schools. But, the averments made in the counter of the 2nd respondent could not be countenanced as the G.O.Ms.No.524 dated 20.12.1988 is superseded by G.O.Ms.No.1 dated 01.01.1994. As per Rule 7 of the Rules, 1993 issued through G.O.Ms.No.1 dated

01.01.1994 as amended by G.O.Ms.No.58 dated 13.07.2006, the disputes with regard to payment of salaries shall be adjudicated in the Civil Court of competent jurisdiction/ Educational Tribunal (as and when constituted) and without reference to the competent authority or the Government and it appears that the Educational Tribunals are not constituted for adjudicating the disputes of the staff working in private educational institutions.

7. The petitioner filed this writ petition i.e. W.P.No.18263 of 2000 for payment of salaries in the year 2000 and thereafter he was also removed from service on 31.07.2002 and questioning the termination order, he filed Writ Petition No.25332 of 2004 and the same is allowed. The petitioner and his family are put to starvation and severe financial troubles by not paying salaries due to the petitioner and action of the 3rd respondent institution is violative of Article 21 of the Constitution of India. However, at this length of time, the petitioner could not be relegated to the Civil Court of competent jurisdiction for adjudication of his grievance of non-payment of salaries.

8. Therefore, this Court feels that to sub-serve the interest of justice, it is fit and proper to direct the 3rd respondent to pay the arrears of salary to the petitioner from 25.02.2000 i.e. date of joining duty till the date of his termination i.e. 31.07.2002 @ Rs.2,300/- per month along with interest at 9%

per annum on the due amount as was held by the Hon'ble Supreme Court, in catena of decisions, from the date of filing of this writ petition i.e. 25.09.2000 till the date of payment. The 3rd respondent is directed to complete the above exercise within a period of two (2) months from the date of receipt of a copy of this order.

9. Accordingly, the Writ Petition is allowed. No order as to costs.

10. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE M.GANGA RAO

20-09-2018
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