

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.18701 OF 2003

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus declaring the action of the respondents in not releasing the salary attached to the posts held by the petitioners for the period from 18.11.1995 to 13.11.1996, as arbitrary and illegal, and consequently, to direct the respondents to release the salary to the petitioners for the period from 18.11.1995 to 13.11.1996 together with interest and other attendant benefits.

2. Heard Sri V. Vishwanatham, learned Counsel for the petitioners and the learned Government Pleader for Education.

3. It is the case of the petitioners that they are fully eligible and qualified to be appointed as School Assistant, Drawing Master and Junior Assistant respectively. The 5th respondent issued notification for filling up the posts of School Assistant, Drawing Master and Junior Assistant. The petitioners responded to the said notification, and after undergoing selection process, they were selected and appointed as School Assistant, Drawing Master and Junior Assistant respectively vide orders dated 18.11.1995. The grievance of the petitioners is that though they were appointed vide proceedings dated

18.11.1995, the respondents have not paid salaries to them. The 5th respondent-school submitted proposals to the Government for approving the appointment of the petitioners. The competent authority approved the appointments of the petitioners nearly after one year from the date of their initial appointment vide proceedings dated 14.11.1996. The principal grievance of the petitioners is that they are entitled to salaries from the date of their initial appointment i.e., from 18.11.1995 to 13.11.1996. Therefore, this writ petition is filed seeking a direction to the respondents to pay salaries to them for the period from 18.11.1995 to 13.11.1996.

4. The learned Counsel for the petitioner contended that Rule 12 of G.O.Ms.No.1, Education dated 1.1.1994 was the deeming provision for approving the appointments of staff in aided and unaided institutions and that the 5th respondent submitted proposals within one month from the date of their selection to the D.E.O., who in turn delayed in forwarding proposals to the competent authority viz., Regional Joint Director of School Education, and that the D.E.O. forwarded proposals sent by the 5th respondent only in the month of November, 1996 and thereafter, the Regional Joint Director approved the appointment of the petitioners vide proceedings dated 14.11.1996. He further contended that the grievance of the petitioners is that there is delay for almost one year on the

part of the competent authority in approving the appointment of the petitioners and for the lapses on the part of the competent authority, the petitioners could not be penalized and therefore, a direction be issued to the respondents to pay salaries to the petitioners. To strengthen his contentions, the learned Counsel for the petitioners relied upon the judgment rendered by the Hon'ble Division Bench of this Court in WA.Nos.604 and 950 of 1999 dated 23.11.1999, wherein it was held as follows:

“Concedingly, proposals in this case were submitted on 19.9.1995 and 6.1.1996 by the School and the State has taken no steps to approve or disapprove the proposals within the stipulated period. But the Government for the reasons best known to it did not grant the approval for almost one and half years. The school cannot keep the posts vacant and make the education of the students suffer for such inordinate delay waiting for the formal approval by the competent authority particularly when the selection committee of which the D.E.O is a member has made the selection.

In view of the observations made above, we find no error in the judgment of the learned single Judge in coming to a conclusion that the State is liable to reimburse the school the salaries payable to the petitioners. However, we are of the view that the deeming provision shall be given effect to from the date of expiry of the period of two months and not from the date of appointments of the teachers as directed by the learned single Judge. Consequently, it would be reasonable to direct the respondents to release the amount to the writ petitioners after the expiry of two months from the date of submission of the proposals. Therefore, in regard to the proposals submitted on 19.9.1995, the grant-in-aid shall be released from 19.11.1995 and in regard to the proposals submitted on 6.1.1996, the grant-in-aid shall be released with effect from 6.3.1996.

The above relief is, however, limited to the writ petitioners only.

The impugned order of the learned single Judge is modified to the extent indicated above. The Writ Appeals are disposed of accordingly. No costs.”

Relying upon the above judgment, the learned Counsel for the petitioners contended that the issue in this writ petition is also identical and therefore, appropriate direction may be issued to the respondents to pay the salaries to the petitioners.

5. The learned Government Pleader for respondents contended that the management submitted proposals belatedly, and no reminder was sent to the competent authority by the management as enunciated in Rule 12(8) of G.O.Ms.No.1, dated 1.1.1994, and therefore, the salaries to the petitioners for the period from 18.11.1995 to 13.11.1996 cannot be paid and that the 5th respondent management appointed the petitioners before obtaining approval from the competent authority, and any appointment made prior to approval cannot be taken into account for the payment of salaries, and that there are no merits in this writ petition.

6. This Court having considered the rival submissions made by the parties is of the considered view that the petitioners must demonstrate that proposals were received by the competent authority but the competent authority delayed approval of the appointments beyond two months. Then the deeming provision as enunciated in Rule 12(8) of G.O.Ms.No.1, dated 1.1.1994,

would come into operation. But in the instant case, the petitioners could not establish on which date the proposals were received by the competent authority. In the absence of the same, the application of deeming provision would not arise. The question of payment of salaries prior to approval cannot be granted. The judgment relied upon by the learned Counsel for the petitioners has no application in the instant case as the petitioners could not establish the date on which proposals were submitted to the competent authority. In the judgment referred to above, it was categorically held that proposals were submitted on 19.9.1995 and in the instant case, no such date is provided either by the petitioners or by the 5th respondent so as to operate deeming provision of the rules. There are no merits in the writ petition and the writ petition is liable to be dismissed.

7. Accordingly, the Writ Petition is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 22nd November, 2018.
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HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.18701 OF 2003



22/11/2018

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