

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.8170 OF 2009

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus declaring the proceedings of the 3rd respondent dated 28.12.2007 as illegal and arbitrary; to set aside the same, and consequently, to direct the respondents to pay regular scale as stated in proceedings of the 3rd respondent dated 8.6.2007 and to pay arrears of the salaries from 1.10.2004 till date excluding the salaries paid for the period June, 2007 to September, 2007 and to give all other consequential benefits.

2. Heard Smt. P. Sarada, learned Counsel for the petitioners and the learned Government Pleader for Education.

3. It is the case of the petitioners that they were appointed as Secondary Grade Teachers in unaided vacancies in the 4th respondent-school during 1988 to 1989 respectively and their appointments were also approved in the unaided vacancies by the District Educational Officer, vide proceedings dated 20.11.1996. While the petitioners were discharging their duties in the 4th respondent-school, the 1st respondent was pleased to admit the 4th respondent-school into grant-in-aid vide G.O.Ms.No.13, Education (PS-2) Department, dated 24.2.2003 and also to admit three posts into granted-in-aid. The 4th

respondent-school submitted proposals to absorb the petitioners into the aided vacancies. Initially, the said proposals were rejected on the ground that there is a ban for filling up the aided vacancies. Subsequently, the Government relaxed the ban vide G.O.Ms.No.318, dated 2.5.2007 and granted permission to the 4th respondent to fill up the aided posts and thereafter, the 3rd respondent was pleased to pass orders vide proceedings dated 8.6.2007 admitting the petitioners into grant-in-aid posts with effect from 1.10.2002. After absorption of the petitioners into the aided vacancies with effect from 1.10.2002, the 3rd respondent issued proceedings dated 28.12.2007 modifying the date of absorption to 2.5.2007 from 1.10.2002, without putting the petitioners on notice. Challenging the same, the present writ petition is filed.

4. Learned Counsel for the petitioners contended that the impugned proceedings were issued without giving any opportunity and notice to the petitioners and that when the school was admitted into grant-in-aid vide G.O.Ms.No.13, dated 24.2.2003, atleast from that date, the petitioners are entitled to be admitted into grant-in-aid posts, but the respondents cannot deny the service rendered by the petitioners right from the year 2002 onwards and therefore, the impugned proceedings are liable to be set aside.

5. The learned Government Pleader contended that the earlier proposals submitted by the 4th respondent-school were considered by the competent authority and the Government had rejected the case vide G.O.Ms.No.2, Education, dated 11.1.2005 and declined to lift the ban imposed for filling up the aided vacancies, and that subsequently, when the ban was lifted by G.O.Ms.No.318, dated 2.5.2007, the case of the petitioners was considered for absorption into aided vacancies. He further contended that the then District Educational Officer had deliberately and intentionally granted permission to absorb the petitioners into the aided vacancies vide proceedings dated 8.6.2007 with retrospective effect instead of prospective effect, and that the absorption will be only on prospective basis, but not with retrospective basis.

6. This Court has considered the submissions made by the parties and the material available on record. The petitioners are continuing in service right from the date of their initial appointment during 1988 to 1989 onwards and their appointments were also approved by the competent authority in the year 1996. The 4th respondent-school was extended the benefit of grant- in-aid vide G.O.Ms.No.13, dated 24.2.2013 and at the moment when the school was admitted into grant-in-aid, the petitioners were discharging their services in the 4th respondent-school. This fact was considered by the

respondents, and the petitioners were absorbed into grant-in-aid posts initially with effect from 1.10.2002 and later on, with prospective effect with effect from 2.5.2007, which would mean that the respondents were conscious of the fact that the petitioners discharged their duties in unaided posts and their appointments were approved in the year 1996 and later, their posts were admitted into grant-in-aid. No reason was assigned by the 3rd respondent as to why the earlier absorption dated 1.10.2002 is modified to that of 2.5.2007. Apart from that, before passing the impugned proceedings, the 3rd respondent has not issued any notice to the petitioners. Therefore, the action of the 3rd respondent is hit by principles of natural justice, and hence, the impugned proceedings are liable to be set aside.

7. Accordingly, the Writ Petition is allowed setting aside the impugned proceedings dated 28.12.2007 issued by the 3rd respondent. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 7th September, 2018.
Nn.

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.8170 OF 2009



7.9.2018

Nn