

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.858 of 2008

ORDER:

Heard the learned counsel for the petitioners and the learned Government Pleader for Education appearing for the respondent Nos.1 and 2.

2. Petitioners are all working as teaching staff in 3rd respondent-college. They contend that as per G.O.Ms.No.418 Education (G) Department dt.18-04-1979, they are entitled to encashment of surrender leave as was permitted by the Government to Government servants with effect from 01-03-1979, and that the respondent Nos.1 to 3 have extended the benefit of encashment of surrender leave only to non-teaching staff by proceedings dt.15-03-2007 but denied the same to the teaching staff.

3. Counter affidavit has been filed by the respondents admitting that G.O.Ms.No.418 dt.18-04-1979 did grant the facility of encashment of surrender leave sanctioned to Government servants also to teaching staff of all non Government schools and colleges and under all managements including aided private management like 3rd respondent with effect from 01-03-1979, but they took a plea that such benefit will be extended only depending on the financial position of the State exchequer. It is contended that it is not possible to release advance teaching grant for payment of surrender leave salary to the staff in aided colleges and the staff including 3rd respondent college and that a rejection order dt.20-12-2008 has been passed.

4. When the matter had come up for hearing on 07-02-2018, time was sought and the matter was adjourned to 12-02-2018 and at request of the Government Pleader for Education to 14-02-2018 and on that day, for a further period of two weeks. The case has been in the final hearing list since then. The learned Government Pleader for Education has again sought time, but having regard to the fact that the Writ Petition is of the year 2008 and time was earlier granted, I am not inclined to adjourn the matter any further.

5. It is not in dispute that the facility of encashment of surrender leave is being extended to Government servants and also to the non-teaching staff to all the non government schools and colleges under all management. Vide G.O.Ms.No.418 dt.18-04-1979 with effect from 01-03-1979, this facility was also extended to teaching staff in aided private management like the 3rd respondent also.

6. The counter filed by the respondents deals with the allocation of funds by the Government for the years 2005-06, 2006-07 and 2007-08. When the benefit has been conferred by G.O.Ms.No.418 dt.18-04-1979, to teaching staff of aided private management schools also with effect from 01-03-1979, why this category alone should be denied the benefit of encashment of surrender leave while extending it to the non teaching staff as well as Government servants, is not explained by the respondents. In any event, it cannot be said that for all times to come, the benefit of G.O.Ms.No.417 dt.18-04-1979 would continue to be denied to the teachers of aided private management because the said G.O. continues

to be subsisting. Having issued the said G.O., which admittedly is subsisting, the State cannot take the plea that it will discriminate against the petitioners who are teaching staff of the 3rd respondent, while continuing to give the benefit of encashment of surrender leave to the non-teaching staff. The law does not permit the State to indulge in such discriminatory practices and take advantage of its own wrong in not allocating funds in the budget by making budgetary provision for several years to enable it to extend this facility of encashment of surrender leave to teachers of aided private management like the petitioner.

7. Therefore, the order dt.20-12-2008 of 1st respondent is set aside; the Writ Petition is allowed, and the respondent Nos.1 and 2 are directed to release the advance teaching grant in favour of 3rd respondent college for enabling the 3rd respondent college to pay surrender leave salary to the petitioners for every year they have served the 3rd respondent organization till their respective dates of retirement. No costs.

8. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-03-2018
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