

**THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

**WRIT PETITION No.4405 of 2002**

**O R D E R:**

This writ petition is filed seeking to issue a writ of *Mandamus* declaring the action of the respondents in rejecting the case of the petitioners for release of arrears of salaries vide impugned proceedings Rc.No.512/SA/ASR/2001 dated 15.2.2002 as arbitrary and illegal.

Heard Sri B.Krishna Mohan, learned counsel for the petitioners and learned Government Pleader for School Education.

It is contended by the petitioners that they were appointed in different posts in the 5<sup>th</sup> respondent-School during September, 1998. When the competent authority sent proposals to the Regional Joint Director of School Education-3<sup>rd</sup> respondent, to approve the appointments of the petitioners, the 3<sup>rd</sup> respondent returned the same on the ground that clearance from the finance department as per G.O.Ms.No.275 dated 14.12.1995 was not obtained. Aggrieved by the same, the petitioners filed WP.No.10074 of 1999 to quash the proceedings of the District Educational officer dated 15.3.1999 and the said writ petition was disposed of directing the respondents to call for fresh proposals and consider the same without reference to G.O.Ms.No.275 dated 14.12.1995. Pursuant to the orders passed in the writ petition, the Government issued G.O.Rt.No.291 dated 4.10.1999 approving the appointments made to various Schools including that of the 5<sup>th</sup> respondent School. Following the orders of the Government in G.O.Rt.No.291 dated 4.10.1999, the Regional Joint Director of

School Education-3<sup>rd</sup> respondent issued proceedings in Rc.No.4834/A1/99 dated 1.8.2001 approving the appointments of the petitioners from the date of their joining. Thereafter, the Correspondent of the 5<sup>th</sup> respondent School addressed letter Ref.No.150/MGHS/0/02 dated 8.1.2002 to the District Educational Officer-4<sup>th</sup> respondent furnishing all the information as called for, for payment of arrears to the petitioners from the date of their joining till February, 2001. In view of the objection taken by the audit to the effect that there is no need to approve the appointments of the petitioners from the date of their joining to duty, the Regional Joint Director of School Education vide impugned proceedings Rc.No.312/SA/ASR/2001 dated 15.2.2002 rejected the request of the management to release the arrears from the date of their joining duty till February, 2001. Being aggrieved by the same, the present writ petition is filed.

Para-5 of G.O.Rt.No.291 dated 4.10.1999 reads as follows:

“In the circumstances stated above, and also keeping in view of the Court Orders, Government hereby approve the appointments made by the managements from the date of their joining in the respective posts of the individuals mentioned in para1 read above, subject to fulfilment of all other conditions stipulated in G.O.Ms.No.1 Dated 1.1.1994 as the managements have permitted to fill up the vacant posts duly following the procedure and also prior to issue of instructions in the reference first cited.”

From the perusal of the above G.O. it is clear that the appointment of the petitioners was approved by the Government from the date of their joining. Admittedly, there is no dispute that the petitioners were appointed and joined in the month of September, 1998. Hence, they are entitled for payment of arrears

of salaries but the audit has taken objection to the effect that there is no mention made by the competent authority for approval of their appointments from the date of their joining i.e. with effect from 7.9.1998 and 8.9.1998 respectively. Their appointments are to be approved only from the date of issuance of G.O.Rt.No.291 dated 4.10.1999 but not with effect from September, 1998. The objection raised by the audit appears to be incorrect as the State Government had issued G.O.Rt.No.291 dated 4.10.1999 making it very clear in para-5 that the appointment of the petitioners is approved from the date of their joining. In view of clear approval from the State Government approving the appointment of the petitioners from the date of their joining, the audit is not justified in rejecting their case and contending that it has to be treated as prospective but not retrospective effect. Therefore, the special audit objection raised in respect of payment of arrears of salaries from September, 1998 cannot be sustained.

Accordingly, the Writ Petition is allowed and the impugned proceedings issued by the 2<sup>nd</sup> respondent in Rc.No.512/SA/ASR/2001 dated 15.2.2002 are set aside. The respondents are directed to pay arrears of salaries to the petitioners from the date of their joining as per orders issued in G.O.Rt.No.291 dated 4.10.1999. No costs.

Miscellaneous petitions if any pending, shall stand closed.

**ABHINAND KUMAR SHAVILI, J**

**Date: 25/07/2018**

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