

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.24130 of 2014

ORDER:

This writ petition is filed seeking a writ of Mandamus, declaring the impugned order passed by respondent No.4 in proceedings dated 01.06.2013 absorbing the petitioner as Secondary Grade Teacher into Grant-in-Aid post in the 5th respondent-School w.e.f. 27.04.2013 instead of 10.09.2003 as per Memo issued by the Government, as arbitrary, illegal and unconstitutional.

2. Heard Sri N.Rajeshwara Rao, counsel for petitioner and G.P. for Education appearing for respondents.

3. It has been contended by the petitioner that she was appointed as a Teacher in the 5th respondent-School on 16.06.1986 and since then, she has been discharging her duties to the best satisfaction of her superiors and everyone concerned. Petitioner further contended that the management of 5th respondent-School absorbed her into grant-in-aid post and submitted proposals to the competent authority on 03.07.2001 for granting approval of the petitioner's appointment in aided vacancy. The State Government had issued Memo dated 10.09.2003, according permission for absorption of petitioner into aided vacancy on humanitarian grounds with a specific observation that the petitioner was appointed in the 5th respondent-School prior to issuance of G.O.Ms.No.524, dated 20.12.1988 and gave specific orders to absorb the petitioner into aided service. Thereafter, the

petitioner has been making series of representations to issue consequential proceedings for absorbing into aided service in pursuance of Memo dated 10.09.2003. When the case of the petitioner was rejected vide orders dated 30.04.2008, petitioner had filed writ petition No.15210 of 2008 before this Court challenging the said rejection orders. This Court disposed of the said writ petition setting aside the rejection orders dated 30.04.2008 and further directed the respondents to consider the case of the petitioner and pass appropriate orders within two months from the date of receipt of copy of said order. The petitioner further contended that this Court disposed of writ petition No.15210 of 2008 with a specific observation that the petitioner was appointed in the 5th respondent-School prior to issuance of G.O.Ms.No.524, dated 20.12.1988 and G.O.Ms.No.1, dated 01.01.1994, and that, ban was imposed by the State Government on 20.10.2004 and the said ban has no application in respect of the petitioner, as the petitioner was appointed way-back in 1986 i.e. much prior to issuance of Statutory Rules. Therefore, this Court specifically held that the reasons assigned for rejection have no application in the instant case.

4. Counsel for petitioner further submitted that inspite of this Court disposing of the writ petition vide orders dated 20.12.2011, as the respondents were not considering the case of the petitioner for absorption into aided post, she filed contempt case before this Court, and only then, the respondents have absorbed the petitioner into aided

service vide proceedings dated 01.06.2013, that too, with effect from 27.04.2013. Challenging the same, the present writ petition is filed.

5. Counsel for petitioner submits that the State Government had issued Memo as early as on 10.09.2003 absorbing the petitioner into aided post, therefore, the respondents ought to have admitted the petitioner into aided post with effect from 10.09.2003, but not with effect from 27.04.2013. Therefore, the impugned order dated 01.06.2013 only to the extent of admitting the petitioner into aided service with effect from 27.04.2013, is liable to be set aside with a further direction directing the respondents to absorb the petitioner into aided service with effect from the date of issuance of Memo by the Government i.e. 10.09.2003, wherein, the State Government had taken a decision to absorb the petitioner into aided service, with all consequential benefits.

6. The learned Government Pleader appearing for respondents has contended that the case of the petitioner was considered in terms of the orders passed by this Court in writ petition No.15210 of 2008 and appropriate orders were passed absorbing the petitioner into aided service with effect from 27.04.2013 vide proceedings dated 01.06.2013, as there was no specific direction by this Court in the order dated 20.12.2011 in writ petition No.15210 of 2008 to absorb the petitioner into aided service with retrospective effect i.e. with effect from 10.09.2003. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

7. This Court, having considered the rival submissions made by the parties, is of the considered view that when the State Government has taken a decision to absorb the petitioner into aided service vide proceedings in Memo No.10.09.2003, in all fairness, the respondents ought to have admitted the petitioner into aided service with effect from 10.09.2003 and this Court has specifically held that the earlier ban has no application to the case of the petitioner. The petitioner was appointed way-back in 1986 i.e. much before framing of Statutory Rules and when the State Government has taken a decision to absorb the petitioner into aided service vide Memo dated 10.09.2003, the respondents ought to have absorbed the petitioner into aided service from the date of said Memo i.e. 10.09.2003.

8. Therefore, the writ petition is allowed, directing the respondents to absorb the petitioner into aided service with all consequential benefits, with effect from 10.09.2003 i.e. the date on which the State Government had taken a decision to absorb the petitioner into aided service. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

11th September, 2019

ajr