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C.A.No. 6513 OF 2002

ITEM No.101

Court No.10

SECTION XIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No.6513/2002

Manager, V.S.U.P.School & Anr. Appellant (s)

vs.

A.V.Mary & Ors. Respondent (s)

(With office report)

Date:26/02/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE BRIJESH KUMAR

HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant (s) Mr. C.S. Rajan, Sr.Adv.

Mr. A. Raghunath,Adv.

For Respondent (s)

Mr. Romy Chacko,Adv.

Mr. Ramesh Babu M.R.

Ms. Anupama Madanan,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is disposed of in terms of the signed order.

(Sarojbala) (Suraj Prakash)

PA to Addl.Registrar

Court Master

(The signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6513 OF 2002

The Manager, V.S. U.P. School & Anr. Appellant(s)

Vs.

A.V. Mary & Ors.

Respondent(s)

O R D E R

Heard the learned counsel for the parties.

The controversy in this appeal relates to the appointment of a teacher in V.S.U.P. school on the basis of the appellant No.2 as well as the respondent No. 1 having been teachers earlier, in the school but their services had been terminated. Under the Rules, such a teacher is entitled to be appointed in future, in cases any vacancy arises. The respondent No. 1 was appointed on 19.1.1984 and continued to work for about two and half months, that is, up to 5.4.1984 where after her service was dispensed with. So far as appellant No.2 is concerned she was appointed on 19.1.2000 and worked as a teacher up to 30.3.2000.

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A permanent vacancy however arose later on which appellant No. 2 was given appointment on 5.6.2000. The respondent No. 1 staked her claim for appointment since her services were terminated in 1984. Ultimately her appointment has been held by the High Court to be erroneous in view of the amendment of Rule 51(A) of Kerala Education Rules. In the meantime the education agency running the institution changed and it was transferred to the hands of the appellant No. 1 whose case is that the appellant No. 1 cannot be fastened with any liability with retrospective effect. This contention of the appellant No. 1 has been vehemently countenanced by respondent No.1 and it has been submitted that change of the education agency or the amendment in Rule 51(A) will have no effect and right of the respondent No. 1 to be appointed again at the vacancy in question would not be affected.

On the factual side of the matter, we find that the appellant No.2 has been appointed on 5.6.2000 and she has continued on the post till date. In the meantime respondent No. 1 attained the age of superannuation in 31.3.2003. So far as her previous services are concerned, she worked for a period of two and a half months only and even against her appointment subsequently, the period of service would at the

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most come to about two and a half years. Where after on attaining the age of superannuation by respondent No.1, the appellant No.1, would obviously have a claim to be appointed as per Rules applicable on the subject. We also find that such brief stint as a teacher would not be worthwhile for any kind of retiral benefits. It will be no use in making any mere declaration of the fact that respondent No. 1 was entitled to be appointed for the period from 5.6.2000 to 31.3.2003 since the appellant No.2 had been working during this period and got her salary in pursuance of letter of appointment given to her, and the stay in the judicial proceedings.

In the above circumstances, in our view it will only be a futile exercise to go into the details of the merits and upset the position as existing now particularly as observed above the appellant No.2 will again have a right to be considered on Respondent No. 1 attaining the age of superannuation. In the above circumstances peculiar, to this case, we refrain from undertaking futile exercise of examining the questions raised, in details, and we provide that the position as existing would continue, that is to say, appellant No. 2 shall be allowed to continue as teacher in pursuance of

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her appointment on 5.6.2000. The questions which fall for consideration, in this case, we provide, would remain open to be considered in any appropriate case.

The appeal stands finally disposed of in the manner indicated above.

.....J.
(BRIJESH KUMAR)

.....J.
(ARUN KUMAR)

NEW DELHI
FEBRUARY 26, 2004.