



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)Nos.18950 and 18951 of 2013andM.P(MD)Nos.1, 1, 2 and 2 of 2013, 1 and 1 of 2014

The Correspondent,
Hyrathul Jamalia Higher Secondary School,
Paramakudi,
Ramnad District.

... Petitioner in both Wps

vs.

1)The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.

2)The Director of School Education,
College Road, Chennai-600 006.

3)The Chief Educational Officer,
Ramnad,
Ramnad District.

4)The District Educational Officer,
Paramakudi,
Ramnad District.

... Respondents in both WPs

Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 2nd respondent Director of School Education Na.Ka.No.34116/D1/E4/2013 dated 07.11.2013 and the consequential order issued by the 4th respondent DEO in Na.Ka.No.9373/A3/2013 dated 18.11.2013, quash the same insofar as the petitioner is concerned and further direct the respondent 2 to 4 to continue to disburse the grant in aid towards salary to the BT Assistant in the petitioner's school Mr.R.I.Asiath Jailani and Mrs.P.Benazir.

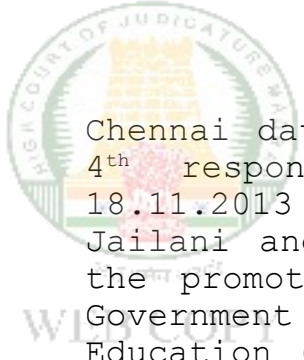
For Petitioner(in both WPs) : Mr.A.S.Mujibur Rahman

For Respondents(in both WPs) : Mr.S.Kumar,

Additional Government Pleader

COMMON ORDER<https://hcservices.ecourts.gov.in/hcservices/>

The petitioner has come to this Court challenging the proceedings of the 2nd respondent/Director of School Education,

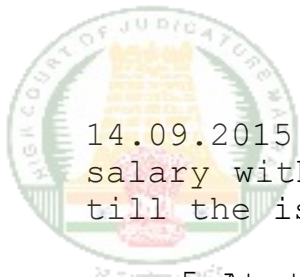


Chennai dated 07.11.2013 and the consequential order passed by the 4th respondent/District Educational Officer, Paramakudi, dated 18.11.2013 cancelling the approval of appointments of Mr.R.I.Asiath Jailani and Mrs.P.Benazir who were appointed as B.T Assistants in the promotional vacancies of the petitioner's school which is a Government aided minority school, citing G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 which prescribes Teacher Eligibility Test as minimum educational qualification for appointment of teachers in minority schools.

2.Placing heavy reliance on a judgment of the Hon'ble Supreme Court in Pramati Educational and Cultural Trust and others vs. Union of India and others, reported in 2014 (4) MLJ 486 (SC), learned counsel for the petitioner has contended that when the Apex Court has given an authoritative pronouncement making it clear that Right of Children to Free and Compulsory Education Act 2009 Act, in so far as it is made applicable to minority schools referred in Clause (1) of Article 30 of the Constitution is ultra vires of the Constitution, the 4th respondent ought not to have cancelled the approval of the appointments of Mr.R.I.Asiath Jailani and Mrs.P.Benazir, on the basis of G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011, therefore, the impugned orders, he pleaded, are liable to be set aside.

3.Mr.S.Kumar, learned Additional Government Pleader appearing for the respondents would fairly submit that as per Section 23 of the Right of Children to Free and Compulsory Education Act 2009, which states that any person possessing minimum qualification as laid down by an academic authority authorised by the Central Government by notification, shall be eligible for appointment as teacher, National Council for Teacher Education has been appointed as the academic authority by the Government of India. He further submitted that subsequently, the National Council for Teacher Education has issued a Notification dated 23.08.2010 prescribing Teacher Eligibility Test as minimum educational qualification for appointment of teachers in schools. Accepting the recommendation and the Notification issued by the National Council for Teacher Education, the Government of Tamil Nadu have also issued G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 making it clear that Teacher Eligibility Test shall be conducted by the Teachers Recruitment Board in accordance with the guidelines framed by the National Council for Teacher Education and in view of the said G.O., the teachers who passed the Teacher Eligibility Test alone were made eligible to become teacher.

4.Adding further, he would submit that the issue as to whether the provisions of the Right of Children to Free and Compulsory Education Act 2009 would be applicable to a minority institution, is pending consideration in Ashwini Thanappan vs. Director of Education and another, reported in (2014) 8 SCC 272. It is also submitted that following the abovesaid reference order, the Hon'ble Division Bench also, in W.A.No.1299 of 2015 has passed an order dated



14.09.2015 directing the Educational authorities to pay only the salary with a further direction not to remove the concerned teacher till the issue referred to before the Supreme Court is decided.

5. At this juncture, it is necessary to extract paragraphs 4 to 8 of the order passed by the Hon'ble Division Bench in W.A.No.1299 of 2015, dated 14.09.2015, which are given as under:-

"4. Be that as it may, the issue as to whether the provisions of the Act, will be applicable to a minority institution, is pending consideration in Aswinithanappan Vs. Director of Education and another - (2014) 8 SCC 272.

5. In view of the above, without going into the merits of the case as to whether a teacher appointed in a minority school is required to have TET qualification, as the same is the subject matter of the Writ petition, we are of the considered view that interest justice would sub-serve, if the appointment of the first respondent is protected, without giving any direction to the State Government to grant temporary approval.

6. Mr.D.Krishnakumar, learned Special Government Pleader (Education) appearing for the appellants fairly submits that the first respondent shall not be terminated during the pendency of the said writ petition being W.P.No.14072 of 2015.

7. Accordingly, we direct that the first respondent shall be given her salary in the course of her employment and no steps to remove her from service shall be taken till the disposal of the writ petition. However, it is made clear that this order is subject to the final outcome of the pending writ petition. It is further made clear that the first respondent shall not claim any equity on account of this order, without prejudice to the rights and contentions of the parties, therein.

8. This intra-Court appeal is disposed of accordingly. No costs. Connected Miscellaneous Petition is closed."

6. In the present case, Mr.R.I.Asiath Jailani and Mrs.P.Benazir were appointed as B.T Assistants without possessing the Teacher Eligibility Test qualification, hence, the approval of their appointments granted, has been cancelled vide impugned orders. However, as the Apex Court in Pramati Educational and Cultural Trust and others vs. Union of India and others, reported in 2014 (4) MLJ 486 (SC), has made it clear that 2009 Act is not applicable to the minority institutions, further, the petitioner school in both the cases being a minority educational institution, in which, Mr.R.I.Asiath Jailani and Mrs.P.Benazir have been appointed as B.T Assistants, G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 cannot be made applicable to the present cases.



7.It may be mentioned herein that Mr.R.I.Asiath Jailani and Mrs.P.Benazir no doubt were appointed in sanctioned posts in the petitioner's school. However, as the issue as to whether the provisions of the Right of Children to Free and Compulsory Education Act 2009, would not be applicable to a minority institution, is pending consideration in Aswinithanappan Vs. Director of Education and another - (2014) 8 SCC 272, following the abovesaid order passed by the Hon'ble Division Bench in W.A.No.1299 of 2015 dated 14.09.2015, these writ petitions are disposed of with the following directions:-

Mr.R.I.Asiath Jailani and Mrs.P.Benazir shall be given salary in the course of their employment and no steps to remove them from service shall be taken. However, it is made clear that this order is subject to the outcome of the case pending before the Supreme Court in Aswini Thanappan Vs. Director of Education and another - (2014) 8 SCC 272. It is further made clear that Mr.R.I.Asiath Jailani and Mrs.P.Benazir shall not claim any equity on account of this order, without prejudice to the rights and contentions of the parties. No costs. M.P(MD)Nos.1, 1, 2 and 2 of 2013, 1 and 1 of 2014 are closed.

Sd/
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar.

To

1)The Secretary to Government,
State of Tamil Nadu,
Department of School Education,
Fort St.George, Chennai-600 009.

2)The Director of School Education,
College Road, Chennai-600 006.

3)The Chief Educational Officer,
Ramnad, Ramnad District.

4)The District Educational Officer,
Paramakudi,Ramnad District.

+1CC to M/S.A.S.Mujibur Rahman, Advocate, SR.No. 37484

W.P(MD)Nos.18950 and 18951 of 2013
and

M.P(MD)Nos.1, 1, 2 and 2 of 2013, 1 and 1 of 2014

18.07.2016