



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2018

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS. JUSTICE R.THARANI

WA (MD) Nos.522 and 523 of 2018
and
C.M.P.(MD) Nos.3035 to 3037 of 2018

1.The State of Tamilnadu
rep. By its Principal Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.

2.The Director of School Education,
Chennai - 06.

3.The Chief Educational Officer,
Karur, Karur District.

4.The District Educational Officer,
Karur, Karur District.

5.The Secretary,
Teachers Recruitment Board,
EVK Sampath Maligai,
DPI Compound, College Road,
Chennai - 06.

... Appellants in both
appeals

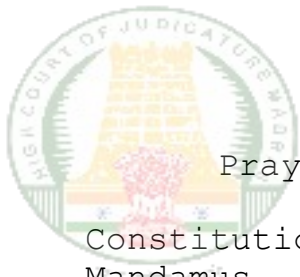
Versus

1.N.Taj	... Respondent in W.A.522/18
1.K.Mohamed Haris Ali	... Respondent in W.A.523/18

Writ Appeals filed under Clause 15 of Letters Patent, to set aside the order dated 30.04.2013 made in M.P.(MD) Nos.1 and 1 of 2013 in in W.P.(MD)Nos.7573 and 7574 of 201 3.

Prayer in MP(MD). 1/ 2013 in WP(MD).7573/2013 :

to pass an order of interim direction, directing the respondents No.3 to 4 to disburse the salary for the period from December 2012 to April 2013 and every month thereafter continuously pending disposal of the above writ petition.



Prayer in WP(MD). 7573/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, or any other writ of direction in the nature of writ, directing the respondents No.2-4 to retain the petitioner in the post of B.T. Assistant in English by providing a period of 5 years for passing the Teacher Eligibility Test and provide the monthly salary for the period from December 2012 to April 2013 and every month thereafter continuously.

Prayer in MP(MD). 1/ 2013 in WP(MD).7574/2013 :

to pass an order of interim direction, directing the respondents No.3 to 4 to disburse the salary for the period from December 2012 to April, 2013 and every month thereafter continuously pending disposal of the above writ petition.

Prayer in WP(MD). 7574/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, or any other writ of direction in the nature of writ, directing the respondents No.2-4 to retain the petitioner in the post of B.T. Assistant in Science by providing a period of 5 years for passing the Teacher Eligibility Test and provide the monthly salary for the period from December 2012 to April 2013 and every month thereafter continuously.

For Appellants : Mr.V.R.Shanmuganathan,
Spl.G.P. For RR1 to 5

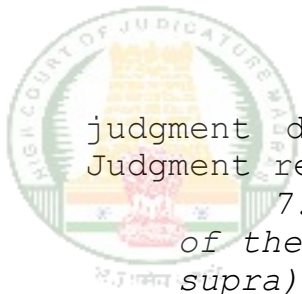
For Respondents : Mr.M.Pown Raj for both
respondents

COMMON JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM,J)

These appeals filed by the State are directed against the common order passed in the miscellaneous petitions in writ petitions. Since the prayer sought for by the appellants in the writ appeals are identical, we have heard the appeals together and they are disposed of by this common judgment.

2.The issue is clearly covered by the decision of the Division Bench in W.P.(MD) No.898 of 2017 dated 30.06.2017 (T.Susila Vs. State of Tamil Nadu and others), to which one of us (T.S.SIVAGNANAM, J.) was a party. The said writ appeal was allowed following an earlier decision of the W.A.(MD) No.1438 of 2016 (Helen Samraj Vs. The Secretary to Government, Department of School Education), by



judgment dated 25.11.2016. The operative portion of the said Judgment reads as follows:

7. It is relevant to extract the following paragraphs of the judgment of the Division Bench of this Court (cited *supra*):

52. However, the Government, before issuing G.O.Ms.No.181 dated 15.11.2011, lost sight of one important fact, namely imposition 39 of a condition on the Teachers, who were appointed prior to the issue of G.O., in non minority and minority Schools, both aided and unaided, to qualify themselves with TET within a period of five years, in order to continue in service, would cause great hardship to them. Moreover, if the Teachers who have put in more number of years of service, could not pass TET within five years, their continuation in service would be in jeopardy. Further, it is seen that the percentage of pass in the TET examination conducted in 2012 and 2013 was very minimal.

...

56. We are, therefore, of the considered view that the Government may seek a clarification from the NCTE, in the light of what is stated in the preceding paragraph, whether the prescription of minimum qualification of TET can be made applicable prospectively for the Teachers who were appointed subsequent to the date of the issue of G.O., in both non minority and minority institutions and not retrospectively as the same would cause undue hardship to the Teachers who have been serving for a quite a long time. ...

58. In our opinion, non qualifying in TET by the Teachers already in service should not defeat the object of the Government to provide quality and standard education and therefore, the Government may, in the alternative, conduct a refresher course and also some interactive 43 sessions during annual vacation, in order to ensure and enhance the quality of education. ...

60. In the light of the above, we are of the view that the Government cannot insist upon the minority institution, both aided or unaided, to abide by any Regulation framed under the provisions of the RTE Act. Therefore, we hold that G.O.Ms.No.181, School Education (C2) Department dated 15.11.2011 issued by the Government of Tamil Nadu, is not applicable to the minority institutions. Similarly, G.O.Ms.No.76 dated 18.3.2015 issued by the Government of Puducherry, is also not applicable to the minority institutions.

62. However, keeping in mind the larger interest in which



the Government has issued the above G.Os., this Court feels that the minority institutions may also consider conducting a refresher course and also some interactive sessions to all the Teachers during annual vacation, in order to ensure and improve the quality of Teachers.?

8. In the light of the above said judgment, the Writ Appeal is allowed and the impugned order, which was subject matter of challenge in W.P. (MD) No.15958 of 2015 as well as the impugned order passed in W.P. (MD) No.15958 of 2015 dated 14.07.2016 are set aside. However, in the circumstances of the case, there shall be no order as to cost."

4. Thus, following the above referred decision, these writ appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CSII)

/True Copy/

Sub-Assistant Registrar

To

1. The Principal Secretary, The State of Tamil Nadu,
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EVK Sampath Maligai,
DPI Compound, College Road, Chennai - 06.

+One cc to The Special Government Pleader, SR.No.59059

Arul

RL/7C/4P/SKN/RSK/SAR3/16/4/2018

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and

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