

A.E. Ebrahim Middle School Vs. The District Elementary Educational Officer and Another

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Court : Chennai Madurai

Decided On : Aug-11-2016

Judge : T. Raja

Appeal No. : W.P(MD).No. 671 of 2015 & M.P(MD)No.1 & 2 of 2015 & W.M.P(MD)No. 5023 of 2016

Appellant : A.E. Ebrahim Middle School

Respondent : The District Elementary Educational Officer and Another

Judgement :

(Prayer: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a WRIT OF CERTIORARIFIED MANDAMUS to call for the records relating to the impugned order of the first respondent made in O.Mu.No.2177/A2/2011 dated 27.11.2014 and quash the same and direct the respondents 1 and 2 to approve the appointment of Tmt.Zabeen A Wahab as Headmistress in the petitioner's A.E.Ebrahim Middle School from the date of appointment i.e., 20.09.2010 with all salary, backwages privileges and emoluments within such time as this Court direct and pass such further of other orders.)

1. The petitioner school seeks for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent made in O.Mu.No.2177/A2/2011 dated 27.11.2014 and quash the same and direct the respondents 1 and 2 to approve the appointment of Tmt.Zabeen A Wahab as Headmistress in the petitioner's A.E.Ebrahim Middle School from the date of appointment i.e., 20.09.2010 with all salary, back-wages privileges and emoluments.

2. When the matter is taken up for hearing, both the parties fairly submitted that although the issue involved in this Writ Petition was already decided by the Apex Court, the main issue is still pending. By saying so, Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the official respondents produced an order passed by the Division Bench of this Court made in W.A.(MD).No.220 of 2016 dated 05.02.2016. Following the order of the Division Bench made in W.A.(MD).No.220 of 2016 dated 05.02.2016, this Court has disposed of the Writ Petition in W.P.(MD).No.17878 of 2015 dated 05.07.2016.

3. 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.

4. In view of the above, the Writ Petition stands disposed of, with a direction to the official respondents to grant salary in the course of her employment within a period of two weeks from the date of receipt of a copy of this order and no steps to remove her from service shall be taken. However, it is made clear that these orders are subject to the final 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 the petitioner shall not claim any equity on account of this order, without prejudice to the rights and contentions of the parties. No costs. Consequently, the connected miscellaneous petitions are closed.

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