
(2014) 11 MAD CK 0132

In the Madras High Court

Case No : Writ Petition No. 33856 of 2013 and M.P. Nos. 1 and 2 of 2013

G. Chandumathi

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 24-11-2014

Acts Referred:

Constitution of India, 1950 — Article 21A

Citation : (2014) 11 MAD CK 0132

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Judgement

M.M. Sundresh, J.—The petitioner's husband late G.Janakiram, who was working as Secondary Grade Teacher with the fourth respondent-school, died in harness while working on 12.09.2008. On the application made by the petitioner, she was appointed as B.T. Assistant on 26.11.2009. As the appointment was made in a sanctioned post, proposals were sent seeking approval before the third respondent. By the impugned order dated 31.07.2013, it was rejected on the ground that the staff being paid with the direct payment, the same cannot be considered. Challenging the same, the present writ petition has been filed.

2. The learned counsel appearing for the petitioner submitted that by the subsequent proceedings dated 06.02.2014, in Na.Ka. No. 108349/W4/E3/2013, the order providing for direct payment was cancelled and therefore, there is no bar in law to consider the proposal pertaining to the petitioner on merit. He has also placed reliance on the order passed by this Court in W.P. No. 21015 of 2014 dated 13.10.2014. wherein it has been held in the following manner.

2. By an order dated 12.02.2014, the 4th respondent was permitted to receive the aid and accordingly the earlier order dated 15.03.2004 by which the direct payment was ordered was duly cancelled. However, notwithstanding the same, by the impugned order dated 06.06.2014, once again the proposal pertaining to the petitioner was returned on the ground that the direct payment made earlier still continues. Challenging the same, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner submitted that the order impugned is factually incorrect. There is no direct payment made to the staff of the 4th respondent, as of now, in pursuant to the order dated 12.02.2014. Even otherwise in the guise of direct payment being made, the students cannot be made to suffer by way of denying the approval when the vacancies to the post of teachers are sought to be filled up. The learned counsel made reliance upon the order passed by this Court in W.P. No. 16456 of 2009 dated 07.12.2009 pertaining to the very same institution wherein this Court was pleased to pass the detailed order as follows:-

.....13. The first respondent must also be directed to consider grant of permission to fill up the post as without a Laboratory Assistant, the School cannot run the laboratory. The first respondent cannot eternally postpone the grant of approval to the said post on the basis of a so-called ban order. A school has to run with necessary para teaching staff also. Therefore, it is incumbent on the first respondent to consider the grant of permission to fill up the post without fail. Otherwise, it will defeat the very purpose of Article 21-A of the Constitution, wherein children are guaranteed to get compulsory free education by the State. The first respondent is also directed to consider the grant of permission to fill up the said post and a decision shall be taken within eight weeks from the date of receipt of copy of this order.....

4. As the above facts narrated would show that the factual position on which the order impugned dated 06.06.2014 has been passed by the 3rd respondent no longer survives for consideration as long as order dated 12.02.2014 is in vogue by which the earlier order of direct payment was cancelled, the 3rd respondent cannot return the papers on that ground.

5. In such view of the matter the impugned order passed by the 3rd respondent is set aside and consequently the 4th respondent is directed to re-present the papers pertaining to the approval of the petitioner to the post of Telugu Pandit within a period of four weeks from the date of receipt of copy of this order and as and when the said papers are presented, the 3rd respondent is directed to pass appropriate order within a period of eight weeks thereafter on merits and in accordance with law.

6. In the result, the Writ Petition is allowed accordingly. Consequently the connected miscellaneous petition is closed. No costs.

3. The learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that the application of the petitioner would be considered on merits and in accordance with law by taking into consideration of the subsequent events.

4. In view of the subsequent development, this Court is of the view that the order impugned passed by the third respondent is liable to be set aside and accordingly, the same is set aside and the fourth respondent is directed to re-present the papers pertaining to the approval of the petitioner for the post of B.T. Assistant within a period of four weeks from the date of receipt of a copy of this

order. On receipt of such papers, the third respondent is directed to pass appropriate orders on merits and in accordance with law within a period of eight weeks thereafter.

5. The writ petition is allowed. However, no order as to costs. Consequently, connected miscellaneous petitions are closed.