
(2015) 06 KL CK 0211

In the High Court Of Kerala

Case No : Writ Petition (C) No. 5537 of 2013

Vijayashoma V. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 04-06-2015

Acts Referred:

Constitution of India, 1950 — Article 337
Kerala Education Act, 1958 — Section 2(1), 9

Citation : (2015) 3 ILR Ker 149

Hon'ble Judges : A. Muhamed Mustaque, J

Bench : Single Bench

Advocate : Abraham Vakkanal, Senior Advocate, Kaleeswaram Raj and Devon Ramachandran, for the Appellant; K.A. Jaleel, Additional Advocate General, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A. Muhamed Mustaque, J—The petitioners are Pre-primary school teachers and Ayahs working in various aided schools in the State. They have approached this Court seeking relief against the Government for salary/honorarium at least at the rate fixed by this Court in the judgment in W.A. No. 205/2011.

2. This Court in the above writ appeal ordered as follows:

"We, therefore, direct the Government as an interim measure, to start paying @ Rs. 5,000 per month to all Pre-Primary School Teachers in such Schools attached to Government Schools run by Parent-Teachers Association and Rs. 3,500 per month to Ayahs, until final decision is taken by the Government. The payment should start for the period starting from 1-8-2012 onwards, i.e., For the salary payment due from 1-9-2012 onwards, until final decision is taken by the Government. The payment so made will be only ad hoc and subject to final orders of the Government based on Policy to be evolved by them. We are sure that the Government will not commit any mistake of fixing the salary at anything below the minimum stated by us above, though only as a temporary measure."

3. The above direction was to make payment to all pre-primary teachers and Ayahs in Government schools run by Parent-Teachers Association. Petitioners' case is that pre-primary school teachers and Ayahs in aided schools are also not different and they are also entitled for similar benefits.

4. The learned Senior Counsel Shri Abraham Vakkanal would argue that pre-primary school is a part of elementary education and any appointments made by the Manager in pre-primary schools are part of elementary education. It is also argued that the Government has recognized the appointments of pre-primary teachers made in the aided schools and the Government has encouraged such appointments and therefore, the Government is bound to pay salary at least at the rate fixed in the judgment in the writ appeal.

5. Shri Devan Ramachandran appearing for some of the petitioners also argues that in the light of Pre-Primary School Employees (Remuneration Order) Regulations 2000, the pre-primary teachers and Ayahs are entitled for similar benefits. It is further argued that it is the duty of the Government to provide pre-primary education to students under the Right of Children to Free and Compulsory Education Act, 2009. He further submits that the writ appeal judgment itself takes note of the right of the students to get primary and pre-primary education and the obligation of the Government to provide quality education at primary and pre-primary levels. Therefore, it is submitted that if pre-primary teachers are not paid basic remuneration for their existence, quality of education would become mirage.

6. The learned counsel Shri Kaleeswaram Raj for some of the writ petitioners submits that appointments are made by the Parent-Teachers Association in aided schools. He submits that Parent-Teachers Association is a creation by the Government and their existence is recognized under law. It is further submitted that in the instructions given to the schools for organization of Parent-Teachers Association, the Government formulated guidelines to achieve quality education through Parent-Teachers Association. Therefore, it is argued that the Government is bound to honour the appointments made by Parent-Teachers Association in aided schools.

7. The learned Additional Advocate General Shri Jaleel, K.A. submits that there are Anganwadis in the State which cater the requirements of pre-primary education. It is submitted that in the matter of appointments made by the Management or Parent-Teachers Association without concurrence of the State, the State is not liable to pay any amount to those appointees. It is further submitted that the State Government has no legal obligation to pay salary of teachers and Ayahs in the pre-primary schools run by Parent-Teachers Association. If at all any liability exists, that liability is with the Management.

8. Kerala Education Rules framed under the Kerala Education Act classify schools for general education into two grades viz., primary and secondary. There is no mention of any pre-primary schools in the KER or under the Act. Chapter V of the

KER also refers on procedure for recognizing schools. It is only in accordance with the method provided under the Chapter, the primary and secondary schools can be recognized by the Government even for the aid. It is also apposite to advert Section 9 of the Kerala Education Act which reads as follows:

"9. Salary of teachers, etc., and grants to aided schools.--

(1) The Government shall pay the salary of all teachers in aided schools direct or through the Headmaster of the school.

(2) The Government shall pay the salary of the non-teaching staff of the aided schools appointed before the 31st May 1957 and continuing in office at the commencement of this section on the scale applicable to them immediately before the 31st May 1957, it shall be competent for the Government to prescribe the number of persons to be appointed in the non-teaching establishment of aided schools, their salaries, qualifications and other conditions of service. The salary of the persons appointed in the non-teaching establishment in accordance with the rules so prescribed shall be paid by the Government.

(3) The Government may pay to the Manager a maintenance grant at such rates as may be prescribed.

(4) The Government may make grants-in-aid for the purchase, improvement and repairs of any land, building or equipment of an aided school."

9. The above provision only mandates obligation of the Government to pay salary to teachers and non-teaching staff of aided schools. Aided school is defined under Section 2(1) of the Kerala Education Act, 1958 as follows:

(1) "'aided school" means a private school which is recognized by and is receiving aid from the Government, but shall not include educational institutions entitled to receive grants under Article 337 of the Constitution of India, except in so far as they are receiving aid in excess of the grants to which they are so entitled."

10. In the light of the legal provisions as above, only schools which are recognized to receive aid alone will be entitled to oblige the Government to pay salary to teaching and non teaching staffs. Pre-primary teachers/Ayachs appointed in pre-primary schools attached to aided schools have no legal relationship with the Government.

11. The appointments in primary classes are made by Parent-Teachers Association or Management in aided schools. The Government has not given permission to any Management or Parent-Teachers Association to open pre-primary schools with the aid of Government. The direction of this Court in the writ appeal referred as above is only in respect of pre-primary schools started in Government schools. It is for the obvious reason that the Government is the Manager of such schools, the Government is bound to recognize any such entity within the school. However, in the case of aided schools, the Government's

obligation to provide aid is only to the extent of aid agreed under the agreement. The Government has no obligation to pay any amount payable as salary to the pre-primary teachers or Ayahs in the aided schools.

12. Mere recognition of Parent-Teachers Association by the Government or even existence of pre-primary schools in the aided schools recognized by the Government will not create legal obligation on the part of the Government to pay salary or remuneration to such appointees in the pre-primary schools. Right to education as contemplated under the Right of Children to Free and Compulsory Education Act, 2009 and the Rules framed in Kerala also prescribe the procedure through which recognition for aid has to be qualified. It is for the Authority which has taken the decision and which has permitted to open pre-primary schools, is under any obligation to pay salary payable to the pre-primary teachers/Ayahs. No doubt, the petitioners are entitled for such payment from Management or Parent-Teachers Association which is, in fact, as ordered by this Court in the writ appeal as reasonable remuneration, till the final decision to be taken by the Government.

13. Accordingly, the petitioners' relief against Government for payment of salary/honorarium in par with the pre-primary schools attached to Government schools and other benefits is declined.

14. However, the State machinery shall not fail to ensure at least minimum amount ordered in the writ appeal judgment, be paid by the Management or the Parent-Teachers Association to the petitioners. The State shall take necessary steps to ensure that the Management and Parent-Teachers Association pay the amount ordered in writ appeal judgment to the petitioners or like. Needful shall be done by the Government within three months.

The writ petitions are disposed of as above. No costs.

*A reproduction from ILR (Kerala Series)