

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.30316 of 2014

J.Helan Janiper

... Petitioner

Vs.

1.The Joint Director (Higher Education),
DPI Campus,
Chennai - 600 006.

2.District Educational Officer,
Tiruppattur, Vellore District.

3.Concordia Higher Secondary School,
Vaniyambadi, Vellore District,
Rep.by its Correspondent.

4.The Secretary,
Education Committee,
Ambur Synod, IELC,
Ambur, Vellore District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue writ of certiorarified mandamus to call for the records pertaining to the order passed by the second respondent in her proceedings Na.Ka.No.2643/A4/2014, dated 26.06.2014 and quash the same, and direct the respondents to approve the appointment of the petitioner as B.T. Assistant (History) in the third respondent School from 20.06.2011 and confer all the consequential benefits.

For Petitioner	:Mr.P.Ganesan
For R1 & R2	:Mr.A.Kumar, Spl.GP
For R3 & R4	:No Appearance

ORDER

By way of filing this writ petition, the petitioner seeks to quash the impugned order passed by the second respondent / the District Educational Officer, Tiruppattur,

Vellore District, in rejecting her appointment, vide her proceedings dated 26.06.2014, with a consequential direction to the respondents to approve her appointment as B.T. Assistant (History) in the third respondent School from 20.06.2011 and confer all the consequential benefits.

2. Mr.P.Ganesan, learned counsel appearing for the petitioner submitted that the petitioner took part in the interview conducted on 26.05.2010 for the post of B.T. Assistant. Thereafter, on the basis of selection, she was appointed as B.T. Assistant (History) on 20.06.2011 in the third respondent school. Subsequent to her appointment, the School management has forwarded the proposal to the second respondent for approval on 23.06.2011. However, without considering the same, the second respondent rejected the approval by way of passing the impugned order.

3. It is further submitted by the learned counsel for the petitioner that in a similar circumstances, this Court, in W.P.No.32314 of 2015, dated 12.10.2015, by taking note of the order passed by the Hon'ble Apex Court in holding that the teachers who were appointed prior to the G.O.Ms.No.181, School Education Department, dated 15.11.2011, will remain protected, gave interim direction to the respondents to temporarily approve the appointment of the petitioner as B.T. Assistant (Tamil) in terms of the orders passed by the Hon'ble Apex Court.

4. Learned counsel appearing for the petitioners has placed reliance upon a judgment of the Hon'ble Apex Court in the case of Pramati Educational & Cultural Trust v. Union of India and others ((2014) 8 SCC 1), whereby the Hon'ble Apex Court held that the Right of Children to Free and Compulsory Education Act, 2009, would not apply to the minority institution. Therefore, since the third respondent School is a minority institution, the impugned order passed by the second respondent in rejecting the appointment of the petitioner on the ground that she has not passed the TET examination does not carry any merit and on that basis, he prayed for allowing the writ petition.

5. Heard the learned counsel appearing on either side.

6. It is no doubt true that the third respondent School is a minority institution. It is also an admitted fact that subsequent to the petitioner's appointment on 20.06.2011, the management of the third respondent School has forwarded a proposal to the second respondent for approval on 23.06.2011. However, the second respondent, by way of passing the impugned order, rejected the appointment of the petitioner on the ground that she has not cleared the TET examination. In my view, such

reasoning given by the second respondent cannot be sustained, since the said reasoning given by the second respondent is contrary to the G.O.Ms.No.181, School Education Department, dated 15.11.2011, wherein it is directed to approve all the appointments made prior to 15.11.2011. Admittedly, as stated above, the petitioner was appointed on 20.06.2011 as B.T. Assistant (History) in the third respondent School, which is much prior to the said G.O. dated 15.11.2011.

7. Further, the third respondent School is a minority institution, therefore, the Right of Children to Free and Compulsory Education Act, 2009, cannot be applied to the case on hand in view of the ratio laid down by the Hon'ble Apex Court in Pramati Educational & Cultural Trust's case (cited supra). For better appreciation, paragraph 47 thereof is extracted below:

"47. In the result, we hold that the Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution and the Constitution (Eighty-Sixth Amendment) Act, 2002 inserting Article 21A of the Constitution do not alter the basic structure or framework of the Constitution and are constitutionally valid. We also hold that the 2009 Act is not ultra vires Article 19(1)(g) of the Constitution. We, however, hold that the 2009 Act insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution. Accordingly, Writ Petition (C) No.1081 of 2013 filed on behalf of Muslim Minority Schools Managers' Association is allowed and Writ Petition (C) Nos.416 of 2012, 152 of 2013, 60 of 2014, 95 of 2014, 106 of 2014, 128 of 2014, 144 of 2014, 145 of 2014, 160 of 2014 and 136 of 2014 filed on behalf of non-minority private unaided educational institutions are dismissed. All I.As. stand disposed of. The parties, however, shall bear their own costs."

8. In view of the above said facts and circumstances of the case and also by following the ratio laid down by the Hon'ble Apex Court as stated above, this Court gives a direction to the respondents to approve the appointment of the petitioner as B.T. Assistant (History) in the third respondent School from 20.06.2011 and confer all the consequential benefits thereof. The respondents are directed to complete the said exercise

within a period of eight weeks from the date of receipt of a copy of this order.

9. With the above observations and directions, the writ petition stands allowed by setting aside the impugned order passed by the second respondent. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rkm

To

1.The Joint Director (Higher Education),
DPI Campus,
Chennai - 600 006.

2.District Educational Officer,
Tiruppattur, Vellore District.

+1 cc to The Government Pleader, sr.9663

+1 cc to M/s.C.S.Associates, Advocates, sr.20180

W.P.No.30316 of 2014

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kra 07.04.2016

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