

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.31382 of 2014

and

MP.Nos.1 of 2014 and 1 of 2015

M.Manogaran

... Petitioner

Vs.

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

2. District Elementary Educational Officer
Krishnagiri, Krishnagiri District

3. Correspondent,
I.E.L.C.Middle School
Krishnagiri 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 his proceedings Na.Ka.No.4310/A6/2011, dated 18.11.2014 and quash the same, and direct the respondents to approve the appointment of the petitioner as Secondary Grade Assistant in the third respondent School from 20.6.2011 and confer all the consequential benefits.

For Petitioner : Mr.P.Ganesan

For R1 & R2 : Mr.A.Kumar,
Special Government Pleader

For R3 : 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, Krishnagiri, Krishnagiri District, in rejecting his appointment, vide

proceedings dated 18.11.2014, with a consequential direction to the respondents to approve his appointment as Secondary Grade Assistant 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 Secondary Grade Teacher. Thereafter, on the basis of selection, he was appointed as Secondary Grade Teacher on 20.06.2011 in the third respondent school. Subsequent to his 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 therein as B.T. Assistant (Tamil) in terms of the orders passed by the Hon'ble Apex Court.

4. Learned counsel appearing for the petitioner 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 he 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 he 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 Secondary Grade Assistant 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 Secondary Grade Teacher 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.

ga

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Joint Director (Elementary Education)
DPI Campus, Chennai -600 006.
2. District Elementary Educational Officer
Krishnagiri, Krishnagiri District.
3. Correspondent,
I.E.L.C.Middle School,
Krishnagiri District.

KR/5/4/16

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