

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.02.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.5631 to 5634 of 2015

AND

MPS.2 TO 4 IN ALL WPS.

D.Solomon Prabhakar ... Petitioner in W.P.No.5631/2015
D.Vennila ... Petitioner in W.P.No.5632/2015
T.G.Devasagayam ... Petitioner in W.P.No.5633/2015
D.Latha ... Petitioner in W.P.No.5634/2015

Vs.

- 1.The Director of School Education,
DPI Complex, College Road,
Chennai - 600 006.
- 2.The Chief Educational Officer,
Erode.
- 3.The District Educational Officer,
Erode. ..R1 TO R3 IN ALL WPS.
- 4.The Correspondent,
C.S.I. Boys Higher Secondary School,
Erode - 638 001.
..R4 IN WPS. 5631, 5632 & 5633/2015
4. The Correspondent,
C.S.I. Girls Higher Secondary School,
Erode - 638 001. ..R4 IN WP.5634/2015

PRAYER IN WP.No.5631 of 2015: 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 third respondent in his proceedings O.Mu.No.8367/Aa3/2012, dated 26.07.2013, quash the same, and direct the respondents to approve the upgradation and appointment of the petitioner from the date of appointment and confer all the consequential benefits.

PRAYER IN WP.No.5632 of 2015: 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 third respondent in his proceedings Aa.Thee.Mu.No.4558/A3/13, dated 18.07.2013, quash the same and direct the respondents to upgrade and approve the appointment of the petitioner from the date of appointment and confer all the consequential benefits.

PRAYER IN WP.No.5633 of 2015: 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 third respondent in his proceedings O.Mu.No.8528/Aa3/2012, dated 26.07.2013, quash the same, and direct the respondents to approve the conversion of the post of B.T. Assistant Maths to Science and appointment of the petitioner from the date of appointment and confer all the consequential benefits.

PRAYER IN WP.No.5634 of 2015: 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 third respondent in his proceedings A.Thee.Mu.No.8789/A3/14, dated 30.12.2014, quash the same and direct the respondents to approve the appointment of the petitioner from the date of appointment and confer all the consequential benefits.

In all the WPs

For Petitioner :Mr.P.Ganesan

For R1 to R3 :Mr.A.Kumar, Spl.GP

For R4 :Mr.V.Udayakumar

COMMON ORDER

By way of filing these writ petitions, the petitioners seek to quash the impugned order passed by the third respondent / the District Educational Officer, Erode, in rejecting their appointment, with a consequential direction to the respondents to approve their respective appointment and confer all the consequential benefits.

2. Since the facts leading to all the writ petitions are one and the same, they are disposed of by this common order. For better appreciation, facts leading to the filing of W.P.No.5631 of 2015 are stated below:

The petitioner was selected to the post of B.T. Assistant (English) through interview and on the basis of selection, he joined for the said post on 07.03.2012 in the fourth respondent School. Subsequent to his appointment, the School management has forwarded the proposal to the third respondent for approval on 30.10.2012. However, the third respondent rejected the proposal for approval on 26.07.2013 on the ground that he has not passed the Teachers Eligibility Test (TET).

3. Assailing the said reasoning given by third respondent, Mr.P.Ganesan, 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 fourth respondent School is a minority institution, the impugned orders passed by the third respondent in rejecting the appointment of the petitioners on the ground that they have not passed the TET examination does not carry any merit and on that basis, he prayed for allowing the writ petitions.

4. Heard the learned counsel appearing on either side.

5. It is no doubt true that the fourth respondent School is a minority institution. It is also an admitted fact that subsequent to the petitioners' appointment, the management of the fourth respondent School has forwarded a proposal to the third respondent for approval. However, the third respondent, by way of passing the impugned orders, rejected their respective appointment on the ground that they have not cleared the TET examination. In my view, such reasoning given by the third respondent cannot be sustained 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."

6. From the above said judgment of the Hon'ble Apex Court, it is clear that the Right of Children to Free and Compulsory Education Act, 2009, cannot be applied to the minority institution. Therefore, in the cases on hand, as stated above, since the fourth respondent School is a minority institution, the reasoning given by the third respondent in the impugned order holding that the petitioners have not passed TET examination is contrary to the said judgment of the Hon'ble Apex Court. Thus, the impugned orders passed by the third respondent giving such reasons are set aside. Consequently, a direction is issued to the respondents to approve the respective appointment of the petitioners in the fourth respondent School from the date of their initial appointment 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.

7. With the above observations and directions, the writ petitions stand allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

rkm

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Director of School Education,
DPI Complex, College Road, Chennai - 600 006.

2.The Chief Educational Officer, Erode.

3.The District Educational Officer, Erode.

+ 1 CC TO THE GOVT.PLEADER, SR 8525

+ 4 ccs to M/s.C.S.Associates, Advocate Sr 20181 (6/4/16)

KR/5/4/16

W.P.Nos.5631 to 5634 of 2015