

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2016

CORAM

THE HON'BLE Mr. JUSTICE M.SATHYANARAYANAN

W.P.Nos.43302 to 43305 of 2016

and

W.M.P.Nos.37141 to 37152 of 2016

W.P.No.43302 of 2016

Miss.F.Jayanthi ...Petitioner

-Vs-

1. The Government of Tamil Nadu,
rep. by the Additional Chief Secretary,
Department of School Education,
Fort St.George,
Madras - 600 009.
2. The Director of School Education,
DPI Campus,
College Road,
Chennai - 600 006.
3. The Chief Educational Officer,
The Office of the Chief Educational Officer,
Dr.Srinivasan Higher Secondary School,
Kancheepuram- 631 501
Kancheepuram District.
4. The District Educational Officer,
The Office of the district Educational Officer,
Old Anna Road,
Near Arignar Anna Government Higher Secondary school,
Chengalpattu - 603 002. Kancheepuram District.
5. The Correspondent,
St.Helans Girls' Higher secondary School,
St.Thomas Mount,
Chennai - 600 016. ...Respondents

Writ petitions filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned G.O.(Ms)No.

181, School Education (C2) Department, dated 15.11.2011, on the file of the 1st respondent and the consequential proceedings dated 12.12.2012 in Na.Ka.No.5596/A2/2012 on the file of the 4th respondent and quash the same in respect of the petitioner based on the Division Bench order dated 24.08.2016 and made in W.A.No.213 of 2016 and others, directing the respondents to approve the appointment of the petitioner Miss.F.Jayanthi working as B.T.Assistant (Tamil) in St.Helans Girls Higher Secondary School, St.Thomas Mount, Chennai - 600 016 w.e.f. 04.06.2012 with all service benefits.

W.P.No.43303 of 2016

Sr.A.Beulah

...Petitioner

-Vs-

1. The Government of Tamil Nadu,
rep. by the Additional Chief Secretary,
Department of School Education (C2)
Fort St.George,
Madras - 600 009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
3. The Chief Educational Officer,
The Office of the Chief Educational Officer,
Thiruvarur District.
4. The District Educational Officer,
The Office of the District Educational Officer,
Thiruvarur District.
5. The Correspondent,
St.Helans Girls' Higher secondary School,
Mannargudi - 641 001
Thiruvarur District.

...Respondents

Writ petitions filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned G.O.(Ms)No. 181, School Education (C2) Department, dated 15.11.2011, on the file of the 1st respondent and quash the same in respect of the petitioner based on the Division Bench order dated 24.08.2016 and made in W.A.No.213 of 2016 and others, directing the respondents to approve the appointment of the petitioner Sr.A.Beulah, working as B.T.Assistant (History, in St.Joseph's

Girls Higher Secondary School, Mannargudi - 641 001, Thiruvarur District w.e.f. 03.06.2015 FN with all service benefits.

W.P.No.43304 of 2016

Mrs.J.Sasikumari

...Petitioner

-Vs-

1. The Government of Tamil Nadu,
rep. by the Additional Chief Secretary,
Department of School Education (C2)
Fort St.George, Madras - 600 009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
3. The Chief Educational Officer,
The Office of the Chief Educational Officer,
Cuddalore,
Cuddalore District.
4. The District Educational Officer,
The Office of the District Educational Officer,
Cuddalore,
Cuddalore District.
5. The Correspondent,
Girls' Christian Higher Secondary School,
Melpattambakkam - 607 104
Cuddalore District.

...Respondents

Writ petitions filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned G.O.(Ms)No. 181, School Education (C2) Department, dated 15.11.2011, on the file of the 1st respondent and quash the same in respect of the petitioner based on the Division Bench order dated 24.08.2016 and made in W.A.No.213 of 2016 and others, directing the respondents to approve the appointment of the petitioner Mrs.J.Sasikumari, working as B.T.Assistant (Maths), in Girls Christian Higher Secondary School, Melpattambakkam - 607 104, Cuddalore District w.e.f.20.01.2016 with all service benefits.

For Petitioners : Dr.Fr.A.Xavier Arulraj, Senior Counsel
assisted by Ms.A.Arul Mary
For Respondents : Mr.V.Anandamoorthy,
Addl.Govt.Pleader (Education)

W.P.No.43305 of 2016

Bro.A.Antony Raja

...Petitioner

-Vs-

1. The Government of Tamil Nadu,
rep. by the Additional Chief Secretary,
Department of School Education (C2)
Fort St.George,
Madras - 600 009.
 2. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
 3. The Chief Educational Officer,
The Office of the Chief Educational Officer,
Master Plan Complex,
Villupuram - 605 602.
 4. The District Educational Officer,
The Office of the District Educational Officer,
Murungapakkam,
Tindivanam,
Villupuram District.
 5. The Correspondent,
Lourdu Annai Higher Secondary School,
Kanakankuppam - 604 151
Gingee Taluk,
Villupuram District.
- ...Respondents

Writ petitions filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned G.O.(Ms)No. 181, School Education (C2) Department, dated 15.11.2011, on the file of the 1st respondent and quash the same in respect of the petitioner based on the Division Bench order dated 24.08.2016 and made in W.A.No.213 of 2016 and others, directing the respondents to approve the appointment of the petitioner Bro.A.Antony Raj, working as B.T.Assistant (English) in Lourdu Annai Higher Secondary School, Kanakkankuppam - 604 151, Gingee

Taluk, Villupuram District, w.e.f. 01.06.2015 with all service benefits.

COMMON ORDER

By consent all the writ petitions are taken up for final disposal as the issue for adjudication is one and the same.

2. The petitioner in W.P.No.43302 of 2016 was appointed as a B.T.Assistant by proceedings 04.06.2012 with effect from the date when the vacancy caused on account of the retirement of Tmt.E.Petchi Anslam Ceilia who was relieved from service on 31.05.2012. The said retirement was also approved by the 4th respondent by proceedings dated 16.07.2002. According to the petitioner, the said post is a regular sanctioned post with Grant-in-Aid from the Government and the 4th respondent School is established and administered by the Catholic Religious Congregation of "The Institute of the Franciscan Missionaries of Mary" and the said Congregation is a registered society bearing Registration No.S.3 of 1992-1923 and it has established and administering number of Educational Institutions for the welfare of the Catholic Christian Minority Community in Tamil Nadu and according to the petitioner, the said educational institutions are all Minority Educational Institutions governed under Article 30(1) of the Constitution of India. The 5th respondent School has forwarded necessary proposal seeking approval of the appointment of the petitioner with effect from 04.06.2012 on 20.11.2012, but it has not been considered for the reason that the petitioner has not completed Teachers Eligibility Test.

3. The petitioner in W.P.No.43303 of 2016 was appointed as B.T. Assistant (History) on 02.06.2015 in St.Joseph's Girls Higher Secondary School, Mannargudi with effect from 03.06.2015 in the vacancy that arose on account of the transfer of one Sr.Sagaya Mary, who relieved from service on 02.06.2015 and according to the petitioner, the said post is a regular post with Grant-in-Aid and it is also run by Catholic Religious Congregation of "The Congregation of the Regular Tertiary Franciscan of Our Lady of Bon Secours". It is also a registered Society bearing S.No.100 of 1956 and established and administering number of Educational institutions and all of them are minority educational institutions governed under Article 30 (1) of the Constitution of India. The petitioner would further aver that necessary proposal seeking approval of appointment of the petitioner was forwarded to the concerned authorities but it has not been considered for the reason that the petitioner has not completed Teachers Eligibility Test qualification.

4. The petitioner in W.P.No.43304 of 2016 was appointed as B.T.Assistant (Maths) on 14.01.2016 in the Girls Christian

Higher Secondary School, Melpattambakkam, Cuddalore District, in the vacancy that arose out of transfer of Mr.J.Paul Arulkumar who was relieved from service on 18.11.2016. According to the petitioner, it is a regular sanctioned post with Grant-in-Aid from the Government. The petitioner has joined the said post with effect from 13.11.2015. The petitioner would further aver that the 5th respondent School is established and administered by the Diocese of Arcot Luthern Church. The said Diocese has established and is administering number of educational institutions for the welfare of the Catholic Christian Minority Community in Tamil Nadu and it is also a religious charitable, educational organization and all the educational institutions run by the said Diocese are Minority Educational Institutions under Article 30(1) of the Constitution of India. The 5th respondent School has sent necessary proposal seeking approval of appointment of the petitioner dated 20.01.2016 but it has not been considered for the reason that the petitioner has not completed Teachers Eligibility Test qualification.

5. The petitioner in W.P.No.43305 of 2016 was appointed as B.T.Assistant (English) in the Lourdu Annai Higher Secondary School, Kanakankuppam, Gingee Taluk, Villupuram District, from 01.06.2015 and the said School was established and administered by The Congregation of the "The Brothers of St.Gabriel" and it is a registered society bearing Registration S.No.209 of 1993 and it is established and administering number of educational institutions. It is also declared as minority educational agency by order of this Court dated 24.09.1975 made in W.P.No.629/1975. The Government has accorded the said status vide letter dated 21.10.1976 as well as the proceedings of the Director of School Education dated 20.11.1976 and the same position has been further confirmed by this Court by order dated 10.10.2012 made in W.P.No.10407/2011. The 5th respondent School has forwarded necessary proposal seeking approval of the appointment of the petitioner with effect from 01.06.2015 but it has not been considered for the reason that the petitioner has not completed Teachers Eligibility Test.

6. Dr.Fr.A.Xavier Arulraj, learned senior counsel assisted by Ms. A.Arul Mary appearing for the petitioners would further submit that though necessary proposal has been forwarded to the educational authorities for approval, it has not been considered for the reason that the petitioners have not passed the Teachers Eligibility Test (TET). Learned senior counsel would further submit that the issue relating to the passing of TET in respect to teachers employed in minority institution came to be considered before the Division Bench of this Court in a batch of writ appeals and by a common judgment dated 24.08.2016 in W.A.No.213 and 572 of 2016 batch etc. reported in 2016(7) MLJ 155 (Secretary to Government, Government of Tamil Nadu,

Education Department & others vs. S.Jeyalakshmi and another), it has been held that the Government cannot insist upon the minority institution both aided or unaided to abide by any regulation framed under the provisions of Right of Children to Free and Compulsory Education Act, 2009 and as a consequence, it was held that G.O.Ms.No.181, School Education (C2) Department dated 15.11.2011 is not applicable to the minority institutions. It is the submissions of the learned senior counsel that the above judgment was also followed by the Madurai Bench of this Court in the judgment dated 24.11.2016 made in W.A.(MD) No.1019 of 2013 etc. batch and as such, there cannot be any impediment to issue positive direction directing to quash the G.O. as well as the consequential proceedings and pass further orders to approve the appointment of the petitioners.

7. The sum and substance of the submission made by the learned senior counsel is that in the light of the above cited common judgment passed by the Madurai Bench of this Court, the writ petitions have to be allowed with the consequential direction directing the concerned authority to approve the appointment of the petitioners in the respective writ petitions.

8. Per contra, Mr.V.Anandamoorthy, learned Additional Government Pleader (Education), on instructions, would submit that a decision has been taken to challenge the order reported in 2016(7) MLJ 155 (Secretary to Government, Government of Tamil Nadu, Education Department & others vs. S.Jeyalakshmi and another) and prayed for time to file counter.

9. The Court has considered the rival submissions and also perused the materials available on record.

10. The Division Bench, while deciding the batch cases in W.A.No.213 and 572 of 2016 etc. batch reported in 2016(7) MLJ 155 (Secretary to Government, Government of Tamil Nadu, Education Department & others vs. S.Jeyalakshmi and another) has followed the judgment rendered by the Honourable Supreme Court reported in 2014 (4) MLJ 486 (SC) (Pramati Educational and Cultural Trust v. Union of India) and following the said judgment, the Division Bench of the Madurai Bench of this Court in W.A.(MD).No.1019/2013 etc. batch, has also quashed the impugned order passed in the writ petition and dismissed the writ appeals. In the light of the ratio laid down by the Honourable Supreme Court of India in 2014 (4) MLJ 486 (SC) (Pramati Educational and Cultural Trust v. Union of India) cited supra coupled with the decision reported in 2016(7) MLJ 155 (Secretary to Government, Government of Tamil Nadu, Education Department & others vs. S.Jeyalakshmi and another), this Court is of the considering view that the writ petitions are to be allowed.

11. In the result, the writ petitions are allowed and G.O. (Ms)No. 181, School Education (C2) Department, dated 15.11.2011 passed by the 1st respondent is quashed insofar as the minority institutions are concerned and the consequential proceedings dated 12.12.2012 made in Na.Ka.No.5596/A2/2012 passed by the 4th respondent in respect of the petitioner in W.P.No.43302 of 2016 is also quashed and the respondents are directed to approve the appointment of the writ petitioners, subject to the fulfilment of all other norms and shall also release the salary of the respective petitioners as well as the arrears amount within a period of two months from the date of receipt of a copy of this order. It is also made clear that in the light of the observation made in paragraph No.62 of the decision reported in 2016(7) MLJ 155 (Secretary to Government, Government of Tamil Nadu, Education Department & others vs. S.Jeyalakshmi and another), the 5th respondent in these writ petitions, taking into consideration the interest and welfare of the students, shall consider to conduct refresher course and also interactive sessions during the annual vacation and other holidays in order to ensure and improve the quality of teachers. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Additional Chief Secretary,
Department of School Education,
Fort St.George, Madras - 600 009.
2. The Director of School Education,
DPI Campus,
College Road,
Chennai - 600 006.
3. The Chief Educational Officer,
The Office of the Chief Educational Officer,
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Kancheepuram- 631 501
Kancheepuram District.

4. The District Educational Officer,
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Thiruvarur District.
7. The Chief Educational Officer,
The Office of the Chief Educational Officer,
Cuddalore,
Cuddalore District.
8. The District Educational Officer,
The Office of the District Educational Officer,
Cuddalore,
Cuddalore District.
9. The Chief Educational Officer,
The Office of the Chief Educational Officer,
Master Plan Complex,
Villupuram - 605 602.
10. The District Educational Officer,
The Office of the District Educational Officer,
Murungapakkam,
Tindivanam,
Villupuram District.

+5cc to Mr.Arul mary, Advocate, S.R.No.73125

mg (CO)
md(05/01/2017)

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W.P.Nos.43302 to 43305 of 2016