

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.43869 of 2016
and W.M.P.Nos.37692 to 37694 of 2016

Miss.R.Mary Sopna

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep. By the Addl. 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,
Chennai - 600 015.
- 4.District Educational Officer,
The Office of the District Educational Officer,
Chennai Central,
Chennai - 600 018.
- 5.The Correspondent,
St. Raphael's Girl Higher Secondary School,
New No.2 Old No.18, Rosary Church Road,
Santhome, Chennai - 600 004.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of 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 22.02.2016 in A.Thi.Mu.No.187/A2/16 on the file of the 4th respondent and quash the same in respect of the petitioner based on the Division Bench orders dated 24.08.2016 made in W.A.No.213 of 2016 and made in W.A.(MD)No.1019 of 2013 dated 24.11.2016, directing the respondents to approve the appointment of the

petitioner Miss.R.Mary Sopana, working as B.T.Assistant (Maths) in St.Raphael's Girls Higher Secondary School, New No.2 Old No.18, Rosary Church Road, Santhome, Chennai - 600 004 with effect from 19.07.2012, with all service benefits.

For Petitioner : Dr.Father Xavier Arul Raj,
Senior Counsel for Ms.A.Arul Mary

For Respondents: Mr.Dhananjayan,
Special Government Pleader.

O R D E R

By consent, the writ petition itself is taken up for final disposal.

2. The petitioner would aver that she was appointed as B.T.Assistant (Maths) in the fifth respondent School on 19.07.2012 in the vacancy arising out of the resignation of one Mrs.Valentina Fernando, Secondary Grade Assistant. She was relieved from service with effect from 2012 and it was also addressed by the 4th respondent, vide proceedings dated 28.09.2012. According to the petitioner, it is a regular sanctioned post with grant in aid from the Government and the 5th respondent school is administered by the Catholic Religious Congregation of the "Institute of the Franciscan Missionaries of May" and it is also a registered society bearing Registration No.S.3 of 1922-1923. It is also administering number of education institutions for the welfare of the Catholic Christian Minority Community in Tamil Nadu and it is also protected under Article 30(1) of the Constitution of India. It is further averred by the petitioner that the approval of her appointment was forwarded to the Educational authorities on 29.07.2012, but the fourth respondent neither approved the appointment of the petitioner nor rejected the same and therefore, the fifth respondent again resubmitted the proposal on 08.01.2016. The fourth respondent, vide proceedings dated 22.02.2016, has rejected the approval of the petitioner stating that she has not completed Teacher Eligible Test and as a consequence, the appointment of the petitioner is not approved and challenging the legality of the same, the petitioner came forward to file this writ petition.

3. Dr.Father Xavier Arul Raj, learned Senior Counsel assisted by Mr.A.Arul Mary, learned counsel appearing for the petitioner has drawn the attention of this Court to the judgment rendered by the Division Bench of this Court reported in (2016) 7 MLJ 155-Secretary to Government, Government of Tamil Nadu, Education Department and others Vs. S.Jeyalakshmi and another, which was followed by the Madurai Bench of this Court in the

common judgment dated 24.11.2016 made in W.A.(MD)No.1019 of 2013-The Director of School Education and another Vs. E.Latha and others and would submit that the Division Bench in the above cited judgment after following the judgment of the Supreme Court of India Reported in (2014) 4 MLJ 486 (SC)-Pramati Educational and Cultural Trust and others Vs. Union of India and others, held that insofar as the minority educational institution is concerned, the provisions of Right to Information Act has no application and as such, the respondent cannot insist the petitioner to pass Teacher Eligible Test and hence, prays for quashment of the impugned order.

4. Per contra, Mr.K.Dhananjayan, the learned Special Government Pleader, who accepts notice on behalf of the respondents seeks further time to get instruction as to whether, a challenge to the decision reported in (2016) 7 MLJ 155-Secretary to Government, Government of Tamil Nadu, Education Department and others Vs. S.Jeyalakshmi and another is going to be made before the Honourable Supreme Court of India.

5. This Court has considered the rival submissions and also perused the materials placed before it.

6. It is relevant to extract paragraph Nos.59 and 60 of the said judgment:

59. Insofar as minority institutions are concerned, the contention of the learned senior counsel appearing for the minority schools is that when Tamil Nadu recognised Private Schools (Regulation) Act, 1973 received the assent of the President of India and it is still in force, it cannot be supplanted by an Executive Order, namely by G.O.Ms.No.181 dated 15.11.2011. Further, the Apex Court has clearly held in Pramati Educational and Cultural Trust Vs. Union of India (Supra) that RTE Act, 2009 is not applicable to the minority institutions. Therefore, we have no hesitation to hold that the right conferred under Article 30(1) of the Constitution cannot be abrogated. Consequently, G.O.Ms.NO.181 dated 15.11.2011, which was issued pursuant to the directions of NCTE, cannot be made applicable to the minority institutions.

60. In the light of the above, we are of the view that the Government cannot insist upon the minority institution, both aided or unaided, to abide by any Regulation framed under the provisions of the RTE Act. Therefore, we hold that G.O.Ms.No.181 School Education (C2)

Department dated 15.11.2011 issued by the Government of Tamil Nadu, is not applicable to the minority institutions. Similarly G.O.Ms.No.76 dated 18.03.2015 issued by the Government of Puducherry, is also not applicable to the minority institutions.

7. In the light of the above cited judgment, the Writ Petition is allowed and the impugned order dated 22.02.2016 is quashed and the respondents shall consider the claim of the fifth respondent for approving the appointment of the petitioner in accordance with law and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner. The fifth respondent school in the light of the observations made in paragraph No.62 of the above cited judgment, shall also impart appropriate training and also conduct a refresher course to the petitioner as well as to the other teachers, who are similarly placed so that, the interest, welfare and future career of the student studying in the institutions are protected. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Additional Chief Secretary,
Government of Tamil Nadu,
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,
Chennai - 600 015.

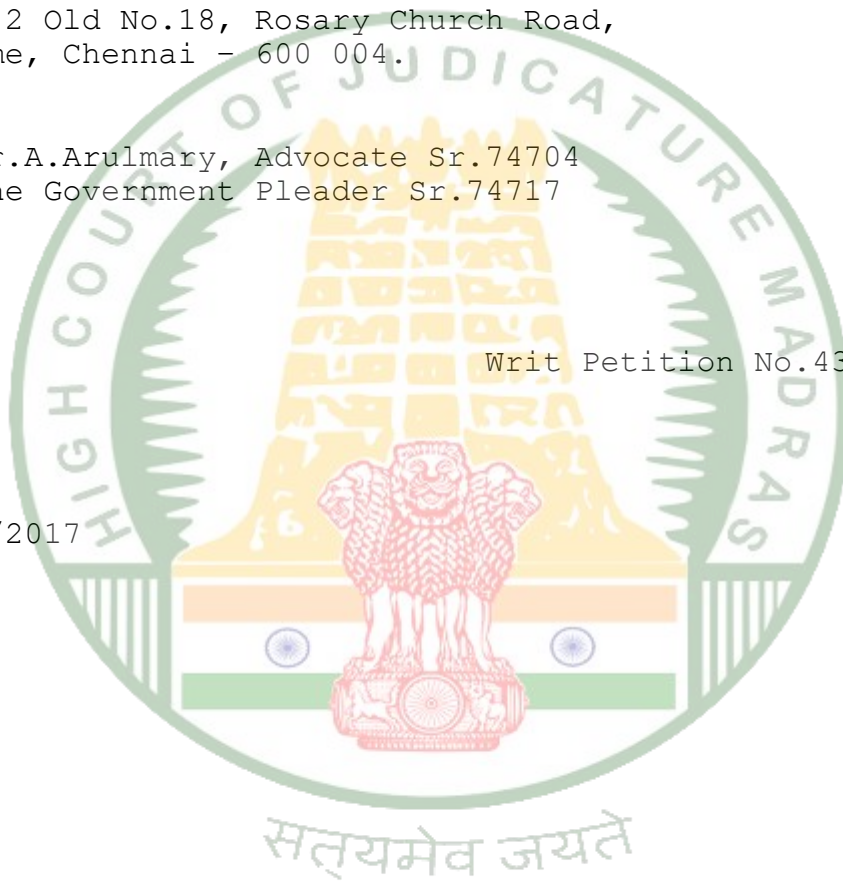
4.District Educational Officer,
The Office of the District Educational Officer,
Chennai Central,
Chennai - 600 018.

5.The Correspondent,
St. Raphael's Girl Higher Secondary School,
New No.2 Old No.18, Rosary Church Road,
Santhome, Chennai - 600 004.

+2cc to Mr.A.Arulmary, Advocate Sr.74704
+1cc to the Government Pleader Sr.74717

Writ Petition No.43869 of 2016

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srg 19/01/2017



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