



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2016

CORAM

**THE HON'BLE Dr.JUSTICE S.VIMALA**

**W.P(MD) No.10817 of 2015**

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K.Malaichamy

... Petitioner

-vs-

- 1.The State of Tamil Nadu  
rep.by its Secretary,  
Department of School Education,  
Fort St. George, Chennai - 09.
- 2.The Director of School Education,  
College road, Chennai - 06.
- 3.The Chief Educational Officer,  
Madurai District at Madurai.
- 4.The District Educational Officer,  
Usilampatti, Madurai District.
- 5.The Correspondent,  
Jothi Dharman Assisi High School,  
Sathangudi - 625 706,  
Thirumangalam Taluk,  
Madurai District.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the Impugned Proceedings issued by the 4th respondent District Educational Officer Usilampatti in Na.Ka.No.4987/A4/2012 dated 18.12.2012 declining to approve the appointment of the petitioner as BT Assistant in English in the 5th respondent school quash the same and further direct the 4th respondent District Educational Officer to approve forthwith the appointment of the petitioner as BT Assistant in English in the 5th respondent school namely Jothi Dharman Assisi High School, Sathangudi w.e.f. the date of his appointment on 22.02.2012 with all attendant benefits including the arrears of salary and allowance.

For petitioner  
For RR - 1 to 4

... Mr.S.Xavier Rajini  
... Mr.V.R.Shamuganathan  
Special Government Pleader

O R D E R

This writ petition has been filed, seeking to quash the order of the fourth respondent dated 18.12.2012 passed in Na.Ka.No.4987/A4/2012, vide which, the 4<sup>th</sup> respondent has returned the proposal directing the fifth respondent school to enclose the certificate of the petitioner passing in TET. The petitioner also sought a direction to the fourth respondent to approve forthwith the appointment of the petitioner as BT Assistant in English in the fifth respondent school, with effect from the date of his appointment on 22.02.2012 with all attendant benefits including the arrears of salary and allowance.

2. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader for the respondents 1 to 4.

3. The fifth respondent school is a recognised and aided minority educational institution. One post of BT Assistant in English in the fifth respondent school fell vacant on 28.12.2011 due to the resignation of one P. Murugeswari. In that vacancy, the fifth respondent school appointed the petitioner as BT Assistant in English and till date he continues to work in the school.

4. The fifth respondent school submitted a proposal to the fourth respondent requesting to approve his appointment as BT Assistant (English) from 22.02.2012 and disburse grant-in-aid towards his salary. But the fourth respondent returned the proposal and directed to enclose the certificate of passing in TET. Despite, the fifth respondent school resubmitted the proposal to the fourth respondent, the same was not considered so far. Hence, the present Writ Petition has been filed.

5. The learned counsel for the petitioner has brought to the attention of this Court to the Judgment of the Division Bench of this Court in W.A.Nos.213 and 572 of 2016 etc. batch, dated 24.08.2016, wherein a direction was issued to the Government to release the salary of the Teachers and also to pay the arrears of salary within a period of two months.

6. Article 45 of the Constitution of India directed the States to endeavour to provide free and compulsory education to all children until they complete the age of 14 years and this should be done within a period of 10 years from the commencement of the Constitution. Article 45 was amended by the 86<sup>th</sup> Constitution Amendment Act, 2002 and it reads "the State shall endeavour to provide early childhood care and education for all children until they complete the age of 14 year". Under the very same enactment, education became a fundamental right to the children between the age group of 6 to 14. Thereafter, parliament enacted the Right of Children to Free and Compulsory Education Act, 2009



(hereinafter called "RTE Act") with the object of providing free education, which came into force from 01.04.2010.

6.1. With the view to improve the quality of education and to provide quality education to children, Section 23 of the RTE Act makes it mandatory for a person, who seeks appointment in the schools covered under RTE Act to possess minimum qualification as laid down by the Academic Authority. As per Section 23 (1) of RTE Act National Council for Teacher Education (NCTE) was notified as the Academic Authority. The authority, while providing for guidelines to conduct Teacher Eligibility Test indicated that the teacher should have passed Teacher Eligibility Test (in short "TET") to be conducted by the appropriate Government in accordance with the guidelines in order to get appointment as Teacher.

6.2. Accepting this recommendation, the Government of Tamil Nadu issued G.O.Ms.No.181 School Education Department dated 15.11.2011. The Government also passed G.O.Ms.25 dated 06.02.2014, under which, the minimum marks to be obtained by various categories were prescribed was also quashed by the Hon'ble Division Bench. The constitutional validity of RTE Act was under challenge before the Supreme Court in the case of Society for Unaided Private Schools of Rajasthan vs. Union of India, 2012 (6) SCC 1. The Apex Court while upholding the constitutional validity held that the Act is applicable to all schools, except the unaided minority schools.

6.3. In the case of Pramati Educational and Cultural Trust vs. Union of India, 2014 (4) MLJ 486, the Hon'ble Supreme Court held that under Article 31 of the Constitution of India, all minorities, whether based on religion or language shall have the right to establish and administer educational institutions of their choice and therefore, those institutions have a special constitutional right to establish and administer educational schools of their choice.

7. The Hon'ble Division Bench of this Court in the case of W.A.(MD) No.213 and 572 of 2016, based on the judgment in Pramati's case, held that G.O.181 dated 15.11.2011, which was issued prior to the directions of NCET, cannot be made applicable to minority institutions. The Hon'ble Division Bench of this Court in the said decision has only suggested that the minority institution may consider conducting a refresher course and also some interactive sessions in order to ensure the quality of teachers. Therefore, it is clear that the impugned order passed is liable to be set aside in view of the legal position enunciated in W.A.(MD) No.213 and 572 of 2016.

8. Accordingly, this writ petition is allowed and the <https://hcmisegovtschools.gov.in/hcmisegovtschools> dated 18.12.2012 is set aside and the 4<sup>th</sup> respondent is directed to approve the appointment of the petitioner as BT Assistant (English) in the fifth respondent school with all



attendant benefits including the arrears of salary and allowance within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, MP(MD)No.2 of 2015 is closed.

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Sd/-  
Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Secretary,  
State of Tamil Nadu  
Department of School Education,  
Fort St. George, Chennai - 09.
- 2.The Director of School Education,  
College road, Chennai - 06.
- 3.The Chief Educational Officer,  
Madurai District at Madurai.
- 4.The District Educational Officer,  
Usilampatti, Madurai District.

+One cc to Mr.S.Xavier Rajini, Advocate, SR.No.74342

mj  
RL/6C/4P/SKN/SARI/5.1.2017

W.P(MD)No.10817 of 2015

30.11.2016