



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2016

CORAM:

THE HONOURABLE MR. JUSTICE T. RAJA

W.P. (MD) No. 10940 of 2015

and

M.P. (MD) No. 2 of 2015

K. Sofiapriyadarshini

... Petitioner

Vs.

1. The State of Tamil Nadu
represented by its Secretary,
Department of School Education,
Fort St. George,
Chennai 600 009.
2. The Director of Elementary Education,
College Road,
Chennai 600 006.
3. The District Elementary Educational Officer,
R.M.S. Road,
Madurai.
4. The Additional Assistant Elementary
Educational Officer,
Usilampatti Region,
Usilampatti,
Madurai District 625 532.
5. The Correspondent,
TELC Middle School,
Keelapudur 626 532,
Usilampatti,
Madurai District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the third respondent District Elementary Educational Officer in O.Mu.No.342/Aa3/2014 dated 11.06.2014 declining to approve the appointment of the petitioner as Secondary Grade
<https://hcprerecords.go.in/hcsetypes/> fifth respondent school viz., T.E.L.C. Middle School, Keelapudur, Madurai District and quash the same and further direct the third respondent District Elementary



Educational Officer to approve forthwith the appointment of the petitioner as Secondary Grade Teacher in the fifth respondent school namely T.E.L.C. Middle School, Keelapudur, Madurai District w.e.f. the date of her appointment on 28.06.2010 with all attendant benefits including the arrears of salary and allowance.

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For Petitioner	: M/S. S.Xavier Rajini
For R1 to R4	: Mr.V.R.Shanmuganathan Special Government Pleader
For R5	: No appearance

O R D E R

The petitioner K.Sofiapriyadarshini was appointed as Secondary Grade Teacher with effect from 28.06.2010 in 5th respondent/T.E.L.C. Middle School, a recognised and aided Minority Educational Institution, against a vacancy arose on 01.06.2010, due to retirement of one D.Prema on 31.05.2010. Thereupon, a proposal seeking approval of her appointment was also sent to the third respondent, the District Elementary Educational Officer, R.M.S.Road, Madurai on 09.07.2010, requesting him to approve her appointment and disburse the grant-in-aid towards her salary. But, the said Authority returned the proposal with a direction to the fifth respondent to enclose the certificate of passing TET (Teacher Eligibility Test), whereupon, the School also re-submitted the proposal to the third respondent/District Elementary Educational Officer, Madurai, indicating that the petitioner was appointed as Secondary Grade Teacher even before the introduction of Teacher Eligibility Test (TET) and that the Notification, dated 23.08.2010, prescribing TET as the requisite qualification for appointment of teacher, is not applicable to the School, a minority educational institution. On that basis, a request was made by the fifth respondent to approve her appointment as Secondary Grade Teacher with effect from 28.06.2010 and disburse the grant-in-aid towards the salary. But, the third respondent rejected on 11.06.2014, citing the notification dated 23.08.2010 issued by the NCTE.

2. In the above background, the contention of the petitioner is that she was appointed as a Secondary Grade Teacher in the fifth respondent School which is admittedly a minority educational institution, which does not require to get prior permission from the third respondent to fill up the said vacancy in the light of the decision of the Apex Court in *Pramati Educational and Cultural Trust and others vs. the Union of India and others* reported in (2014) 4 MLJ 486 (SC). Further, the petitioner also has passed the TET in May 2013 by securing 86 marks. Although, the Government, by issuing subsequent G.O.No.25, has relaxed the mark from 90 to 82, the third respondent cannot have any impediment to grant approval to the petitioner. As all these factors have not been properly looked into, the impugned order is liable to be set aside.



3. Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for respondents 1 to 4 submitted that when the petitioner was appointed during 2010 as secondary grade teacher in the fifth respondent School, admittedly, she did not possess the TET. However, the applicability of the Act viz., Right of Children to Free and Compulsory Education Act, 2009, came to be decided finally by the Apex Court in the case of *Pramati Educational and Cultural Trust and others vs. the Union of India and others* reported in (2014) 4 MLJ 486 (SC) holding that the said Act cannot be made applicable to the minority educational institution. In any event, for two reasons, firstly, when the petitioner was appointed in a sanctioned vacancy, subject to verification, the respondent will consider that aspect. Secondly, G.O.Ms.No.25 has relaxed the pass mark relating to test from 90 to 82. Since the petitioner has passed the TET in the month of May 2013 by securing 86 marks, this aspect also will be considered subject to the result of the pending S.L.P. challenging the validity of the said G.O.

4. The submissions of the learned Additional Government Pleader are not convincing, for, the petitioner was appointed on 07.07.2010 as secondary grade teacher in the fifth respondent School which is admittedly a minority educational institution. Therefore, the ratio laid down by the Apex Court in the case of *Pramati Educational and Cultural Trust and others vs. the Union of India and others* reported in (2014) 4 MLJ 486 (SC), clearly being applicable to the said school, the writ petition deserves to be allowed. Accordingly, the impugned order in O.Mu.No.342/Aa3/2014 dated 11.06.2014 issued by the third respondent/District Elementary Educational Officer is set aside and respondents 1 to 4 are directed to consider the case of the petitioner for granting approval within a period of six weeks from the date of receipt of a copy of this order.

5. With the above direction, the Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

1. The Secretary,
Department of School Education,
Fort St. George,
Chennai 600 009.



2. The Director of Elementary Education,
College Road,
Chennai 600 006.

3. The District Elementary Educational Officer,
R.M.S.Road,
Madurai.

4. The Additional Assistant Elementary
Educational Officer,
Usilampatti Region,
Usilampatti,
Madurai District 625 532.

+One cc to Mr.Xavier Rajini, Advocate, SR.No.43072

akv

RL/6C/4P/CK/28/9/2016

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