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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.07.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No.17878 of 2015  
and  
M.P(MD)Nos.1 to 3 of 2015

M.Ruban

...Petitioner

vs.

1)The State of Tamil Nadu,  
Rep. by the Additional Chief Secretary,  
Department of School Education,  
Fort St.George, Chennai-9.

2)The Director of School Education,  
DPI Campus, College Road,  
Chennai-6.

3)The District Elementary Educational Officer,  
O/o District Elementary Educational Officer,  
Tirunelveli,  
Tirunelveli District.

4)The Assistant Elementary Educational Officer,  
O/o The Assistant Elementary Educational Officer,  
Nanguneri,  
Tirunelveli District.

5)The Correspondent,  
Nadar Middle School,  
Pattaraikattivilai,  
Sanganankulam (PO),  
Tirunelveli District.

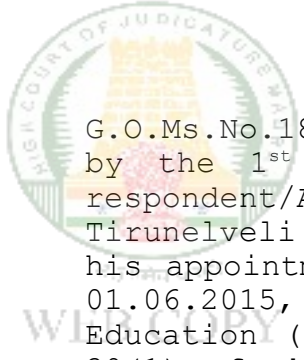
...Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 on the file of the 1<sup>st</sup> respondent and the consequential order passed by the 4<sup>th</sup> respondent in Na.Ka.No.1640/A1/15 dated 11.09.2015, quash the same in so far as the petitioner is concerned and directing the respondents to approve the appointment of the petitioner as B.T. Assistant(Maths) in the 5<sup>th</sup> respondent school from 01.06.2015 with all service and monetary benefits.

For Petitioner : Mr.D.Selvam for Mr.G.Thalaimutharasu  
For R1 to R4 : Mr.V.R.Shanmuganathan  
Special Government Pleader

ORDER

Mr.M.Ruban who was appointed as B.T Assistant in Mathematics subject on 01.06.2015 in the 5<sup>th</sup> respondent school which is a Government aided minority school in a vacancy arising out of the retirement of one Mrs.Emerncia Mary on 30.04.2015, has come to this Court challenging



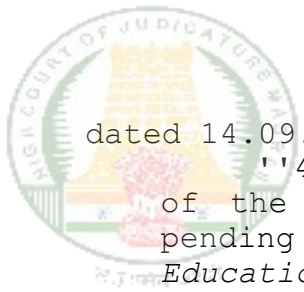
G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011, passed by the 1<sup>st</sup> respondent and the consequential order passed by the 4<sup>th</sup> respondent/Assistant Elementary Educational Officer, Nanguneri, Tirunelveli District, refusing the request of the petitioner to approve his appointment as B.T Assistant(Maths) in the 5<sup>th</sup> respondent school from 01.06.2015, on the ground that the impugned G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011, is in violation of Article 30(1) of the Constitution of India as it is not applicable to minority institutions.

2.Placing heavy reliance on a judgment of the Hon'ble Supreme Court in *Pramati Educational and Cultural Trust and others vs. Union of India and others*, reported in 2014 (4) MLJ 486 (SC), learned counsel for the petitioner has contended that when the Apex Court has given an authoritative pronouncement making it clear that Right of Children to Free and Compulsory Education Act 2009 Act, in so far as it is made applicable to minority schools referred in Clause (1) of Article 30 of the Constitution is ultra vires of the Constitution, the 1<sup>st</sup> respondent ought not to have refused to grant approval of the petitioner's appointment on the basis of G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011, therefore, both G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 and the consequential order passed by the 4<sup>th</sup> respondent, he pleaded, are liable to be set aside.

3.Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents would fairly submit that as per Section 23 of the Right of Children to Free and Compulsory Education Act 2009, which states that any person possessing minimum qualification as laid down by an academic authority authorised by the Central Government by notification, shall be eligible for appointment as teacher, National Council for Teacher Education has been appointed as the academic authority by the Government of India. He further submitted that subsequently, the National Council for Teacher Education has issued a Notification dated 23.08.2010 prescribing Teacher Eligibility Test as minimum educational qualification for appointment of teachers in schools. Accepting the recommendation and the Notification issued by the National Council for Teacher Education, the Government of Tamil Nadu have also issued G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 making it clear that Teacher Eligibility Test shall be conducted by the Teachers Recruitment Board in accordance with the guidelines framed by the National Council for Teacher Education and in view of the said G.O., the teachers who passed the Teacher Eligibility Test alone were made eligible to become teacher.

4.Adding further, he would submit that the issue as to whether the provisions of the Right of Children to Free and Compulsory Education Act 2009 would be applicable to a minority institution, is pending consideration in *Ashwini Thanappan vs. Director of Education and another*, reported in (2014) 8 SCC 272. It is also submitted that following the abovesaid reference order, the Hon'ble Division Bench also, in W.A.No.1299 of 2015 has passed an order dated 14.09.2015 directing the Educational authorities to pay only the salary with a further direction not to remove the concerned teacher till the issue referred to before the Supreme Court is decided.

5.At this juncture, it is necessary to extract paragraphs 4 to 8 of the order passed by the Hon'ble Division Bench in W.A.No.1299 of 2015,



dated 14.09.2015, which are given as under:-

4. Be that as it may, the issue as to whether the provisions of the Act, will be applicable to a minority institution, is pending consideration in *Aswinithanappan Vs. Director of Education and another* - (2014) 8 SCC 272.

5. In view of the above, without going into the merits of the case as to whether a teacher appointed in a minority school is required to have TET qualification, as the same is the subject matter of the Writ petition, we are of the considered view that interest justice would sub-serve, if the appointment of the first respondent is protected, without giving any direction to the State Government to grant temporary approval.

6. Mr. D. Krishnakumar, learned Special Government Pleader (Education) appearing for the appellants fairly submits that the first respondent shall not be terminated during the pendency of the said writ petition being W.P.No.14072 of 2015.

7. Accordingly, we direct that the first respondent shall be given her salary in the course of her employment and no steps to remove her from service shall be taken till the disposal of the writ petition. However, it is made clear that this order is subject to the final outcome of the pending writ petition. It is further made clear that the first respondent shall not claim any equity on account of this order, without prejudice to the rights and contentions of the parties, therein.

8. This intra-Court appeal is disposed of accordingly. No costs. Connected Miscellaneous Petition is closed."

6. In the light of the above, in the present case, the petitioner was appointed without possessing the Teacher Eligibility Test qualification, hence, he has filed this writ petition challenging G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011, however, as the Apex Court in *Pramati Educational and Cultural Trust and others vs. Union of India and others*, reported in 2014 (4) MLJ 486 (SC), has made it clear that 2009 Act is not applicable to the minority institutions, further, the 5<sup>th</sup> respondent in the present case being a minority educational institution, in which, the petitioner has been appointed as B.T Assistant, the said G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 cannot be made applicable to the present case.

7. It may be mentioned herein that the petitioner, no doubt, was appointed in a sanctioned post arising out of the retirement of one Mrs. Emerncia Mary on 30.04.2015 in the 5<sup>th</sup> respondent school. However, as the issue as to whether the provisions of the Right of Children to Free and Compulsory Education Act 2009, would not be applicable to a minority institution, is pending consideration in *Aswinithanappan Vs. Director of Education and another* - (2014) 8 SCC 272, following the abovesaid order passed by the Hon'ble Division Bench in W.A.No.1299 of 2015 dated 14.09.2015, this writ petition is disposed of with the following directions:-

The petitioner shall be given salary in the course of his employment and no steps to remove him from service shall be taken. However, it is made clear that this order is subject to the final outcome of the case pending before the Supreme Court in *Aswini Thanappan Vs. Director of Education and another* - (2014) 8 SCC 272. It is further made clear that the petitioner shall not claim any equity on account of this order,



without prejudice to the rights and contentions of the parties. No costs. M.P(MD)Nos.1 to 3 of 2015 are closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)  
Madurai Bench of Madras High Court,  
Madurai-23.

To

1)The Additional Chief Secretary,  
State of Tamil Nadu,  
Department of School Education,  
Fort St.George, Chennai-9.

2)The Director of School Education,  
DPI Campus, College Road,  
Chennai-6.

3)The District Elementary Educational Officer,  
O/o District Elementary Educational Officer,  
Tirunelveli,  
Tirunelveli District.

4)The Assistant Elementary Educational Officer,  
O/o The Assistant Elementary Educational Officer,  
Nanguneri,  
Tirunelveli District.

+1cc to M/s.G.Thalamutharasu, Advocate in SR.35089  
+1cc to the Special Government Pleader, in SR.35176

W.P(MD)No.17878 of 2015  
and MP(MD)No.1 to 3 of 2015  
05.07.2016

nbi

PBK/NGM-MP/SAR-I 18/07/2016 ::4P-7C::