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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

and

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

W.A(MD) No.1438 of 2016

Helen Samraj

... Appellant/Petitioner

Vs.

1. The Secretary,
Department of School Education,
Government of Tamilnadu,
Fort St. George, Chennai - 9.
2. The Director of School Education,
College Road, DPI Campus, Chennai - 6.
3. The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
4. The District Educational Officer,
Tirunelveli, Tirunelveli District.
5. The Correspondent,
St. John's Higher Secondary School,
Palayamkottai.

... Respondents/Respondents

PRAYER: The Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 14.07.2016 made in W.P.(MD) No.15958 of 2015.

Prayer in WP(MD)15958/2015:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, calling for the records in connection with the proceedings of the 4th respondent, District Educational Officer, Tirunelveli, bearing Ref.No.NA.KA.2927/a4/2014 dated 09.07.2014 and quash the same and further direct the respondents 1 to 4 to grant approval of the petitioner's appointment as B.T.Assistant (History) with effect from 20.07.2012 in the 5th respondent minority Aided School in view of the Judgment of the Honourable Supreme Court of India in WP(C)No. 1081/2013.

For Appellant

: Mr.T.Pon Ramkumar

For Respondents 1 to 4

: Mr.A.K.Baskara Pandian,
Special Government Pleader



J U D G M E N T

(Judgment of this Court was delivered by M.SATHYANARAYANAN, J.)

By consent, this Writ Appeal is taken up for final disposal. Mr.A.K.Baskara Pandian, learned Special Government Pleader accepts notice on behalf of the respondents 1 to 4.

2.The facts leading to the filing of the writ petition has been narrated in detail and explained in the order passed in W.P. (MD) No.15958 of 2015, which is the subject matter of challenge in this Writ Appeal. Therefore, the repetition of the same is not necessary.

3.The petitioner claims to have qualified in B.A., B.Ed., Degree and she was appointed as B.T. Assistant (History) on 20.07.2012, in St. John's Higher Secondary School, Palayamkottai, which is a religious minority aided institution and her accommodation was on the retirement of one D.Nimroth, Secondary Grade Assistant. The Correspondent of the 5th respondent has also forwarded the proposal for approval of the said appointment to the 2nd respondent, however, the second respondent by citing G.O.Ms.No. 181 Department of School Education (C2) dated 15.11.2011 has refused to grant approval for the said post and also issued proceedings dated 16.11.2012.

4.It is the case of the petitioner that in the light of the judgment rendered by the Hon'ble Supreme Court of India in **Pramati Educational and Cultural Trust and others v.Union of Indian and others**, reported in **2014 (4) MLJ 486 (SC)** the Right of Children to Free and Compulsory Education Act, 2009, is not applicable to the minority institutions. Therefore, he came forward to file the Writ Petition. The Writ Petition was entertained and after service of notice, taken up for disposal along with connected Writ Petitions. The learned Judge, taking note of the above decision as well as **Aswini Thangappan v. Director of Education and another** reported in **(2014) 8 SCC 272**, has disposed of the Writ Petitions holding that the Writ Petitioners shall be given salary in the course of their appointment within a period of four weeks from the date of receipt of a copy of that order and it has also made it clear that the said order is made subject to the outcome of the **Aswini Thangappan** case (cited supra), pending before the Supreme Court and challenging the legality of the order the present writ appeal is filed.

5.The learned counsel for the petitioner would submit that subsequent to the present order of this Court, the Hon'ble Division Bench of this Court in **The Secretary to Government, Government of Tamil Nadu, Chennai & Others v. S.Jeyalakshmi & Others** reported in **2016 (5) CTC 639 = 2016 (7) MLJ 155 = 2016 (4) LW 841**, held that the teachers employed in aided and unaided minority schools need not possess TET qualification. Therefore, prays for modification of the



order of the learned Single Judge.

6. This Court also heard the submissions of Mr. A.K. Baskarapandian, learned Special Government Pleader, appearing for respondents 1 to 4.

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7. It is relevant to extract the following paragraphs of the judgment of the Division Bench of this Court (cited supra):

"52. However, the Government, before issuing G.O.Ms.No.181 dated 15.11.2011, lost sight of one important fact, namely imposition 39 of a condition on the Teachers, who were appointed prior to the issue of G.O., in non minority and minority Schools, both aided and unaided, to qualify themselves with TET within a period of five years, in order to continue in service, would cause great hardship to them. Moreover, if the Teachers who have put in more number of years of service, could not pass TET within five years, their continuation in service would be in jeopardy. Further, it is seen that the percentage of pass in the TET examination conducted in 2012 and 2013 was very minimal.

...

56. We are, therefore, of the considered view that the Government may seek a clarification from the NCTE, in the light of what is stated in the preceding paragraph, whether the prescription of minimum qualification of TET can be made applicable prospectively for the Teachers who were appointed subsequent to the date of the issue of G.O., in both non minority and minority institutions and not retrospectively as the same would cause undue hardship to the Teachers who have been serving for a quite a long time.

...

58. In our opinion, non qualifying in TET by the Teachers already in service should not defeat the object of the Government to provide quality and standard education and therefore, the Government may, in the alternative, conduct a refresher course and also some interactive 43 sessions during annual vacation, in order to ensure and enhance the quality of education.

...

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 18.3.2015 issued by the Government of Puducherry, is also not applicable to the minority institutions.

...

62. However, keeping in mind the larger interest in



which the Government has issued the above G.Os., this Court feels that the minority institutions may also consider conducting a refresher course and also some interactive sessions to all the Teachers during annual vacation, in order to ensure and improve the quality of Teachers."

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8. In the light of the above said judgment, the Writ Appeal is allowed and the impugned order, which was subject matter of challenge in W.P.(MD) No.15958 of 2015 as well as the impugned order passed in W.P.(MD) No.15958 of 2015 dated 14.07.2016 are set aside. However, in the circumstances of the case, there shall be no order as to cost.

9. This Court taking into account the interest and welfare of the future of the students, directs the 5th respondent to conduct refresher course and also some interactive sessions to all the Teachers employed, for the purpose of updating knowledge and skill so as to enable them to impart knowledge to the students studying in the institutions for their betterment.

Sd/-
Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To

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2. The Director of School Education,
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4. The District Educational Officer,
Tirunelveli, Tirunelveli District.

+1 CC TO M/S.Mr.T.Pon Ramkumar, ADVOCATE SR.No. 72643

W.A(MD)No.1438 of 2016

sj
SH/SK:19.12.2016:4P/6C