



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29.08.2016

Coram

THE HON'BLE MR.JUSTICE T.RAJAWrit Petition (MD)Nos.14939 of 2016
and W.M.P.(MD).No.11013 of 2016The Correspondent,
De Britto Higher Secondary School,
Devakottai-03,
Sivagangai District.

... 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-09.
3. The Chief Educational Officer,
Sivagangai, Sivagangai District.
4. The District Educational Officer,
Devakottai,
Sivagangai District.

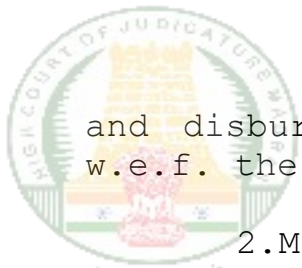
... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 4th respondent District Educational Officer to approve forthwith the appointment of Thiru.A.Simon as BT Assistant (English) in the petitioner's school w.e.f. 01.06.2012 and disburse the grant-in-aid towards his salary and allowance w.e.f. the said date.

For petitioner : Mr.T.Cibi Chakraborty
For respondents : Mr.T.S.Mohamed Mohideen
Addl. Government Pleader

ORDER

The Correspondent of De Britto Higher Secondary School, Devakottai-03, Sivagangai District, has brought this writ petition to approve the appointment of Thiru.A.Simon as BT Assistant (English) in the petitioner's school forthwith w.e.f. 01.06.2012



and disburse the grant-in-aid towards his salary and allowance w.e.f. the said date.

2.Mr.T.S.Mohamed Mohideen, Learned Additional Government Pleader takes notice on behalf of the respondents.

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3.The petitioner school viz., De Britto Higher Secondary School, Devakottai-03, Sivagangai District is a recognised and aided Minority Educational institution owned and administered by a registered society namely 'the Roman Catholic Society of Jesus, Dindigul'. When the school was established in the year 1941 as a primary school, it was first upgraded in the year 1947 as a High School, then, it was further upgraded as a Higher Secondary School, in the year 1978. Now, the petitioner is recognised and aided by the Government of Tamil Nadu and is offering education from standards 6 to 12 and the medium of instruction is also Tamil. It is claimed by the petitioner that no fee or charge is collected from the children. Accepting the smaller sum specified by the Government, admission is granted to any one not in respect caste, creed or religion and the school is enjoying full strength of students and teachers. Whiles, one post of Secondary Grade Teacher fell vacant in the petitioner school on 31.05.2012 on account of the promotion of one incumbent Thiru.S.Kaspar as B.T Assistant on 01.06.2012. The Post of Secondary Grade Teacher was also converted into B.T Assistant (English). In view of the said vacancy, the petitioner school appointed a fully qualified candidate Thiru.A.Simon, since he possessed B.A., B.Ed and the said teacher has also passed the Teacher's Eligibility Test in the month of August 2013, by securing 86 marks. But the controversy in the present case is 90 marks has been fixed as the minimum pass marks for all candidates. However, the Government issued G.O.Ms.No.25 School Education (TRB) Department, dated 06.02.2014, relaxing 5% of marks from the pass percentage for the candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes, Backward Classes (Muslims), Most Backward Classes, Denotified Communities and Differently Abled Persons. The said G.O reads as follows:

"3.In continuation of the announcement made by the Hon'ble Chief Minister, the Government orders as follows:

a)relaxing 5% marks from the present pass mark of 60% and fix the pass mark at 55% for candidates belonging to Scheduled Caste, Scheduled Tribes, Backward Classes, Backward Classes (Mulsim), Most Backward Classes. De-notified Communities and persons with Disability (PWD) as given below. The candidates are required to obtain the following minimum marks in paper I for Secondary Grade Teachers and Paper II for Graduate Assistants.



Category	Maximum marks	Minimum Marks (%) to be obtained in TNTET	
		Paper I	Paper II
General	150	60% or 90 marks	60% or 90 marks
SC, ST, BC, BC(M) MBC, DNC and Persons with Disability (PWD)	150	55% or 82.5 marks rounded off to 82 marks	55% or 82.5 marks rounded off to 82 marks.

b)relaxing 5% marks from the 60% marks prescribed for clearing of the Tamil Nadu Teacher Eligibility Test, 2013, held on 17.08.2013 and 18.08.2013 for Scheduled Caste, Scheduled Tribes, Backward Classes, Backward Classes (Muslims), Most Backward Classes, De-notified Communities and Persons with Disability (PWD) and fixed at 55% or 82 marks.

c)For all future Eligibility Tests, to fix the minimum marks for candidates belonging to General Category at 90 marks (60% of 150) and for candidates belonging to Scheduled Caste, Scheduled Tribes, Backward Classes, Backward Classes (Muslims), Most Backward Classes, De-notified Communities and persons with Disability (PWD) at 82 marks. (55% of 150).

4.In the light of the above G.O.Ms.No.25, dated 06.02.2014, admittedly, Thiru.A.Simon, B.T Assistant, has secured 86 marks. Therefore, the petitioner is clearly covered by G.O.Ms.No.25, dated 06.02.2014 However, when the said G.O was challenged by way of appeal, in the verdict granting relaxation in favour the aforesaid weaker sections in of W.P.(MD).Nos.2677 and 4558 of 2014, dated 25.09.2014, a Division Bench of this Court has given cut off date as '25.09.2014' stating that whoever the teacher passes the Teacher Eligibility Test securing the marks fixed by the Government, their appointment should be considered for grant of approval by the Education Authorities.

5.In the present case, when we the direction issued by a Division Bench of Principal Seat of this Court in W.P.Nos.11983 of 2016, etc., and W.A.(MD).No.921 of 2013, etc., dated 24.08.2016 is applied, admittedly, the petitioner was appointed as B.T Assistant in English on 01.06.2012, which is coming within the cut off date fixed by the Division Bench i.e 25.09.2014.

6. Moreover, while considering a similar issues, a Division at the Principal Seat of this Court in W.A.Nos.213 & 572 of 2016, etc. batch, and W.A.(MD).No.921 of 2013, etc batch., dated 24.08.2016, (**The Secretary to Government and two others Vs. S.Jeyalakshmi and another**) has categorically held that G.O.Ms.No.181, dated 15.11.2011, cannot be made applicable to Minority Educational Institutions. In this regard, it is pertinent to extract paragraph Nos.59 to 61 and 63 of the said



judgment, which run as follows:

"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 & Cultural Trust** that RTE Act, 2009 is not applicable to the minority institutions. Therefore, we have no hesitation to hold that 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.

61. Though the intention of the Government is that there should not be any discrimination among the Teachers working in non-minority Schools and minority Schools with respect to qualification and that there should be uniformity in the teaching imparted to the children, in view of the decision of the Apex Court in **Pramati Educational & Cultural Trust**, the Government cannot take shelter under the guise of discrimination to impose restrictions on minority institutions.

63. In the result, the writ petitions are allowed and the writ appeals are dismissed with a direction to the Government to release the salary of the Teachers and also to pay the arrears of salary within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected M.Ps are closed."



7. In the light of the above, this Court is of the considered view that the appointments made in the aforementioned writ petitions are squarely covered by the facts of the present case. Hence, this Court directs the 4th respondent to approve the appointment of the petitioner, subject to the staff fixation and pay salary to the petitioner from the date of appointment, within a period of 8 weeks from the date of receipt of copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

8. It is also represented that against the order passed by a Division Bench of this Court reported in **2015 (2) CWC 195 (S.Vincent Vs State of Tamil Nadu and two others)** in W.P.(MD). Nos.2677 and 4558 of 2014, dated 25.09.2014, challenging its validity and correctness, a Special Leave Petition is filed and the same is pending. Hence, liberty is granted to the Education Department to pass orders, subject to the result of the SLP filed against judgment of the Division Bench passed in W.P.(MD). Nos.2677 and 4558 of 2014, dated 25.09.2014, holding the validity of G.O.Ms.No.25, dated 06.02.2014. If for any reason, the order passed by the Honourable Division Bench is reversed, the question of approval can be taken up and an order may be passed. Till then, salary of the petitioner shall be released.

Sd/-

Assistant Registrar (CS-II)

/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-09.
- 3.The Chief Educational Officer,
Sivagangai, Sivagangai District.
- 4.The District Educational Officer,
Devakottai, Sivagangai District.

+ 1 CC TO Mr.T.CIBI CHAKRABORTHY, ADVOCATE IN SR No. 48031

VS

TE/SK-SKN : 24/10/2016 : 5P/6C

W.P.(md).NO.14939 of 2016 and
W.M.P.(MD).No.11013 of 2016
29.08.2016