



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29.08.2016

Coram

THE HON'BLE MR.JUSTICE T.RAJA

**Writ Petition (MD)No.16144 of 2016**

**and**

**W.M.P. (MD) .Nos.11809 and 11810 of 2016**

The Correspondent,  
St. Arulanandar Higher Secondary School,  
Oriyur,  
Ramanathapuram 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,  
Ramanathapuram,  
Ramanathapuram District.
- 4.The District Educational Officer,  
Ramanathapuram,  
Ramanathapuram District. . . . . Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings of the 4th respondent DEO in A.Thi.Mu.No.1766/A3/2016 dated 00.06.2016, Quash the same and further direct the 4th respondent District Educational Officer to approve forthwith the appointment of Tmt. B. Mettilda as BT Assistant (Science) in the petitioner's school w.e.f 02.06.2014 and disburse the grant-in-aid towards her salary and allowance w.e.f. the said date.

For petitioner  
For respondents

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

**ORDER**

The petitioner herein/Correspondent of St. Arulanandar Higher Secondary School, Oriyur, Ramanathapuram District, challenges the impugned order passed by the District Educational Officer, Ramanathapuram, refusing to grant sanction of approval for appointment of Thirumathi.B.Mettilda as B.T Assistant.

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

3.The petitioner school viz., St. Arulanandar Higher Secondary School, Oriyur, Ramanathapuram District is a recognised and aided Minority Educational Institution owned and administered by a registered society namely 'the Roman Catholic Society of Jesus, Dindigul'. After its establishment in the year 1939 as a primary school, the school was first upgraded in the year 1952 as a High School, then and thereafter, it was further upgraded as a Higher Secondary School, in the year 1963. Now, the petitioner being a recognised school, aided by the Government of Tamil Nadu, is offering education from Standards 6 to 12 with Tamil as the medium of instruction. It is claimed by the petitioner that no fee or charge is collected from the students. Accepting the smaller sum specified by the Government, admission is granted to anyone, irrespective of caste, creed or religion and the school is enjoying full strength of Students and Teachers. Whiles, one post of B.T Assistant (Science) fell vacant in the petitioner school on 01.06.2014 on account of the retirement of one Thirumathi.L.Annal Sundari on 31.05.2014. In view of the said vacancy, the petitioner school appointed a fully qualified candidate Thirumathi.B.Mettilda, since she possessed B.Sc., B.Ed and the said teacher has also passed Teacher's Eligibility Test in the month of August 2013, by securing 87 marks. It is stated that while 90 marks has been fixed as minimum pass marks for all candidates, 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 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 (Muslims), 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. |

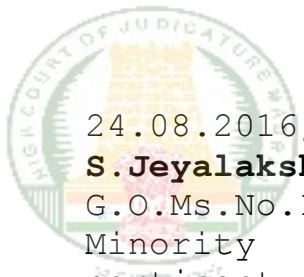
b)relaxing 5% marks from the 60% marks prescribed for clearing of the Tamil Nadu Teacher Eligibility Test, 2013, held on 17.08.2013 and 18.08.2013 for Scheduled Caste, Scheduled Tribes, Backward Classes, Backward Classes (Muslims), Most Backward Classes, De-notified Communities and Persons with Disability (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, Thirumathi B.Mettilda, B.T Assistant, having secured 87 marks, the petitioner school is clearly covered by the said G.O. Whiles, when the said G.O was challenged by way of W.P.(MD).Nos.2677 and 4558 of 2014, vide orders dated 25.09.2014, reported in **2015 (2) CWC 195 (S.Vincent Vs State of Tamil Nadu and two others)**, a Division Bench of this Court has fixed the 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 the direction issued by the Division Bench in W.P.(MD).Nos.2677 and 4558 of 2014, dated 25.09.2014, is applied, admittedly, the petitioner was appointed as B.T Assistant in Science on 28.05.2014, thus he 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 Bench 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 appointment made in the aforementioned writ petitions are squarely covered by the facts of the present cases. Hence, this Court has no hesitation in allowing the present writ petition. The impugned order, dated 00.06.2016 passed by the fourth respondent, is set aside. The fourth respondent is directed to grant approval of appointment to the petitioner, subject to the students strength, within a period of four weeks from the date of receipt of copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are 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(T&P)

/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,  
Ramanathapuram,  
Ramanathapuram District.

4.The District Educational Officer,  
Ramanathapuram,  
Ramanathapuram District.

+1 cc to MR.T.CIBI CHAKRABORTHY, Advocate Sr.No.48030

+1 cc to Special Government Pleader Sr.No.48095

**W.P. (md) .NO.16144 of 2016**  
**29.08.2016**

SMA/SKS-RR/21.10.2016:6P/7C