



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30.08.2016

Coram

THE HON'BLE MR.JUSTICE **T.RAJA**

Writ Petition (MD)No.16260 of 2016
and
W.M.P. (MD) .Nos.11898 and 11899 of 2016

K.Kamal

. . .Petitioner

-Vs-

- 1.The Chief Educational Officer,
Sivagangai, Sivagangai District.
- 2.The District Educational Officer,
Devakottai, Sivagangai District.
- 3.N.S.M.V.P.S Higher Secondary School,
rep. By Secretary,
Devakottai,
Sivagangai 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 2nd respondent herein in O.Mu.No.4879/A3/2015 dated 19.08.2015 is illegal and quash the same and further direct the respondents 1 and 2 herein to grant approval for the appointment of the petitioner as B.T. Assistant (Social Science) w.e.f. 20.04.2015 in N.S.M.V.P.S.Higher Secondary School, Devakottai, Sivagangai District with all attendant benefits including the arrears of salary and allowance within the time limit fixed by this Hon'ble Court.

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

ORDER

Heard the parties on both sides.

2.N.S.M.V.P.S Higher Secondary School, Devakottai, Sivagangai District is an aided, recognised, Private School. In that school, one post of B.T Assistant (Social Science) was fell vacant, on account of promotion of one incumbent namely ~~Mr.N.Sathya~~ Before making the appointment, the third respondent school, applied before the first respondent herein, seeking prior

permission. By proceedings, dated -12-2014, the first respondent granted permission to fill up the said post. Thereafter, the third respondent issued a notification calling for applications from the eligible candidates to the said post. Since the petitioner is possessing the qualification of B.A (History), B.Ed, he applied for the said vacancy in the 3rd respondent school and got selected and appointed as a B.T Assistant (Social Science) with effect from 20.04.2015. In the meanwhile, the petitioner has also passed the Teachers Eligibility Test and secured 87 marks and he has also been issued with the Teachers Eligibility Test Certificate by the Teachers Recruitment Board. Therefore, the third respondent school sent a proposal for his approval of appointment on 13.05.2015. But the controversy in the present case is 90 marks has been fixed as 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 (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, K.Kamal (the petitioner herein), B.T Assistant, has secured 87 marks. Therefore, the petitioner is clearly covered by the said G.O. However, when the said G.O was challenged by way of an appeal, in a verdict, granting relaxation to the aforesaid weaker sections in 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 Teachers 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 of this Court in W.P.(MD).Nos.2677 and 4558 of 2014, dated 25.09.2014 is applied, admittedly, the petitioner has secured 87 marks. He has not only passed the Teachers Eligibility Test, but also has requisite qualification. Therefore, the petitioner is fully qualified to hold the post of B.T Assistant (Social Science) and was appointed as B.T Assistant in Social Science on 20.04.2015.

6. Moreover, while considering a similar issue, 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,



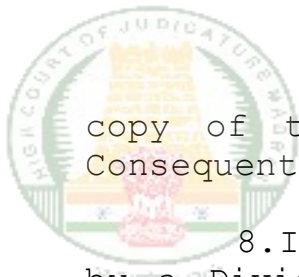
2009 is not applicable to the minority institutions. Therefore, we have no hesitation to hold that right conferred under Article 30(1) of the Constitution cannot be abrogated. Consequently, G.O.Ms.No.181 dated 15.11.2011, which was issued pursuant to the directions of NCTE, cannot be made applicable 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 19.08.2015 passed by the second respondent, is set aside. The first and second respondents are directed to grant approval of appointment of the petitioner and also pay salary, subject to the staff fixation, within a period of 4 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 judgment 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, 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 the validity and correctness of the 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 Chief Educational Officer,
Sivagangai, Sivagangai District.
- 2.The District Educational Officer,
Devakottai, Sivagangai District.

+1 CC to Mr.S.MANIKANDAN, Advocate, SR No.48554
+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No.48596

W.P. (md) .NO.16260 of 2016
30.08.2016

VS

SH/CK:19.10.2016:5P/5C