



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01.09.2016

Coram

THE HON'BLE MR.JUSTICE T.RAJA

**Writ Petition (MD)No.16442 of 2016**

**and**

**W.M.P. (MD) .Nos.12003 and 12004 of 2016**

The Correspondent,  
St. Francis Higher Secondary School,  
Nagercoil-01,  
Kanyakumari 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,  
Nagercoil  
Kanyakumari District.
- 4.The District Educational Officer,  
Nagercoil,  
Kanyakumari 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 issued by the 4th respondent District Educational Officer in Na.Ka.No. 2287/A4/2016 dated 11.08.2016 quash the same and further direct the 4th respondent District Educational Officer to approve forthwith the appointment of A.Aeilrin as BT Assistant (Science) in the petitioner school w.e.f. the date of her appointment viz. 10.06.2013 with all attendant benefits including the arrears of salary and allowance and pass such further or other suitable orders as this Honourable Court may deem fit and proper in the circumstances of the case.



For petitioner :Mr.K.Ragathees Kumar for  
Mr.T.Cibi Chakraborty

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

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**ORDER**

The petitioner herein/Correspondent of St. Francis Higher Secondary School, Nagercoil, Kanyakumari District, challenges the impugned order passed by the District Educational Officer, Nagercoil, Kanyakumari District, refusing to grant sanction of approval for appointment of Thirumathi.A.Aeilrin as B.T Assistant (Science).

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

3.The petitioner school viz., St. Francis Higher Secondary School, Nagercoil, Kanyakumari District is a recognised and aided Minority Educational Institution owned and administered by a registered society namely 'the Roman Catholic Society of Jesus, Kottar'. Whiles, one post of B.T Assistant (Science) fell vacant in the petitioner school on 01.06.2013 on account of the retirement of one Thirumathi.J.Stella Bai on 31.05.2013. In view of the said vacancy, the petitioner school appointed a fully qualified candidate Thirumathi.A.Aeilrin, since she possessed B.Sc., B.Ed., Subsequently, the school submitted a proposal to the District Educational Officer on 12.06.2013, requesting to approve her appointment and disburse grant-in-aid towards her salary. The District Educational Officer returned that proposal on many times for additional particulars. At last, it was returned by the District Educational Officer, by an order dated 11.08.2016, for want of TET certificate. Challenging the same, the petitioner is before this Court.

4.While considering a similar issue, a Division Bench at the Principal Seat of this Court, in a batch of writ petitions in W.P.Nos.11983 of 2016, etc., and W.A.(MD).No.921 of 2013, etc. vide order dated 24.08.2016, has held that G.O.Ms.No.181, dated 15.11.2011, cannot be made applicable to Minority Educational Institutions. It is pertinent to extract Paragraph Nos.59 to 61 and 63 of the said Judgment, which runs 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."

5. Even though Thirumathi.A.Aeilrin has not passed the Teachers Eligibility Test, in view of the above judgment holding that G.O.Ms.No.181, dated 15.11.2011, cannot be made applicable to Minority Educational Institutions, the case of the petitioner school deserves acceptance. Hence, this Court has no hesitation in allowing the present writ petition. Consequently, the impugned order, dated 08.08.2016, passed by the fourth respondent, is set aside. The petitioner school is directed to once again send the



proposal for approval of appointment of Thirumathi.A.Aeilrin to the fourth respondent within a period of one week from the date of receipt of copy of this order. Thereafter, the fourth respondent/District Elementary Educational Officer, Nagercoil, Kanyakumari District, is directed to approve the appointment of Thirumathi.A.Aeilrin as B.T Assistant (Science) in the petitioner school, within a period of 4 weeks therefrom and also to pay the salary to Thirumathi.A.Aeilrin from the date of her appointment. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

6.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 Thirumathi.A.Aeilrin, who is working as a B.T Assistant (Science) shall be released.

Sd/-

Assistant Registrar(Record)

/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, Nagercoil, Kanyakumari District.

4.The District Educational Officer,  
Nagercoil, Kanyakumari District.

+1 cc to M/s.T.Cibi Chakraborty, Advocate in SR.No.49530

+1 cc to The Special Government Pleader in SR.No.50053

vs

CSL/PV/10.11.2016 :4P/7C

**W.P. (md) .NO.16442 of 2016**

**01.09.2016**