



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01.09.2016

Coram

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

Writ Petition (MD)No.16443 of 2016

and

W.M.P. (MD) .Nos.12005 and 12006 of 2016

The Correspondent,
Little Flower Higher Secondary School,
Crawford-12,
Tiruchirapalli 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,
Tiruchirapalli,
Tiruchirapalli District.
- 4.The District Educational Officer,
Tiruchirapalli,
Tiruchirapalli 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 A.Thi.Mu.No.7704/Aa1/2012 dated 28.11.2012 and his sequential proceedings in A.Thi.Mu.No.3447/Aa3/2015 dated 19.01.2016 quash the same and further direct the 4th respondent District Educational Officer to approve forthwith the appointment of I.Esthar as Tamil Pandit in the petitioner school w.e.f. the date of her appointment viz., 16.06.2011 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

WEB COPY

ORDER

The petitioner herein/Correspondent of Little Flower Higher Secondary School, Tiruchirappalli District, challenges the impugned order passed by the District Educational Officer, Nagercoil, Kanyakumari District, dated 28.11.2012, refusing to grant sanction of approval for appointment of Sr. I.Esthar as Tamil Pandit.

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

3.The petitioner school viz., Little Flower Higher Secondary School, Tiruchirappalli District is a recognised and aided Minority Educational Institution owned and administered by a registered society namely 'the Congregation of the Sisters of St. Anne, Tiruchirapalli'. Whiles, one post of Tamil Pandit fell vacant in the petitioner school on 16.06.2011, due to transfer of one St.Maria Pushpam to another school. In view of the said vacancy, the petitioner school appointed a fully qualified candidate Sr. I.Esthar, since she possessed B.A., B.Ed., Subsequently, the school submitted a proposal to the District Educational Officer on 23.08.2011, requesting to approve her appointment and disburse grant-in-aid towards her salary. The District Educational Officer returned that proposal by an order dated 28.11.2012, 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



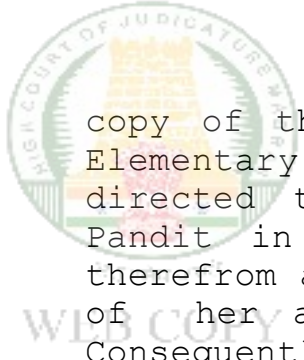
Pramati Educational & Cultural Trust that RTE Act, 2009 is not applicable to the minority institutions. Therefore, we have no hesitation to hold that right conferred under Article 30(1) of the Constitution cannot be abrogated. Consequently, G.O.Ms.No.181 dated 15.11.2011, which was issued pursuant to 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 Sr. I. Esthar 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 28.11.2012, passed by the fourth respondent, is set aside. The petitioner school is directed to once again send the proposal for approval of appointment of Sr. I. Esthar 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, Tiruchirapalli District, is directed to approve the appointment of Sr. I.Esthar as Tamil Pandit in the petitioner school, within a period of 4 weeks therefrom and also to pay the salary to Sr. I.Esthar 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 Sr. I.Esthar, who is working as a B.T Assistant (Tamil) 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,
Tiruchirapalli, Tiruchirapalli District.
- 4.The District Educational Officer,
Tiruchirapalli, Tiruchirapalli District.

+1 cc to M/s.T.Cibi Chakraborty, Advocate in SR.No.49531
+1 cc to The Special Government Pleader in SR.No.50024

vs

CSL/PV/10.11.2016 :4P/7C

W.P. (md) .NO.16443 of 2016
01.09.2016