



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **21.09.2016**

CORAM:

THE HONOURABLE DR.JUSTICE **S.VIMALA**

W.P(MD)No.17290 of 2016

WEB COPY

Nehru Vidhyasalai Hr. Sec. School,
No.7, Prasad Road, Narimedu,
Madurai - 625 002, rep. by its
Correspondent Er.Henry Basinger.

: Petitioner

Vs.

- 1.The Secretary to Government,
Education Department, State of Tamil Nadu,
Secretariat, St. Fort George,
Chennai - 9.
- 2.The Director of School Education,
College Road, Chennai - 6.
- 3.The Chief Educational Officer,
Madurai.
- 4.The District Educational Officer,
Melur, Madurai District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the fourth respondent to receive the proposal dated 12.08.2016 to be sent by the petitioner school for the approval of the appointment of the B.T.Assistant (Science) namely Mrs.Abirami Sundari and to consider and pass orders of approval in the light of the orders passed by the Division Bench of this Court in W.A.No.213 of 2016 Batch, dated 24.08.2016 within stipulated time as may be fixed by this Court.

For Petitioner

: Mr.T.A.Ebenezer

For Respondents

: Mr.S.Kumar,

Additional Government Pleader.

O R D E R

This writ petition has been filed for issuance of a Writ of Mandamus, directing the fourth respondent to receive the proposal dated 12.08.2016 sent by the petitioner school for the approval of the appointment of the B.T.Assistant (Science), namely, Mrs.Abirami Sundari and to consider and pass orders of approval in the light of the orders, passed by the Division Bench of this Court in W.A.No.213 of 2016 Batch, dated 24.08.2016, within the time to be stipulated by this Court.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader, who took notice for the respondents.

3.It is the case of the petitioner that the petitioner is a Government Aided Religious Minority School. The school has appointed one Mrs.Abirami Sundari as B.T. Assistant (Science) in



the sanctioned post on 25.07.2016, in the vacancy, which arose on account of the retirement of one Selvi.R.Janaki. The petitioner sent a proposal on 12.08.2016 to the fourth respondent for the approval of the appointment of Mrs.Abirami Sundari, from 25.07.2016. When the proposal was sent to the office of the fourth respondent, the fourth respondent refused to receive the proposal. In order to avoid approval to the teacher appointed without Teachers Eligibility Test, the fourth respondent has refused to receive the proposal of approval, wantonly. Therefore, the petitioner has come up with the present writ petition.

4.The learned counsel for the petitioner has brought to the attention of this Court to the Judgment of the Division Bench of this Court in W.A.Nos.213 and 572 of 2016 etc. batch, dated 24.08.2016, wherein a direction was issued to the Government to release the salary of the Teachers and also to pay the arrears of salary within a period of two months.

5. Article 45 of the Constitution of India directed the States to ensure and to provide free and compulsory education to all children until they complete the age of 14 years and this should be done within a period of 10 years from the commencement of the Constitution. Article 45 was amended by the 86th Constitution Amendment Act, 2002 and it reads "the State shall endeavour to provide early childhood care and education for all children until they complete the age of 14 year". Under the very same enactment, the right to education became a fundamental right to the children between the age group of 6 to 14. Thereafter, parliament enacted the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter called "RTE Act") with the object of providing free education, which came into force from 01.04.2010.

5.1.With the view to improve the quality of education and to provide quality education to children, Section 23 of the RTE Act makes it mandatory for a person, who seeks appointment in the schools covered under RTE Act to possess minimum qualification as laid down by the Academic Authority. As per Section 23 (1) of RTE Act National Council for Teacher Education (NCTE) was notified as the Academic Authority. The authority, while providing for guidelines to conduct Teacher Eligibility Test indicated that the teacher should have passed Teacher Eligibility Test (in short "TET") to be conducted by the appropriate Government in accordance with the guidelines in order to get appointment as Teacher.

5.2.Accepting this recommendation, the Government of Tamil Nadu issued G.O.Ms.No.181, School Education Department dated 15.11.2011. The Government also passed G.O.Ms.25, dated 06.02.2014, under which, the minimum marks to be obtained by various categories were quashed by the Hon'ble Division Bench.

5.3. The constitutional validity of RTE Act was under challenge before the Supreme Court in the case of **Society for Unaided Private Schools of Rajasthan vs. Union of India, 2012 (6) SCC 1**. The Apex Court while upholding the constitutional validity held that the Act is applicable to all schools, except the unaided minority schools.

5.4. In the case of **Pramati Educational and Cultural Trust vs. Union of India, 2014 (4) MLJ 486**, the Hon'ble Supreme Court held

that under Article 31 of the Constitution of India, all minorities, whether based on religion or language shall have the right to establish and administer educational institutions of their choice and therefore, those institutions have a special constitutional right to establish and administer educational schools of their choice.

6.The Hon'ble Division Bench of this Court in the case of W.A. (MD) No.213 and 572 of 2016, based on the Judgment in Pramati's case, held that G.O.181 dated 15.11.2011, which was issued prior to the directions of NCET, cannot be made applicable to minority institutions. The Hon'ble Division Bench of this Court in the said Judgment has only suggested that the minority institution may consider conducting a refresher course and also some interactive sessions in order to ensure the quality of teachers.

7.Therefore, in view of the legal position enunciated in W.A (MD)No.213 and 572 of 2016, the 4th respondent is directed to approve the appointment of Mrs.Abirami Sundari as BT Assistant (Science) in the petitioner school and disburse the grant-in-aid towards her salary/allowance with effect from the date of her appointment, viz., 25.07.2016 and to pay the arrears of salary within a period of two months from the date of receipt of a copy of this order.

8.With the above observation and direction, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Education Department, Government of Tamil Nadu,
Secretariat, St. Fort George,
Chennai - 9.
- 2.The Director of School Education,
College Road, Chennai - 6.
- 3.The Chief Educational Officer,
Madurai.
- 4.The District Educational Officer,
Melur, Madurai District.

+1 cc to MR.T.A.Ebenezer ADVOCATE, SR NO:54812
+1cc to M/S.THE GOVERNMENT PLEADER, SR NO: 54706

smn

sva/jm/03.03.2017/3p/7c

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ORDER MADE IN
W.P(MD)No.17290 of 2016
21.09.2016