



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2016

C O R A M

THE HONOURABLE Dr.JUSTICE S.VIMALA

Writ Petition (MD) No.18196 of 2016

and

WMP(MD)No.13126 of 2016

A.Suja

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St.George, Chennai - 600 009.

2.The Director of School Education,
College Road, Chennai 600 006.

3.The Chief Educational Officer,
Chief Educational Office,
Nagercoil, Kanyakumari District.

4.The District Educational Officer,
District Educational Office,
Kuzhithurai, Kanyakumari District - 629 163.

5.The Correspondent,
St.Aloysius Higher Secondary School,
Marthandanthurai, Kollemcode Post,
Kanyakumari District.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the files of the 4th respondent pertaining to its order bearing Aa.thi.mu.No.1418/A2/2013, dated 14.3.2013 and to quash the same and consequently direct the respondents to approve the appoint of the petitioner as BT Assistant (Social Science) in the 5th respondent school with effect from the date of appointment on 2.4.2012 with all attendant benefits within a stipulated time that may be prescribed by this Hon'ble Court by considering the proposal resubmitted by the 5th respondent, dated 23.3.2013.

For petitioner

... Mr.S.C.Herold Singh

For Respondents

... Mr.M.Alagadevan

Special Government Pleader

O R D E R

This is a writ of Certiorarified Mandamus calling for the files of the 4th respondent in Aa.thi.mu.No.1418/A2/2013, dated 14.3.2013 and to quash the same and consequently direct the respondents to approve the appoint of the petitioner as BT Assistant (Social Science) in the 5th respondent school with effect from the date of appointment on 2.4.2012 with all attendant benefits within a stipulated time, considering the proposal resubmitted by the 5th respondent, dated 23.3.2013.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader who takes notice for the respondents. By consent the writ petition itself is taken up for final disposal at the admission stage.

3.A vacancy arose in the fifth respondent school due to the retirement of one M.Isabellan who was working as B.T.Assistant (Social Science) in the fifth respondent school and retired on 02.04.2012. In that vacancy, the petitioner was appointed as BT Assistant (Social Science) and till date she continues to work in the school.

4.The fifth school submitted a proposal to the fourth respondent requesting to approve her appointment as BT Assistant (Social Science) from 02.04.2011 and disburse grant-in-aid towards her salary. But the fourth respondent has returned the proposal without assigning any reason. Hence, the present Writ Petition has been filed.

5.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.

6. Article 45 of the Constitution of India directed the States to endure 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 to all children. The RTE Act came into force from 01.04.2010.



6.1. 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.

6.2. 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 prescribed was also quashed by the Hon'ble Division Bench. 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.

6.3. 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.

7. 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 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. Therefore, it is clear the impugned order passed is liable to be set aside in view of the legal position enunciated in W.A.(MD) No.213 and 572 of 2016 and it is set aside accordingly.

8. Accordingly, the 4th respondent is directed to approve the appointment of the petitioner as BT Assistant (Social Science) in the fifth respondent school and disburse the grant-in-aid towards her salary allowance with effect from the date of her appointment on 02.04.2012 and to pay the arrears of salary within a period of two month from the date of receipt of a copy of this order.



9. With the above observation and direction, this Writ Petition is disposed of. No costs. Consequently, connected WMP(MD) No.13126 of 2016 is closed.

Sd/-

Assistant Registrar(Records)

WEB COPY

/True Copy/

Sub Assistant Registrar

To

1.

The Secretary,
Department of School Education,
Fort St.George, Chennai - 600 009.

2.The Director of School Education,
College Road, Chennai 600 006.

3.The Chief Educational Officer,
Chief Educational Office,
Nagercoil, Kanyakumari District.

4.The District Educational Officer,
District Educational Office,
Kuzhithurai, Kanyakumari District - 629 163.

5.The Correspondent,
St.Aloysius Higher Secondary School,
Marthandanthurai, Kollemcode Post,
Kanyakumari District.

+1cc to Mr.S.C.Herold Singh, sr no 55120

rj2

ms sv mms 30 01 2017 4p 7c

Writ Petition (MD) No.18196 of 2016
23.09.2016