



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.09.2016
CORAM

THE HON'BLE Dr.JUSTICE S.VIMALA
W.P(MD) No.18277 of 2016

WEB COPY

S.Shama Nancy Rani

... 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 Elementary Education,
College Road,
Chennai - 600 009.

3.The District Elementary Educational Officer,
Tutirocin, Tuticorin District.

4.The Additional Assistant Elementary
Educational Officer,
Tiruchendur Union,
Tuticorin District.

5.The Correspondent,
TNDTA Middle School,
Sonaganvilai,
Tiruchendur Union,
Tuticorin District.

... Respondents

Writ Petition 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 herein in O.Mu.N.1220/Aa2/2012 dated 07.01.2013 Quash the same and further Direct the 3rd respondent herein to approve the petitioner's appointment as BT Assistant (Science) in the 5th respondent School w.e.f. 04.07.2011 onwards with salary and other attendant benefits.

For Petitioner : Mr.A.Ajith Geethan
For Respondents : Mr.M.Alagadevan
Special Government Pleader
For R1 to R4

O R D E R

<https://hcservices.ecourts.gov.in/hcservices/> This petition has been filed to quash the impugned proceedings issued by the fourth respondent dated 07.01.2013, under which, the 4th respondent has returned the proposal stating



that appointment of the petitioner could not be approved for want of pass in TET. The petitioner also sought a direction to the respondents to accord approval to the appointment of the petitioner as BT Assistant (Science) in the 5th respondent School with effect from 04.07.2011 onwards with salary and other attendant benefits.

2. Heard the learned counsel appearing for the petitioner and the learned Special 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. The 5th respondent is a recognised and aided minority educational institution; one post of B.T. Assistant (Science) in the 5th respondent school fell vacant due to promotion of the then incumbent; in that vacancy, the 5th respondent school appointed the petitioner and till date, she continues to work in the school as B.T. Assistant (Science).

4. The school submitted a proposal to the third respondent through the fourth respondent requesting to approve the petitioner's appointment as B.T. Assistant (Science) from 04.07.2011 and to disburse grant-in-aid towards her salary. The fourth respondent by the proceedings dated 07.01.2013, returned the proposal, stating that appointment of the petitioner could not be approved for want of pass in TET. Hence, the petitioner has filed this writ petition.

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 endeavour 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.

<https://hcservices.ecourts.gov.in/hcservices/>

7. 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.

7.1. 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.

7.2. 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.

8. 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 decision 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 that 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.

9. Accordingly, the impugned order passed by the fourth respondent dated 07.01.2013 is set aside and the third respondent is directed to approve the appointment of the petitioner as BT Assistant (Science) in the 5th respondent school with effect from 04.07.2011 with salary and other attendant benefits within a period of two months from the date of receipt of a copy of this order.



10. With the above observation and direction, this Writ Petition is disposed of. No costs. Consequently, connected WMP(MD) No.13168 of 2016 is closed.

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Sd/-

Assistant Registrar(AE)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St. George,
Chennai - 600 009.
2. The Director of Elementary Education,
College Road,
Chennai - 600 009.
3. The District Elementary Educational Officer,
Tutirocin, Tuticorin District.
4. The Additional Assistant Elementary
Educational Officer,
Tiruchendur Union,
Tuticorin District.

+1cc to M/S. THE SPECIAL GOVERNMENT PLEADER, SR NO:58215

W.P (MD) No.18277 of 2016

26.09.2016

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