



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.10.2016

CORAM :

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P(MD)No.19006 of 2016

and W.M.P(MD)Nos.13734 to 13736 of 2016

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L.Pushparaj

... Petitioner

vs.

1)The State of Tamil Nadu,
Rep by the Additional Chief Secretary,
Department of School Education,
Fort St.George, Chennai-9.

2)The Director of School Education,
DPI Campus, College Road,
Chennai-6.

3)The District Elementary Educational Officer,
O/o. District Elementary Educational Officer,
Tirunelveli,
Tirunelveli District.

4)The Assistant Elementary Educational Officer,
O/o. the Assistant Elementary Educational Officer,
Tenkasi Region,
Tirunelveli District.

5)The Correspondent,
T.D.T.A. Schools,
TIP Meenatchipuram Pastorate,
Tenkasi Region,
Tirunelveli District.

... Respondents

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 relating to the impugned G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 on the file of the 1st Respondent and the consequential order passed by the 4th Respondent in A.Thi.Mu.No.305/A1/2012 dated 09.04.2012 and quash the both as illegal and arbitrary in so far as my case is concerned and consequently direct the Respondents 3 & 4 to approve the petitioner's appointment as B.T. Assistant(History) in the 5th respondent School from 21.06.2011, with all service and monetary benefits within the time limit that may be stipulated by this



For Petitioner : Mr.G.Thalaimutharasu
For Respondents : Mr.M.Alagadevan,
1 to 4 Special Government Pleader

ORDER

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This Writ of Certiorarified Mandamus has been filed, to quash G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 on the file of the 1st Respondent and the consequential order passed by the 4th Respondent in A.Thi.Mu.No.305/A1/2012 dated 09.04.2012, as illegal and arbitrary in so far as the petitioner is concerned with a consequential direction to the respondents 3 and 4, to approve the petitioner's appointment as B.T. Assistant (History) in the 5th respondent School from 21.06.2011, with all service and monetary benefits within the time limit that may be stipulated by this Hon'ble Court.

2.The learned counsel for the petitioner produced the proposal of the 5th respondent school dated 25.02.2014 addressed to the 4th respondent, wherein, the 4th respondent has made an endorsement that the certificate relating to passing of TET by the petitioner should be enclosed. So stating, the proposal has been returned.

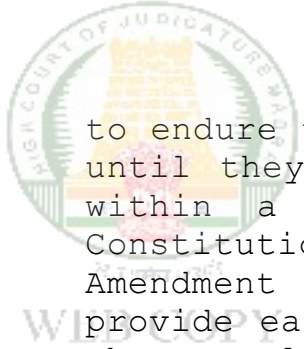
3.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader who takes notice for the respondents 1 to 4. By consent, the writ petition itself is taken up for final disposal at the admission stage.

4.The 5th respondent is a Government aided minority educational institution; one post of B.T. Assistant(History) in the 5th respondent school fell vacant due to retirement of the then incumbent; in that vacancy, the 5th respondent school appointed the petitioner and till date, he continues to work in the school as B.T. Assistant(History); the school submitted a proposal to the 4th respondent requesting to approve the petitioner's appointment as B.T. Assistant(History) from 21.06.2011 and to disburse grant-in-aid towards his salary; the 4th respondent by order dated 01.03.2014, returned the proposal, stating that the document relating to the passing of TET by the petitioner, should be enclosed for approval of his appointment. Hence, 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.

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6.Article 45 of the Constitution of India directed the States



to ensure 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.

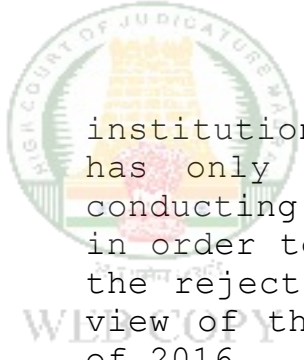
6.1. With the view to improve the quality of education and to provide quality education to children, Section 23 of the RTE Act makes it mandatory for a person, who seeks appointment in the schools covered under RTE Act to possess minimum qualification as laid down by the Academic Authority. As per Section 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

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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 rejection order dated 01.03.2014 is liable to be set aside in view of the legal position enunciated in W.A.(MD) No.213 and 572 of 2016.

8. Accordingly, the rejection order dated 01.03.2014 issued by the 4th respondent is set aside and the 4th respondent is directed to approve the appointment of the petitioner as BT Assistant (History) in the 5th respondent school and disburse the grant-in-aid towards his salary allowance with effect from the date of his appointment, viz., 21.06.2011 and to pay the arrears of salary within a period of two months from the date of receipt of a copy of this order.

In the result, this Writ Petition stands allowed. No costs. Consequently, W.M.P(MD)Nos.13734 to 13736 of 2016 is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1) The Additional Chief Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai-9.

2) The Director of School Education,
DPI Campus, College Road,
Chennai-6.

3) The District Elementary Educational Officer,
O/o. District Elementary Educational Officer,
Tirunelveli,
Tirunelveli District.

4) The Assistant Elementary Educational Officer,
O/o. the Assistant Elementary Educational Officer,
Tenkasi Region,
Tirunelveli District.

+1cc to Special Government Pleader in SR. 59398

+1cc to M/S.G.THALAIMUTHARASU, ADVOCATE SR.No. 66685

NBI

SM/JM/17.02.2017/4P-7C