



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.10.2016

CORAM :

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.19129 of 2016

and

W.M.P (MD) No.13809 of 2016

F.Maria Benasitha

... 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,  
Kanyakumari District.

4)District Educational Officer,  
Thuckalay, Kanyakumari District.

5)The Correspondent,  
St.Mary's High School,  
Kesavanputhenthurai,  
Kanyakumari District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 3<sup>rd</sup> respondent herein to approve forthwith the appointment of the petitioner as B.T. Assistant (Science) in the 5<sup>th</sup> respondent school since 01.06.2015 onwards with salary and other attendant benefits without insisting pass in Teacher Eligibility Test.

For Petitioner : Mr.E.V.N.Siva, Advocate

For Respondents : Mr.T.S.Mohamed Mohideen,

Additional Government Pleader

ORDER

<https://hcservices.courts.gov.in/hcservices/> THIS Writ of Mandamus has been filed, to direct the 3<sup>rd</sup> respondent herein to approve forthwith the appointment of the



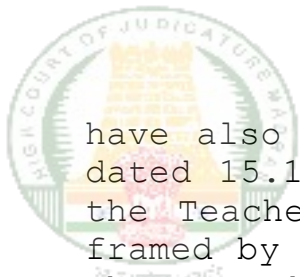
petitioner as B.T. Assistant (Science) in the 5<sup>th</sup> respondent school since 01.06.2015 onwards with salary and other attendant benefits without insisting upon the qualification of pass in Teacher Eligibility Test.

2. Heard the learned counsel appearing for the petitioner and the learned Additional 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.

3. The 5<sup>th</sup> respondent is a recognised and aided minority educational institution; one post of B.T. Assistant (Science) in the 5<sup>th</sup> respondent school fell vacant due to retirement of the then incumbent; in that vacancy, the 5<sup>th</sup> respondent school appointed the petitioner and till date, she continues to work in the school as B.T. Assistant (Science); the school submitted a proposal to the fourth respondent requesting to approve the petitioner's appointment as B.T. Assistant (Science) from 01.06.2015 and to disburse grant-in-aid towards her salary; the third respondent by the order dated 29.06.2015, returned the proposal, stating that the document relating to the passing of TET by the petitioner, should be enclosed for approval of her appointment. Hence, the petitioner has filed this writ petition.

4. Placing heavy reliance on a judgment of the Hon'ble Supreme Court in **Pramati Educational and Cultural Trust and others vs. Union of India and others**, reported in **2014 (4) MLJ 486 (SC)**, learned counsel appearing for the petitioner has contended that when the Apex Court has given an authoritative pronouncement, making it clear that Right of Children to Free and Compulsory Education Act 2009 Act, insofar as it is made applicable to minority schools referred in Clause (1) of Article 30 of the Constitution is *ultra vires* of the Constitution, approval for the appointments made by the minority schools, ought not to have been refused on the basis of G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011.

5. The learned Additional Government Pleader appearing for the respondents, would fairly submit that as per Section 23 of the Right of Children to Free and Compulsory Education Act 2009, which states that any person possessing minimum qualification as laid down by an academic authority authorised by the Central Government by notification, shall be eligible for appointment as teacher, National Council for Teacher Education (in short, 'the Council') is the academic authority appointed by the Government of India. The Council for Teacher Education has issued a Notification, dated 23.08.2010, prescribing the Teacher Eligibility Test (in short, 'TET') as minimum educational qualification for appointment of teachers in schools. In terms of the recommendation and the Notification issued by the Council, the Government of Tamil Nadu



have also issued G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011, making it clear that TET shall be conducted by the Teachers Recruitment Board in accordance with the guidelines framed by the Council and in view of the said G.O., the teachers, who passed the TET alone, were made eligible to become Teacher.

WEB COPY

6.He has further submitted that the issue as to whether the provisions of the Right of Children to Free and Compulsory Education Act 2009 would be applicable to a minority institution, is pending consideration before the Supreme Court in **Ashwini Thanappan vs. Director of Education and another**, reported in **(2014) 8 SCC 272**. Further, following the abovesaid reference order, a Hon'ble Division Bench of this Court also, in W.A.No.1299 of 2015, has passed an order dated 14.09.2015, directing the Educational authorities to pay only the salary with a further direction not to remove the concerned teacher till the issue under Reference is decided.

7.At this juncture, it is necessary to extract below paragraph Nos.4 to 8 of the order passed by the Hon'ble Division Bench in W.A.No.1299 of 2015, dated 14.09.2015:-

''4.Be that as it may, the issue as to whether the provisions of the Act, will be applicable to a minority institution, is pending consideration in **Aswinithanappan Vs. Director of Education and another - (2014) 8 SCC 272**.

5.In view of the above, without going into the merits of the case as to whether a teacher appointed in a minority school is required to have TET qualification, as the same is the subject matter of the Writ petition, we are of the considered view that interest justice would sub-serve, if the appointment of the first respondent is protected, without giving any direction to the State Government to grant temporary approval.

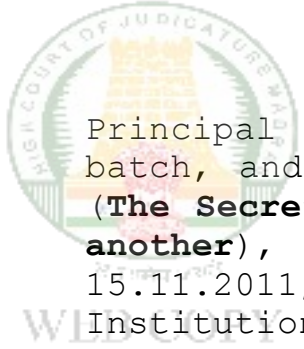
6.Mr.D.Krishnakumar, learned Special Government Pleader (Education) appearing for the appellants fairly submits that the first respondent shall not be terminated during the pendency of the said writ petition being W.P.No.14072 of 2015.

7.Accordingly, we direct that the first respondent shall be given her salary in the course of her employment and no steps to remove her from service shall be taken till the disposal of the writ petition. However, it is made clear that this order is subject to the final outcome of the pending writ petition. It is further made clear that the first respondent shall not claim any equity on account of this order, without prejudice to the rights and contentions of the parties, therein.

8.This intra-Court appeal is disposed of accordingly.  
No costs. Connected Miscellaneous Petition is closed."

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

8.Recently, on the same issue, a Hon'ble Division Bench at the



Principal Seat of this Court in W.A.Nos.213 & 572 of 2016, etc. batch, and W.A.(MD).No.921 of 2013, etc batch., dated 24.08.2016, (**The Secretary to Government and two others Vs. S.Jeyalakshmi and another**), has categorically held that G.O.Ms.No.181, dated 15.11.2011, cannot be made applicable to Minority Educational Institutions. In this regard, it is pertinent to extract paragraph Nos.59 to 61 and 63 of the said judgment, which run 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."

9. Indisputedly, the petitioner's appointment as B.T. Assistant (Science) has been made against the sanctioned post in the 5<sup>th</sup> respondent school and therefore, approval for such appointment ought not to have been denied. However, as the issue as to whether the provisions of the Right of Children to Free and Compulsory Education Act 2009, would be applicable or not to a minority institution, is pending consideration in Aswinithanappan's case (cited supra), following the abovesaid order dated 14.09.2015 passed by the Hon'ble Division Bench in W.A.No.1299 of 2015, this Writ Petition is disposed of with the following directions:-

The petitioner who was appointed as B.T. Assistant (Science) in the 5<sup>th</sup> respondent school, shall be given salary in the course of her employment and no steps to remove her from service shall be taken. However, it is made clear that this order is subject to the outcome of the case pending before the Supreme Court in **Aswinithanappan's case** (cited supra). It is further made clear that the petitioner shall not claim any equity on account of this order, without prejudice to the rights and contentions of the parties. The respondents 1 to 4 are directed to release the salary of the petitioner 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. No costs. Consequently, W.M.P(MD)No.13809 of 2016 is closed.

Sd/-

Assistant Registrar(CO)

/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 School Education,  
College Road, Chennai-600 006.

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

3) The Chief Educational Officer,  
Kanyakumari District.



4) District Educational Officer,  
Thuckalay, Kanyakumari District.

+1cc to Mr.E.V.N.Siva, Advocate Sr.No. 59711

WEB COPY

+1cc to Spl.Government Pleader Sr.No. 59826

JAM/18.10.16/SK-SKN/6P-7C

W.P (MD) No.19129 of 2016  
05.10.2016

05.10.2016