



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.10.2016

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THE HON'BLE DR.JUSTICE S.VIMALA**W.P(MD) No.19579 of 2016**

WEB COPY

C.Shanthi

... Petitioner

-vs-

1. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

2. The Chief Educational Officer,
Thanjavur District, Thanjavur.

3. The District Educational Officer,
Thanjavur, Thanjavur District.

4. The Secretary,
Kalyanasundaram Higher Secondary School,
Thanjavur, Thanjavur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 3 to approve the appointment of the petitioner in the post of BT Assistant (English) in the 4th respondent's school from the date of appointment 02.07.2016 with payment of salary based on the proposal forwarded by the 4th respondent in letter No.6A-2016 dated 02.07.2016.

For Petitioner : Mr.S.Venkatesan

For R1 to R3 : Mr.S.Kumar

Addl. Govt. Pleader

O R D E R

This writ petition has been filed for the issuance of a writ of mandamus, directing the respondents 1 to 3 to approve the appointment of the petitioner in the post of BT Assistant (English) in the 4th respondent's school from the date of appointment, viz., 02.07.2016 with payment of salary based on the proposal forwarded by the 4th respondent in letter No.6A-2016 dated 02.07.2016.

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. The 4th respondent's school (hereinafter referred to as "the School") is a Government Aided School receiving grant-in-aid



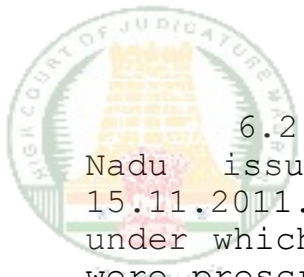
from the State Government. One post of B.T.Assistant (English) in the School fell vacant due to retirement of one Nagarajan. In that vacancy, the School appointed the petitioner as B.T.Assistant (English) with effect from 02.07.2016, who secured 83 marks in TET.

4. The School submitted a proposal to the third respondent on 02.07.2016, requesting to approve her appointment as BT Assistant (English) and disburse grant-in-aid towards her salary. But the third respondent returned the same stating that though the Government Order granting 5% relaxation of marks in passing TET has been upheld by this Court in W.A.No.707 of 2014 etc. cases, subsequently, this Court, in W.P.(MD) No.2677 of 2014 etc cases quashed the said Government Order, granting relaxation of marks on 25.09.2014; that the State Government in this regard has preferred an appeal before the Hon'ble Supreme Court, in which notice has been ordered; that since her appointment has not been approved by the 3rd respondent and the proposal was not considered so far, 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 endeavor 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 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 of return passed cannot be approved in view of the legal position enunciated in W.A.(MD) No.213 and 572 of 2016.

8. Accordingly, the third respondent is directed to approve the appointment of the petitioner in the post of B.T.Assistant (English) in the 4th respondent's school from the date of her appointment, viz., 02.07.2016 with all attendant benefits, including the arrears of salary and allowance within a period of two months from the date of receipt of a copy of this order.

With the above observation and direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Director of School Education,
<https://hcservices.ecourts.gov.in/hcservices/>
DPI Campus, College Road,
Chennai - 600 006.



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Thanjavur District, Thanjavur.

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