



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2016

CORAM:

THE HONOURABLE DR.JUSTICE **S.VIMALA**

W.P (MD) No.20052 of 2016

J.Vimala Periakani : Petitioner

Vs.

- 1.The Government of Tamil Nadu rep. by
its Secretary to Government,
School Education Department,
Secretariat, Chennai.
- 2.The Director of School Education,
DPI Compound, College Road,
Chennai.
- 3.The District Educational Officer,
Tirunelveli District.
- 4.The Correspondent,
Sarahtucker Higher Secondary School for Girls,
Palayamkottai, Tirunelveli District. : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pursuant to the impugned rejection order passed by the third respondent Aa.Thi.Mu.No.4545/B5/2016, dated 22.09.2016, quash the same and consequently direct the respondents to approve the petitioner's appointment as B.T. Assistant at fourth respondent school and give all other service and monetary benefit from 12.09.2016.

For Petitioner	: Mr.S.Chellapandian
For Respondents	: Mr.A.Muthukaruppan, Additional Government Pleader.

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus praying to quash the impugned rejection order passed by the third respondent in Aa.Thi.Mu.No.4545/B5/2016, dated 22.09.2016 and consequently to direct the respondents to



approve the petitioner's appointment as B.T. Assistant at fourth respondent school and give all other service and monetary benefits from 12.09.2016.

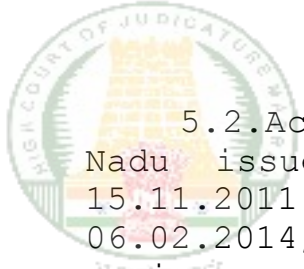
2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader, who took notice for the respondents. By consent, the writ petition itself is taken up for final disposal.

3. The case of the petitioner is that she was appointed as BT Assistant in the fourth respondent school on 12.09.2016. It is a sanctioned post. The fourth respondent has sent the appointment proposal to the third respondent on 20.09.2016. But, the third respondent has returned the proposal on the ground of non-possession of TET qualification as per G.O.(Ms).No.181, dated 15.11.2011, vide impugned order, dated 22.09.2016. Therefore, this writ petition has been filed.

4. 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.

5.0. 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.

5.1. 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) conducted by the appropriate Government in accordance with the guidelines in order to get appointment as Teacher.



5.2. 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.

5.3. 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.

6. 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 that the impugned order passed is liable to be set aside in view of the legal position enunciated in W.A(MD)No213 and 572 of 2016.

7. Accordingly, the impugned order dated 22.09.2016 passed by the third respondent is set aside and the 3rd respondent is directed to approve the appointment of the petitioner as BT Assistant in the 4th respondent school, namely, Sarahtucker Higher Secondary School for Girls, Palayamkottai, Tirunelveli District and disburse the grant-in-aid towards her salary allowance with effect from the date of her appointment, viz., 12.09.2016 and to pay the arrears of salary within a period of two months from the date of receipt of a copy of this order.

8. With the above observation and direction, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CRL)

/True Copy/

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

Sub Assistant Registrar



To ஸ்ரீமத் ஜஸ்டீஸ்

WEB COPY

- 1.The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Secretariat, Chennai.
- 2.The Director of School Education,
DPI Compound, College Road,
Chennai.
- 3.The District Educational Officer,
Tirunelveli District.

+1cc to Mr.S.Chellapandian Advocate Sr.No. 61897

+1cc to Spl.Government Pleader Sr.No. 62326

JAM/22.11.16/ck/4P-6C

**ORDER MADE IN
W.P (MD) No.20052 of 2016**

19.10.2016