



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2016

CORAM :

THE HON'BLE Dr.JUSTICE S.VIMALA

W.P(MD)No.20404 of 2016

St.Joseph's High School
rep.by its Correspondent
Rev.Fr.S.Glatton

... Petitioner

Vs.

1.The Chief Educational Officer,
Kanyakumari,
Kanyakumari District.

2.The District Educational Officer,
Thuckalay,
Kanyakumari District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondents herein to direct the 2nd respondent to consider the proposals for approval of the appointment of A.Mary Vinoba as B.T.Assistant (Science) in the petitioner school and approve the same with effect from the date of the appointment i.e. 01.09.2015 with all consequential monetary benefits.

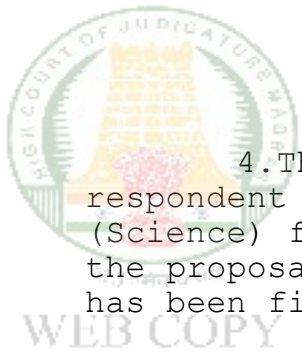
For Petitioner	: Mr.S.Manikandan
For Respondents	: Mr.T.S.Mohammed Mohideen Additional Government Pleader

O R D E R

This writ petition has been filed for the issuance of a writ of mandamus, directing the second respondent to approve the appointment of A.Mary Vinoba as B.T.Assistant (Science) in the petitioner school and approve the same with effect from the date of the appointment i.e. 01.09.2015 with all consequential monetary benefits.

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 petitioner is an aided recognised, private and minority educational institution. One post of B.T.Assistant (Science) in the petitioner's school fell vacant on 31.08.2015 due to retirement of one J.Alice Deleema. In that vacancy, the petitioner school appointed one A.Mary Vinoba and till date she continues to work in the school.



4. The petitioner school submitted a proposal to the second respondent requesting to approve her appointment as B.T. Assistant (Science) from 01.09.2015 with all consequential monetary benefits. As the proposal has not been 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 endure 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 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, this writ petition is liable to be allowed in the light of the legal position enunciated in W.A.(MD) No.213 and 572 of 2016.

8. Accordingly, the second respondent is directed to approve the appointment of A.Mary Vinoba as B.T.Assistant (Science) in the petitioner school with effect from the date of the appointment i.e., 01.09.2015 with all consequential monetary benefits within a period of two months from the date of receipt of a copy of this order.

9. With the above observation and direction, this Writ Petition is disposed of. No costs. Consequently, WMP(MD)No.14597 of 2016 is closed.

Sd/-
Assistant Registrar (Writ)

/True copy/

Sub Assistant Registrar

To

1.The Chief Educational Officer,
Kanyakumari,
Kanyakumari District.

2.The District Educational Officer,
Thuckalay,
Kanyakumari District.

+1 CC to M/s.S.Manikandan, Advocate, SR No.63442

W.P(MD)No.20404 of 2016

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SH/SKS-RR:08.12.2016:3P/4C