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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.21878 of 2016

and

W.M.P (MD) No.15628 of 2016

J.P.Sobi

: 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.The District Educational Officer,

Kuzhithurai, Kanyakumari District.

5.The Correspondent,

St. Francis Xavier High School,

Alanchy, Kanyakumari District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the fourth respondent herein to approve forthwith the appointment of the petitioner as B.T. Assistant (Tamil) in the fifth respondent - school from 18.12.2015 onwards with salary and other attendant benefits without insisting pass in Teacher Eligibility Test.

For Petitioner

: Mr.E.V.N.Siva

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 Mandamus, directing the fourth respondent herein to approve forthwith the appointment of the petitioner as B.T. Assistant (Tamil) in the fifth respondent - school from 18.12.2015 onwards with salary and other attendant benefits without insisting pass in Teacher Eligibility Test.



2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader, who took notice for the respondents 1 to 4.

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3. It is the case of the petitioner that the fifth respondent school is a Private Aided Minority Educational Institute. The fifth respondent school has appointed the petitioner as B.T. Assistant (Tamil) in the sanctioned post on 18.12.2015, in the vacancy, which arose on account of the retirement of one A.Susheela Bai. The fifth respondent school sent a proposal on 09.04.2016 to the fourth respondent for the approval of the appointment of the petitioner. The fourth respondent, vide proceedings, dated 26.04.2016, returned the proposal, seeking pass in Teachers Eligibility Test Certificate, No Objection Certificate, Staff Fixation Order for the Academic Year 2015-2016, Appointment Order issued by the Corporate Manager and Relieving Order. Since the fifth respondent school is a Minority Educational Institution, the school resubmitted the proposal on 30.08.2016, with necessary explanations and certificates. But, it was orally informed by the third respondent that the appointment could not be approved for want of pass in Teachers Eligibility Test. Therefore, the petitioner has come up with the present writ petition.

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") to be 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.

7. Therefore, in view of the legal position enunciated in W.A (MD) No.213 and 572 of 2016, the 4th respondent is directed to receive the proposal, dated 09.04.2016, which was resubmitted on 30.08.2016, by the fifth respondent school for approval and to approve the appointment of the petitioner as BT Assistant (Tamil) in the fifth respondent school and disburse the grant-in-aid towards her salary allowance with effect from the date of her appointment, viz., 18.12.2015 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. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl. Side)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Department of School Education,
Government of Tamil Nadu,
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. The District Educational Officer,
Kuzhithurai, Kanyakumari District.

+1cc to Mr. E. V. N. Siva, Advocate in SR No. 69698

+1cc to the Spl. Govt. Pleader in SR No. 69752

ORDER MADE IN
W. P (MD) No. 21878 of 2016
and
W. M. P (MD) No. 15628 of 2016
16.11.2016

SMN

ANR/DB/07.12.2016/2P/7C