



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2016

WEB COPY

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.21884 of 2016

and

W.M.P (MD) Nos.15635 and 15636 of 2016

C.Rani Malathy

: Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary,
Department of School Education,
Fort St. George,
Chennai - 9.
2. The Director of School Education,
College Road, Chennai - 600 006.
3. The Chief Educational Officer,
Chief Educational Office,
Nagercoil, Kanyakumari District.
4. The District Educational Officer,
District Educational Office,
Kuzhithurai, Kanyakumari District - 629 163.
5. The Correspondent,
St. Bernadette's Higher Secondary School,
Mangalakuntu - 629 178,
Kanyakumari 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 on the files of the fourth respondent pertaining to his order bearing Na.Ka.No.6406/A2/2016 dated 26.10.2016 and to quash the same and consequently direct the respondents to approve the appointment of the petitioner as School Assistant (Maths) in the fifth respondent school with effect from the date of appointment on 10.06.2013 with all attendant benefits within a stipulated time that may be prescribed by this court by <https://hcservices.elets.com/hcservices/> the proposal resubmitted by the fifth respondent dated 08.11.2016.



For Petitioner

: Mr.S.C.Herold Singh

For Respondents
1 to 4: Mr.A.Muthukaruppan,
Additional Government Pleader

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O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus praying to quash the order of the fourth respondent bearing Na.Ka.No.6406/A2/2016, dated 26.10.2016 and consequently to direct the respondents to approve the appointment of the petitioner as School Assistant (Maths) in the fifth respondent school with effect from the date of appointment i.e., from 10.06.2013 with all attendant benefits.

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

3.It is the case of the petitioner that the fifth respondent school is a Government Aided Religious Minority School. The fifth respondent school has appointed the petitioner as School Assistant (Maths) in the sanctioned post on 10.06.2013, in the vacancy, which arose on account of the retirement of one J.Reeth Mary, who was working as B.T.Assistant (Maths). Immediately, the fifth respondent school sent a proposal to the fourth respondent for the approval of the appointment of the petitioner from 10.06.2013. The same was returned. Thereafter, the fifth respondent school again sent a proposal on 14.10.2016 to the fourth respondent. The fourth respondent, by the proceedings dated 26.10.2016, returned the proposal directing to resubmit the same along with the certificate for no excess post and certificate for pass in Teachers Eligibility Test. As the fifth respondent school being a Government Aided Religious Minority School, resubmitted the proposal on 08.11.2016 after complying with the queries. Since the proposal is pending from 10.06.2013, the petitioner has come forward 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 endure to provide free and compulsory education to all <https://hcservicesdocuments.gov.in/hcservices> 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 direction 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 impugned order passed by the fourth respondent dated 26.10.2016 is set aside and the fourth respondent is directed to receive the proposal, dated 14.10.2016, which was resubmitted on 08.11.2016, for approval and to approve the appointment of the petitioner as School Assistant (Maths) in the fifth respondent school and disburse the grant-in-aid towards her salary allowance with effect from the date of her appointment, viz., 10.06.2013 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 Petitions are closed.

Sd/
Assistant Registrar (C.S-I)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Secretary, Department of School Education,
Government of Tamil Nadu, Fort St. George, Chennai - 9.
2. The Director of School Education,
College Road, Chennai - 600 006.
3. The Chief Educational Officer,
Chief Educational Office,
Nagercoil, Kanyakumari District.
4. The District Educational Officer,
District Educational Office,
Kuzhithurai, Kanyakumari District - 629 163.

1CC TO MR. S.C. HEROLD SINGH, ADVOCATE SR: 69444

1CC TO THE SPL GOVT PLEADER SR: 69764

SMN

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ORDER MADE IN
W.P (MD) No. 21884 of 2016
and W.M.P (MD) Nos. 15635 and 15636 of 2016
16.11.2016