



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2016

CORAM :

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P(MD)No.22016 of 2016

and

W.M.P(MD)Nos.15722 and 15723 of 2016

T.Wills

... 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)District Educational Officer,
Kuzhithurai, Kanyakumari District.

5)The Correspondent,
Higher Secondary School,
kalluppalam, Edaicode,
Kanyakumari District.

... Respondents

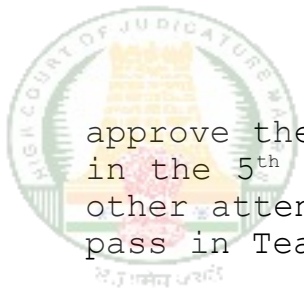
Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 4th respondent herein in O.Mu.No.6147/A2/2016 dated 13.10.2016, quash the same and further direct the 4th respondent herein to approve the appointment of the petitioner as B.T Assistant (Science) in the 5th respondent school from 04.10.2012 onwards with salary and other attendant benefits without insisting pass in ''Teacher Eligibility Test''.

For Petitioner : Mr.E.V.N.Siva

For R1 to R4 : Mr.V.R.Shanmuganathan,
Special Government Pleader

ORDER

This Writ of Certiorarified Mandamus has been filed, to quash the order passed by the 4th respondent in O.Mu.No.6147/A2/2016, dated 13.10.2016, with a consequential direction to the 4th respondent to



approve the appointment of the petitioner as B.T Assistant (Science) in the 5th respondent school from 04.10.2012 onwards with salary and other attendant benefits without insisting upon the qualification of pass in Teacher Eligibility Test.

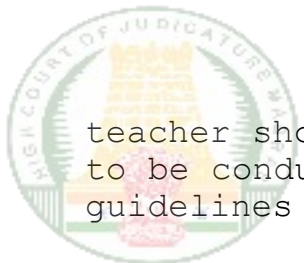
2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader who takes notice for the respondents 1 to 4. By consent, the writ petition itself is taken up for final disposal at the admission stage.

3. The petitioner claims that the 5th respondent is a recognised and private aided minority educational institution; one post of Secondary Grade Teacher in the 5th respondent school fell vacant due to retirement of the then incumbent; in that vacancy, the 5th respondent school appointed the petitioner and till date, he continues to work in the school as Secondary Grade Teacher; the school submitted a proposal to the 4th respondent, requesting to approve the petitioner's appointment as Secondary Grade Teacher from 04.10.2012 and to disburse grant-in-aid towards his salary; the 4th respondent by the impugned order, returned the proposal, stating that the petitioner did not possess a pass in TET. Challenging the said order, the petitioner has filed this 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. 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.

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 case 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 passed is liable to be set aside in view of the legal position enunciated in W.A.(MD) No.213 and 572 of 2016.

7. Accordingly, the impugned order issued by the 4th respondent herein in O.Mu.No.6147/A2/2016 dated 13.10.2016 is set aside and the 4th respondent is directed to approve the appointment of the petitioner as BT Assistant(Science) in the petitioner school and disburse the grant-in-aid towards his salary allowance with effect from the date of his appointment, viz., 04.10.2012 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. In the result, this Writ Petition stands allowed. No costs. Consequently, W.M.P(MD)Nos.15722 and 15723 of 2016 are closed.

Sd/
Assistant Registrar(RTI)

/True Copy/

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

Sub Assistant Registrar.



To

1) The Secretary,
State of Tamil Nadu,
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) District Educational Officer,
Kuzhithurai, Kanyakumari District.

+1CC to the Special Government Pleader, SR.No. 70607

W.P (MD) No. 22016 of 2016
17.11.2016

nbi

AM/PM PN/SAR-1/16.02.2017/4P/6C