



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2016

CORAM:

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

W.P (MD) No.22085 of 2016

and

W.M.P (MD) No.15802 of 2016

D.Mary Merline Manju : 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,
Chief Educational Office,
Nagercoil, Kanyakumari District.

4.The District Educational Officer,
District Educational Office,
Kuzhithurai, Kanyakumari District - 629 163.

5.The Correspondent,
Pius XI Higher Secondary School,
Thoothur, 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 4th respondent to approve the appointment of the petitioner as B.T.Assistant (Tamil) with effect from the date of her appointment that is on 01.06.2012 and to grant all service and monitory benefits by considering the proposal resubmitted by the 5th respondent dated 11.08.2016 without insisting for a pass in TET within a time frame that may be stipulated by this Court.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.A.Muthukaruppan,
Additional Government Pleader.

**O R D E R**

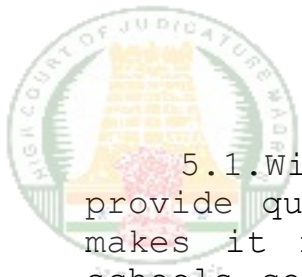
This writ petition has been filed for issuance of a Writ of Mandamus, directing the fourth respondent to approve the appointment of the petitioner as B.T. Assistant (Tamil) with effect from the date of her appointment, i.e., from 01.06.2012 and to grant all service and monetary benefits by considering the proposal resubmitted by the fifth respondent dated 11.08.2016 without insisting for a pass in TET within a time frame that may be stipulated by this Court.

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 school has appointed the petitioner as B.T. Assistant (Tamil) in the sanctioned post on 01.06.2012, in the vacancy, which arose on account of promotion of one K. Vijaya Kumari, w.e.f. 01.06.2012. The fifth respondent sent a proposal on to the fourth respondent for the approval of the appointment of the petitioner, from 01.06.2012. When the proposal was sent to the office of the fourth respondent, the fourth respondent returned the proposal, saying that the petitioner has not passed the Teachers Eligibility Test. Thereafter, the fifth respondent school resubmitted proposal to the fourth respondent on 11.08.2016. As the same pending without any progress, 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 to Education Act, 2009 (hereinafter called "RTE Act") with the object of providing free education, which came into force from 01.04.2010.



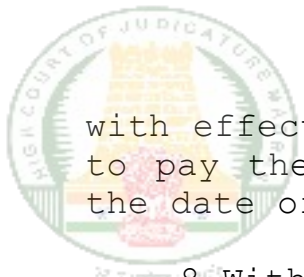
5.1. With the view to improve the quality of education and to provide quality education to children, Section 23 of the RTE Act makes it mandatory for a person, who seeks appointment in the schools covered under RTE Act to possess minimum qualification as laid down by the Academic Authority. As per Section 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, resubmitted on 11.08.2016, 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., 01.06.2012 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. With the above observation and direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (Crl)

/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,
Chief Educational Office,
Nagercoil, Kanyakumari District.
 4. The District Educational Officer,
District Educational Office,
Kuzhithurai, Kanyakumari District - 629 163.
- +1 cc to Mr. S. C. Herold Singh, Advocate SR.No.70330
- +1 cc to Special Government Pleader Sr.No.70630

ORDER MADE IN
W. P (MD) No. 22085 of 2016
and
W. M. P (MD) No. 15802 of 2016
18.11.2016

CSL/SKS-RR/07.12.2016:4P/7C