



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2016

CORAM

THE HON'BLE Dr.JUSTICE S.VIMALA

W.P(MD) No.22861 of 2016

N.Mercy

... Petitioner

-vs-

1.The State of Tamil Nadu,
rep.by its Secretary,
Department of School Education,
Fort St.Geroge, 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,
Concordia Higher Secondary School,
Pootetti,
Kanyakumari District.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the 4th respondent herein to approve forthwith the appointment of the Petitioner as BT Assistant (Science) in the 5th respondent school since 02.11.2011 onwards with salary and other attendant benefits without insisting pass in Teacher Eligibility Test.

For petitioner
For RR - 1 to 4

... Mr.E.V.N.Siva
... Mr.M.Murugan
Government Advocate

**O R D E R**

This writ petition has been filed for the issuance of a writ of mandamus, directing the fourth respondent to approve forthwith the appointment of the petitioner as BT Assistant (Science) in the fifth respondent school with effect from 02.11.2011 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 Government Advocate, who takes notice for the respondents. By consent, the writ petition itself is taken up for final disposal at the stage of admission.

3. The fifth respondent school is a private aided minority educational institution. One post of BT Assistant (science) in the fifth respondent school fell vacant on 31.05.2011 due to retirement of one A. Mercy Leela Bai. In that vacancy, the fifth respondent school appointed the petitioner as BT Assistant (science) and till date she continues to work in the school.

4. The fifth respondent school submitted a proposal to the fourth respondent requesting to approve the appointment of the petitioner as BT Assistant (Science) from 02.11.2011 and disburse grant-in-aid towards her salary. But the fourth respondent returned the proposal seeking pass in TET and No Objection Certificate from the CEO. Despite, the fifth respondent school resubmitted the proposal to the fourth respondent, the same was not considered so far. Hence, 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 endeavor 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.

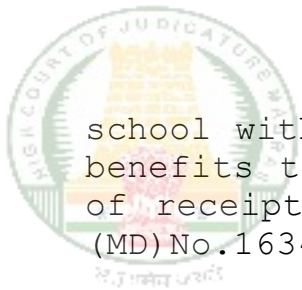
6.1. With the view to improve the quality of education and to provide quality education to children, Section 23 of the RTE Act makes it mandatory for a person, who seeks appointment in the schools covered under RTE Act to possess minimum qualification as laid down by the Academic Authority. As per Section 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, it is clear that this writ petition has to be allowed in view of the legal position enunciated in W.A.(MD) No.213 and 572 of 2016.

<https://hcservices.ecourts.gov.in/hcservices/> Accordingly, this writ petition is allowed and the fourth respondent is directed to approve the appointment of the petitioner as BT Assistant (Science) in the fifth respondent



school with effect from 02.11.2011 with salary and other attendant benefits to till date within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, WMP (MD) No.16349 of 2016 is closed.

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/True copy/

Sd/-

Assistant Registrar(AE)

Sub Assistant Registrar

To

- 1.The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St.Geroge, 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 M/S E.V.N.Siva Advocate, SR-78494
+1cc to Special Government Pleader, SR-74790

AAM/7c/4p/12.01.2017

W.P(MD) No.22861 of 2016
30.11.2016