



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2016

CORAM

THE HON'BLE Dr.JUSTICE S.VIMALA

W.P(MD) No.23334 of 2016

D.Gunaseeli Devasutha

... Petitioner

-vs-

- 1.The Government of Tamil Nadu,
through its Secretary,
School Education Department,
Secretariat, St.Geroge, Chennai - 600 009.
- 2.The Director of elementary School Education,
Directorate of Elementary School Education,
College road, Chennai - 600 006.
- 3.The District Elementary Education Officer,
District Education Office,
Thoothukudi - 628 002.
- 4.The Assistant Elementary Education Officer,
Assistant Elementary Education Office,
Vilathikulam, Thoothukudi District - 628 907.
- 5.The Correspondent.
T.N.D.T.A.Primary and Middle Schools,
Kulathur,
Thoothukudi District - 628 903. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of impugned order of the 3rd respondent in Na.Ka.No.3898/A3/2012 dated 1.4.2013 and quash the same and to direct the respondents to approve the appointment of the petitioner from 23.09.2011 and to pay the salary in the light of the judgement of the Division Bench.

For petitioner

... Mr.B.Rooban

For RR - 1 to 4

... Mr.T.S.Mohammed Mohideen

Additional Government Pleader

O R D E R

<https://hcservices.ecourts.gov.in/hcservices> This petition has been filed, seeking to quash the order of the third respondent dated 01.04.2013 passed in



Na.Ka.No.3898/A3/2012, vide which, the third respondent has returned the proposal stating that the petitioner has not passed TET. The petitioner has also sought a direction to the respondents to approve the appointment of the petitioner from 23.09.2011 and to pay the salary in the light of the judgement of the Division Bench.

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

3. The petitioner has been appointed as Graduate Teacher (History) with effect from 23.09.2011 in the fifth respondent school, which is a Minority Educational Institution. The fifth respondent herein forwarded the proposal for approval of appointment on 10.10.2012. The third respondent has passed the impugned order, denying approval of appointment of the petitioner for want of pass in TET. Challenging the same, this Writ Petition has been filed.

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 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.

6. 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 <https://hds.ces.hcourtsgov.in/hoselides/> 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.



6.1. 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.

6.2. 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 the impugned order is liable to be quashed in view of the legal position enunciated in W.A.(MD) No.213 and 572 of 2016.

8. Accordingly, this writ petition is allowed and the impugned order dated 01.04.2013 passed by the third respondent is set aside and the third respondent is directed to approve the appointment of the petitioner as Graduate Teacher in the fifth respondent school with effect from 23.09.2011 and to pay salary in the light of the Judgment of the Hon'ble Division Bench within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, WMP(MD) Nos.16762 & 16763 of 2016 are closed.

Sd/-
Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar



To

1.The Secretary to Government of Tamil Nadu,
School Education Department,
Secretariat, St.Geroge, Chennai - 600 009.

2.The Director of elementary School Education,
College road, Chennai - 600 006.

3.The District Elementary Education Officer,
District Education Office,
Thoothukudi - 628 002.

4.The Assistant Elementary Educational Officer,
Assistant Elementary Education Office,
Vilathikulam, Thoothukudi District - 628 907.

+One cc to The Special Government Pleader, SR.No.79483

+One cc to Mr.B.Rooban, Advocate, SR.No.78718

mj

RL/7C/4P/SKN/MM/11.1.2017

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