

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 01.09.2016****CORAM:****THE HONOURABLE MR.JUSTICE T.RAJA****W.P. (MD) No.12915 of 2013****and****M.P. (MD) .Nos.1 and 2 of 2013****WEB COPY**

The Correspondent,
R.C.Higher Secondary School,
Konamkadu,
Kanyakumari District -629 803
Vs.

... Petitioner

1. The State of Tamil Nadu
represented 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,
Nagercoil,
Kanyakumari District.

4. The District Educational Officer,
Thuuckalay, Kanyakumari District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the fourth respondent District Educational Officer in O.Mu.No.5017/A3/12 dated 26.02.2013, quash the same and further direct the fourth respondent District Educational Officer to approve forthwith the appointment of A.Reka as BT Assistant in English in the petitioner School with effect from the date of her appointment on 01.02.2012 with all attendant benefits including the arrears of salary and allowance.

For Petitioner

: Mr.K.Ragathees Kumar

For Respondents

: Mr.V.R.Shanmuganathan

Special Govt. Pleader

**ORDER**

The petitioner herein/Correspondent of R.C.Higher Secondary School, Konamkadu, Kanyakumari District, challenges the impugned order passed by the District Educational Officer, Thuckalay, Kanyakumari District, refusing to grant sanction of approval for appointment of A.Reka as B.T Assistant.

2. Mr.V.R.Shanmuganathan, learned Special Government Pleader takes notice on behalf of the respondents.

3. The petitioner School viz., R.C.Higher Secondary School, Konamkadu, Kanyakumari District is a recognised and aided Minority Educational Institution owned and administered by the Roman Catholic Diocese of Kottar, Kanyakumari District. The school is one among the 109 recognised educational institutions owned and administered by the Diocese in Kanyakumari District. The Diocese is a registered Society and a recognised religious minority. The school is now offering education from standards I to XII. Out of which, standards I to VIII are aided by the Government and standards IX and XII are self financed. The total strength insofar as High school sections are concerned, is 138. The school is giving the best general and secular education to the children of the surrounding areas and education is given almost free of charges. While so, one post of B.T Assistant (English) fell vacant in the petitioner school on 01.02.2012 due to the transfer of then incumbent J.Fabi to one another school under the same Diocese on 01.02.2012 f.n. In that vacancy, the petitioner School appointed one A.Reka as B.T.Assistant in English w.e.f. 01.02.2012. Subsequently, the petitioner school sent a proposal to the 4th respondent, to approve her appointment as B.T Assistant (English) and disburse grant-in-aid towards her salary, but, the fourth respondent, vide impugned order, dated 26.02.2013, returned that proposal stating to produce the certificate of Teachers Eligibility Test (TET). Challenging the same, the petitioner is before this Court.

4. While considering a similar issue, a Division Bench at the Principal Seat of this Court, in a batch of writ petitions in W.P.Nos.11983 of 2016, etc., and W.A.(MD).No.921 of 2013, etc. vide order dated 24.08.2016, has held that G.O.Ms.No.181, dated 15.11.2011, cannot be made applicable to Minority Educational Institutions. It is pertinent to extract Paragraph Nos.59 to 61 and 63 of the said Judgment, which runs as follows:

"59. Insofar as minority institutions are concerned, the contention of the learned senior counsel appearing for the minority Schools is that when Tamil Nadu Recognised Private Schools



(Regulation) Act, 1973 received the assent of the President of India and it is still in force, it cannot be supplanted by an Executive Order, namely by G.O.Ms.No.181, dated 15.11.2011. Further, the Apex Court has clearly held in **Pramati Educational & Cultural Trust** that RTE Act, 2009 is not applicable to the minority institutions. Therefore, we have no hesitation to hold that right conferred under Article 30(1) of the Constitution cannot be abrogated. Consequently, G.O.Ms.No.181 dated 15.11.2011, which was issued pursuant to the directions of NCTE, cannot be made applicable to the minority institutions.

60. In the light of the above, we are of the view that the Government cannot insist upon the minority institution, both aided or unaided, to abide by any Regulation framed under the provisions of the RTE Act. Therefore, we hold that G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011, issued by the Government of Tamil Nadu, is not applicable to the minority institutions. Similarly, G.O.Ms.No.76, dated 18.03.2015, issued by the Government of Puducherry, is also not applicable to the minority institutions.

61. Though the intention of the Government is that there should not be any discrimination among the Teachers working in non-minority Schools and minority Schools with respect to qualification and that there should be uniformity in the teaching imparted to the children, in view of the decision of the Apex Court in **Pramati Educational & Cultural Trust**, the Government cannot take shelter under the guise of discrimination to impose restrictions on minority institutions.

63. In the result, the writ petitions are allowed and the writ appeals are dismissed with a direction to the Government to release the salary of the Teachers and also to pay the arrears of salary within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected M.Ps are closed."

5. Even though the petitioner has not passed the Teachers Eligibility Test, in view of the above judgment holding that G.O.Ms.No.181, dated 15.11.2011, cannot be made applicable to Minority Educational Institutions, the case of the petitioner is allowed. Hence, this Court has no hesitation in allowing the present writ petition. Consequently, the writ



petition is allowed and the impugned order, dated 26.02.2013, passed by the fourth respondent, is set aside. The petitioner is directed to once again send the proposal for approval of her appointment to the fourth respondent within a period of one week from the date of receipt of copy of this order. Thereafter, the fourth respondent/District Educational Officer, Thuckalay, Kanyakumari District, is directed to approve the appointment of A.Reka as B.T Assistant (English) in the petitioner school, within a period of 4 weeks therefrom and also to pay the salary to her from the date of her appointment. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

6. It is also represented that against the order passed by a Division Bench of this Court reported in 2015 (2) CWC 195 (S.Vincent Vs State of Tamil Nadu and two others) in W.P.(MD). Nos.2677 and 4558 of 2014, dated 25.09.2014, challenging its validity and correctness, a Special Leave Petition is filed and the same is pending. Hence, liberty is granted to the Education Department to pass orders, subject to the result of the SLP filed against judgment of the Division Bench passed in W.P.(MD). Nos.2677 and 4558 of 2014, dated 25.09.2014, holding the validity of G.O.Ms.No.25, dated 06.02.2014. If for any reason, the order passed by the Honourable Division Bench is reversed, the question of approval can be taken up and an order may be passed. Till then, salary of A.Reka shall be released.

Sd/-

Assistant Registrar (P&A)

/True copy/

Sub Assistant Registrar

To

1. The 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,
Nagercoil, Kanyakumari District.
4. The District Educational Officer,
Thuckalay, Kanyakumari District.

+1 CC to Mr.T.CIBI CHAKRABORTHY, Advocate, SR No.49532

+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No.50011

W.P. (MD) No.12915 of 2013

01.09.2016