



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P. (MD) No.13395 of 2013

WEB COPY

C.Sangeetha

... Petitioner

Vs.

- 1.The Secretary to Government
School Education Department,
Fort St. George, Chennai.
- 2.The Director of School Education,
College Road, DPI Campus, Chennai.
- 3.The Chief Educational Officer,
Tirunelveli, Tirunelveli District
- 4.The District Educational Officer,
Cheranmahadevi, at Tirunelveli
Tirunelveli District.
- 5.The Correspondent,
SSV Higher Secondary School
Mathapattanam, Koviloothu
Kadayam Via, Tirunelveli District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the 4th respondent in O.Mu.No.1808/A4/2013 dated 17.07.2013 and quash the same and consequently direct the respondents 3 and 4 herein to approve the petitioner's appointment as Tamil Pandit in the 5th respondent's School w.e.f. 04.10.2010 with all attendant benefits including the arrears of salary and allowance.

For Petitioner	: Mr.T.Ponramkumar
For Respondents	: Mr.V.Muruganantham for R1 to R4 Additional Government Pleader

ORDER

The prayer in the writ petition is for a Certiorarified Mandamus calling for the records relating to the impugned order of the 4th respondent in O.Mu.No.1808/A4/2013 dated 17.07.2013 and quash the same and consequently direct the respondents 3 and 4 herein to approve the petitioner's appointment as Tamil Pandit in the 5th respondent's School with effect from 04.10.2010 with all attendant benefits including the arrears of salary and allowance.



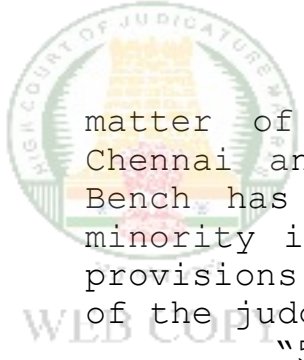
2. The facts in nutshell, which leads to the filing of the present writ petition, is that the petitioner was appointed as Tamil Pandit at the 5th respondent school on 04.10.2010. The said post is a sanctioned post, for which the 5th respondent school is entitled to get salary from the official respondents and to disburse the same to the person, who occupies the said post. The petitioner is fully qualified to hold the post of Tamil Pandit.

3. When the proposal for approval of the petitioner's appointment was sent to the 4th respondent on 29.06.2011, the same was considered by the 4th respondent and ultimately by the impugned order, dated 17.07.2013, the 4th respondent has rejected the claim of approval of the appointment of the petitioner. The one and only reason stated by the 4th respondent for such refusal in the impugned order is that the petitioner, since is not qualified for the Teachers Eligibility Test and no appointment can be made without such qualification. Thus, the appointment of the petitioner made at the 5th respondent School on 04.10.2010 as Tamil Pandit cannot be considered for approval and accordingly, it was rejected. Challenging the said rejection, the petitioner is before this Court with this writ petition.

4. Heard the learned counsel for the petitioner and the learned Additional Government pleader for the respondents.

5. The learned counsel for the petitioner would contend that at that time, when the petitioner was appointed, there is no Government order governing the element of compulsion to have the TET qualification for appointment to the post of Tamil Pandit/Teacher. Since the 5th respondent School is a minority Institution, it has very right and power to make an appointment in the sanctioned post from among the eligible candidates. Therefore, the appointment made to the petitioner for the post of Tamil Pandit at the 5th respondent School is based on the fulfillment of the required qualification by the petitioner and therefore, the same should not have been rejected by the 4th respondent.

6. The learned counsel for the petitioner would also contend that the only reason cited by the 4th respondent as stated above is that the petitioner not qualified in TET examination. The learned counsel would further contend that in the subsequent development, Government Order, namely, G.O.Ms.No.181 School Education (C2) Department dated 15.11.2011 requiring the qualification of the TET as one of the basic minimum eligible qualification for consideration of appointment as Teacher was put under challenge in a batch of writ petitions. Ultimately, the service courts in the petitions as well as the intra Court appeals heard by a Division Bench of this Court (Principal Seat) and vide common order dated 24.08.2016, in W.A.No.213/2016 etc batch, in the



matter of Secretary to Government, Government of Tamil Nadu, Chennai and others v. S.Jeyalakshmi and others, the Division Bench has declared that the Government cannot insist upon the minority institution to abide by any regulation framed under the provisions of the Right to Information Act. The relevant portion of the judgment is reproduced hereunder for better appreciation:

"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 the 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 Tamilnadu, 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."

7. In view of the law having been declared by this Court in the batch of writ petitions, as stated supra, the only reason cited by the 4th respondent as reflected in the impugned order would no longer be a valid reason and for the same, the approval of the petitioner cannot be withheld.

8. The learned counsel for the petitioner would also contend that after the impugned order, in fact, the petitioner appeared in the TET examination and passed the same on 19.08.2013, by which, even that qualification, the petitioner has acquired, though the same is unwarranted for the petitioner being appointed as a Teacher of the 5th respondent School, which is a minority institution.

9. The learned counsel for the petitioner would submit that the petitioner's qualification to TET acquired by the petitioner, the 4th respondent also has sanctioned the salary of the petitioner from the date of passing of TET, i.e., from 19.08.2013. Therefore,



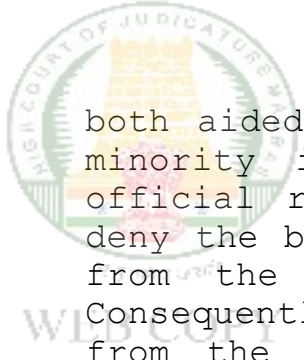
according to him, the only grievance, as of now, for the petitioner appears to be that the salary for the remaining period, ie., from the date of appointment on 04.10.2010 till 18.08.2013 has to be paid by the respondents.

10. On the other hand, the learned Special Government Pleader for the official respondents would contend that no doubt, the applicability of the Government orders pursuant to the Right to Information Act, especially, G.O.No.181 School Education Department dated 15.11.2011 has been clarified by the said Division Bench judgment of this Court, as the same would not be made applicable, insofar as the aided and unaided minority institution are concerned. However, the learned Special Government Pleader would further contend that in the said judgment, it is also stated at Paragraph Nos.61 and 62 that even in the minority institution, for whom the G.O., and other regulations would not be made applicable may also consider, conducting a refresher course and also some interactive sessions to all the Teachers working with them in order to ensure and improve the quality of Teachers. Therefore, sofar as that portion of the Division Bench order is concerned, in order to attain the uniformity in qualification of Teachers, whether minority or non minority institution, as the same would have a direct impact on education, there can be no compromise on the quality of Teachers.

11. Therefore, there is every justification on the part of the respondents to insist upon the TET or atleast the further equipment of additional knowledge by way of conducting refresher course. In the absence of such course of action adopted by the 5th respondent School, the petitioner cannot as a matter of right would be entitled for the salary for the said period between 04.10.2010 till 18.08.2013, he contended.

12. This Court considered the rival submissions made by the learned counsel on either side.

13. The uncontroverted factors, in this writ petition, are that the petitioner was appointed only in a sanctioned post of Tamil Pandit on 04.10.2010. The petitioner had subsequently completed the TET and qualified successfully on 19.08.2013. The 4th respondent also has sanctioned salary for the petitioner from the date of acquiring such TET qualification ie., from 19.08.2013. The only controversial issue is that whether the petitioner is entitled to get salary between 04.10.2010 and 18.08.2013. This controversy, as has been rightly put it by the learned counsel for the petitioner, is no more res integra atleast for the time now, where the categorical findings of the Division Bench of this Court is in full force. According to the said order of this Court, any ~~order passed by the court~~ framed under the provisions of the Right to Information Act includes G.O.Ms.No.181 School Education Department dated 15.11.2011 will have no application on minority institution



both aided and unaided. Since the 5th respondent Institution is a minority institution and the said factor is admitted by the official respondents, certainly, the official respondents cannot deny the benefit of approval of the appointment of the petitioner from the date of appointment itself, ie., from 04.10.2010. Consequently the petitioner would also entitle to claim salary from the respondents from 04.10.2010. Therefore, the salary, which has not been paid or withheld by the official respondents between 04.10.2010 and 18.08.2013 is liable to be released to the petitioner forthwith.

14. In view of the aforesaid, this writ petition is allowed and the impugned order is quashed and the petitioner shall be entitled to get the approval of appointment as Tamil Pandit. Consequently she would be entitled to salary from 04.10.2010 till 18.08.2013 for the post of Tamil Pandit. Since the petitioner has already been sanctioned the salary from 19.08.2013 and the same is continuously paid, there is no further issue to be resolved. The needful, as directed above, shall be done by the official respondents within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar()

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Secretary to Government
School Education Department,
Fort St. George, Chennai.
- 2.The Director of School Education,
College Road, DPI Campus, Chennai.
- 3.The Chief Educational Officer,
Tirunelveli, Tirunelveli District
- 4.The District Educational Officer,
Cheranmahadevi, at Tirunelveli

+1 cc to MR.T.Pon Ramkumar,ADVOCATE, SR NO:79381

+1cc to M/S.THE SPECIAL GOVERNMENT PLEADER, SR NO:79844

W.P. (MD) No.13395 of 2013 and
M.P.Nos.1 and 2 of 2013
05.12.2016