

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.4208/2017 & WMP.Nos.4362 to 4364/2017

Sr.A.Mariya Packiyam

... Petitioner

Vs

- 1.The Additional Chief Secretary
Government of Tamil Nadu
The Department of School Education [C2]
Fort St George, Madras 600 009.
 - 2.The Director of Elementary Education,
DPI Campus, College Road,
Chennai 600 006.
 - 3.The Chief Educational Officer
O/o.The Chief Educational Officer
Coimbatore.
 - 4.The District Elementary Educational Officer
O/o.The District Elementary Educational Officer
Coimbatore 641 001.
 - 5.The Correspondent
Presentation Convent Girls' Higher Secondary
School, Coimbatore 641001.
- ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of ceritorarified mandamus calling for the records pertaining to the impugned G.O.Ms.No.181, School Education [C2] Department, dated 15.11.2011 on the file of the 1st respondent and the consequential proceedings dated 06.082016 in A.Di.Mu.No.4397/A2/16 on the file of the 4th respondent and quash the same in respect of the petitioner based on the Division Bench orders dated 24.08.2016 and made in WA.No.213/2016 and made in WA[MD] No.1019/2013 dated 24.11.2016, directing the

respondents to approve the appointment of the petitioner Sr.A.Mariya Packiyam, working as B.T. Assistant [Tamil] in Presentation Convent Girls Higher Secondary School, Coimbatore 641001, w.e.f. 01.06.2016 with all service benefits.

For Petitioner: Dr.Father Xavier Arul Raj, Senior
Counsel assisted by
Ms.A.Arul Mary

For R1 to R5 : Mr.V.Anandamoorthy, AGP

ORDER

By consent, the writ petition is taken up for final disposal. Mr.V.Anandamoorthy, learned Additional Government Pleader [Edn] accepts notice on behalf of the respondents 1 to 5.

2 The petitioner would aver that she was appointed as a B.T.Assistant [Tamil] in the services of the 5th respondent / School with effect from 01.06.2016 in the vacancy caused on account of the retirement of one Mrs.M.Palaniammal on 31.05.2016 and it is also a regular sanctioned post and receiving Grant-in-Aid from the Government. The petitioner would further aver that the said school was established and being administered by the Catholic Religious Congregation of the "The Congregation of the Franciscan Sisters of the Presentation of the Blessed Virgin Mary, Coimbatore" and for the purpose of legal perpetuity, it is a registered Society bearing Registration S.No.86/1972 and it has been established and is administering a number of educational institutions and all of them are minority administering a number of educational institutions and its rights are guaranteed under Article 30[1] of the Constitution of India. The 5th respondent / School submitted a proposal to the 4th respondent for approval of the appointment of the petitioner with effect from 01.06.2016, on 12.07.2016 and however, the 4th respondent, vide impugned proceedings dated 06.08.2016, rejected the said proposal, stating that the proposal will be considered only after getting appropriate orders from the Government and according to the petitioner, she is working without salary from 01.06.2016. It is the claim of the petitioner that she is also subscribing the Register in the Master Attendance Register maintained in the 5th respondent / School with effect from 01.06.2016 till this date and the primordial reason for rejection appears to be non-passing of the Teacher Eligibility Test [TET] by the petitioner and challenging the legality of the same, the petitioner came forward to file the present writ petition.

3 Dr. Father Xavier Arul Raj, learned Senior Counsel assisted by Ms.A.Arul Mary, learned counsel on record, would submit that the issue relating to the passing of TET in respect to teachers employed in minority institution came to be considered before the Division Bench of this Court in a batch of writ appeals and by a common judgment dated 24.08.2016 in W.A.No.213 and 572 of 2016 batch etc. reported in 2016(7) MLJ 155 (Secretary to Government, Government of Tamil Nadu, Education Department & others vs. S.Jeyalakshmi and another), it has been held that the Government cannot insist upon the minority institution both aided or unaided to abide by any regulation framed under the provisions of Right of Children to Free and Compulsory Education Act, 2009 and as a consequence, it was held that G.O.Ms.No.181, School Education (C2) Department dated 15.11.2011 is not applicable to the minority institutions. It is the submissions of the learned senior counsel that the above judgment was also followed by the Madurai Bench of this Court in the judgment dated 24.11.2016 made in W.A.(MD) No.1019 of 2013 etc. batch and as such, there cannot be any impediment to issue positive direction directing to quash the G.O. as well as the consequential proceedings and pass further orders to approve the appointment of the petitioner.

4 The sum and substance of the submission made by the learned senior counsel is that in the light of the above cited common judgment passed by the Madurai Bench of this Court, the writ petition has to be allowed with the consequential direction directing the concerned authority to approve the appointment of the petitioner.

5 Per contra, Mr.V.Anandamoorthy, learned Additional Government Pleader (Edn), on instructions, would submit that a decision has been taken to challenge the order reported in 2016 (7) MLJ 155 (Secretary to Government, Government of Tamil Nadu, Education Department & others vs. S.Jeyalakshmi and another) and prayed for time to file counter.

6 The Court has considered the rival submissions and also perused the materials available on record.

7 The Division Bench, while deciding the batch cases in W.A.No.213 and 572 of 2016 etc. batch reported in 2016(7) MLJ 155 (Secretary to Government, Government of Tamil Nadu, Education Department & others vs. S.Jeyalakshmi and another) has followed the judgment rendered by the Honourable Supreme Court reported in 2014 (4) MLJ 486 (SC) (Pramati Educational and Cultural Trust v. Union of India) and following the said judgment, the Division Bench of the Madurai Bench of this Court

in W.A.(MD).No.1019/2013 etc. batch, has also quashed the impugned order passed in the writ petition and dismissed the writ appeals. In the light of the ratio laid down by the Honourable Supreme Court of India in 2014 (4) MLJ 486 (SC) (Pramati Educational and Cultural Trust v. Union of India) cited supra coupled with the decision reported in 2016(7) MLJ 155 (Secretary to Government, Government of Tamil Nadu, Education Department & others vs. S.Jeyalakshmi and another), this Court is of the considering view that the writ petition is to be allowed.

8 In the result, the writ petition is allowed and G.O.(Ms)No. 181, School Education (C2) Department, dated 15.11.2011 passed by the 1st respondent is quashed insofar as the minority institutions are concerned and the consequential proceedings dated 06.08.2016 made in A.Di.Mu.No.4397/A2/16 passed by the 4th respondent in respect of the petitioner is also quashed and the 4th respondent is directed to approve the appointment of the writ petitioner, subject to the fulfilment of all other norms and shall also release the salary of the petitioner as well as the arrears amount within a period of two months from the date of receipt of a copy of this order. It is also made clear that in the light of the observation made in paragraph No.62 of the decision reported in 2016(7) MLJ 155 (Secretary to Government, Government of Tamil Nadu, Education Department & others vs. S.Jeyalakshmi and another), the 5th respondent / School, taking into consideration the interest and welfare of the students, shall consider to conduct refresher course and also interactive sessions during the annual vacation and other holidays in order to ensure and improve the quality of teachers. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional Chief Secretary
Government of Tamil Nadu
The Department of School Education [C2]
Fort St George, Madras 600 009.

2.The Director of Elementary Education,
DPI Campus, College Road,
Chennai 600 006.

3.The Chief Educational Officer
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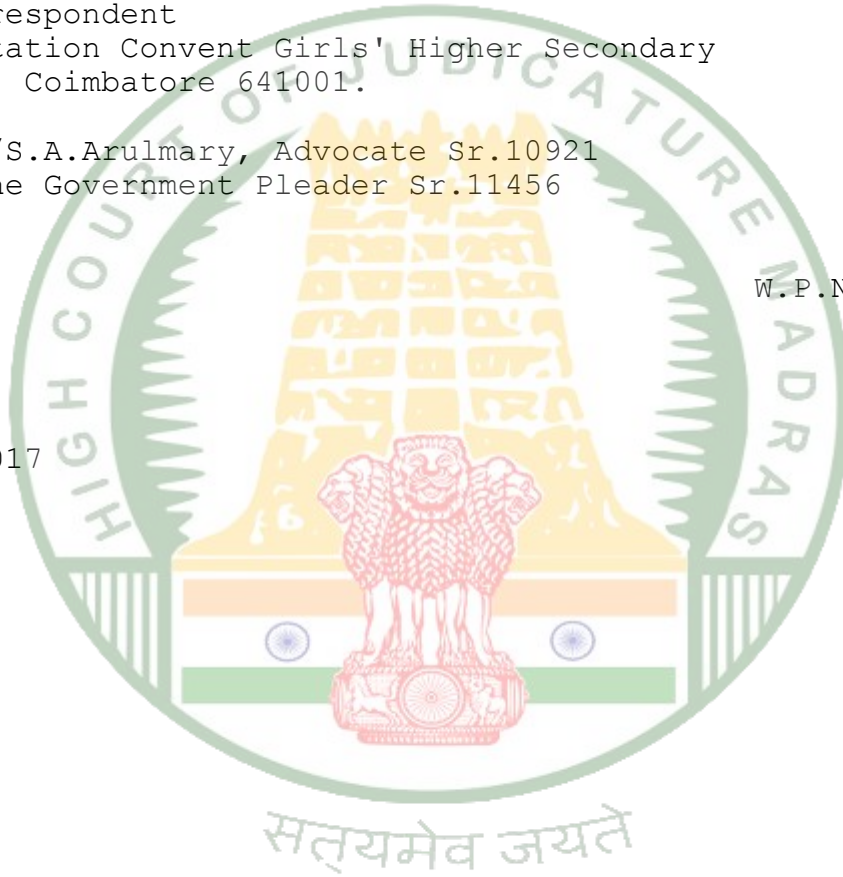
4.The District Elementary Educational Officer
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5.The Correspondent
Presentation Convent Girls' Higher Secondary
School, Coimbatore 641001.

+1cc to M/S.A.Arulmary, Advocate Sr.10921
+1cc to the Government Pleader Sr.11456

W.P.No.4208/2017

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