

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.4209/2017 & WMP.Nos.4365 to 4367/2017

Sr.A.Joseph Nirmala

... 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 District Elementary Educational Officer
O/o.The District Elementary Educational Officer
Krishnagiri 635 001.
 - 4.The Addl.Asst.Elementary Educational Officer
O/o.The Addl.Asst.Elementary Educational Officer
Kelamangalam-635113, Krishnagiri District.
 - 5.The Correspondent
St.Joseph's Primary School, Denkanikottai
Krishnagiri 635107.
- ... 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 28.03.2016 in O.Mu.No.936/A6/16 on the file of the 3rd 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.Joseph Nirmala, working as Secondary Grade Assistant in St.Joseph's Primary School, Denkanikottai Taluk, Krishnagiri 635107 w.e.f. 02.01.2001 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[Edn]

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 Secondary Grade Assistant in the services of the 5th respondent / School with effect from 02.01.2016 in the vacancy caused on account of the transfer and promotion of one Sr.S.Agnes Mary, on 04.06.2015 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 Society of the Congregation of Mother of Sorrows, Servants of Mary" and for the purpose of legal perpetuity, it is a registered Society bearing Registration S.No.4/1954 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 for the welfare of the Catholic Christian Minority Institutions and its rights are guaranteed under Article 30[1] of the Constitution of India. The 5th respondent / School submitted a proposal to the 3rd respondent for approval of the appointment of the petitioner with effect from 02.01.2016, on 15.03.2016 and however, the 3rd respondent, vide impugned proceedings dated 28.03.2016, had returned the proposal stating among other things, as per the proceedings of the Director of Elementary Education dated 12.04.2012, the appointment of teachers can be made in Aided Schools only those who have completed the Teacher Eligibility Test [TET] and as a consequence, the appointment of the petitioner is not approved and she is working from 02.01.2016 without any salary. 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 02.01.2016 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 28.03.2016 made in O.Mu.No.936/A6/16 passed by the 3rd respondent in respect of the petitioner is also quashed and the 3rd 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

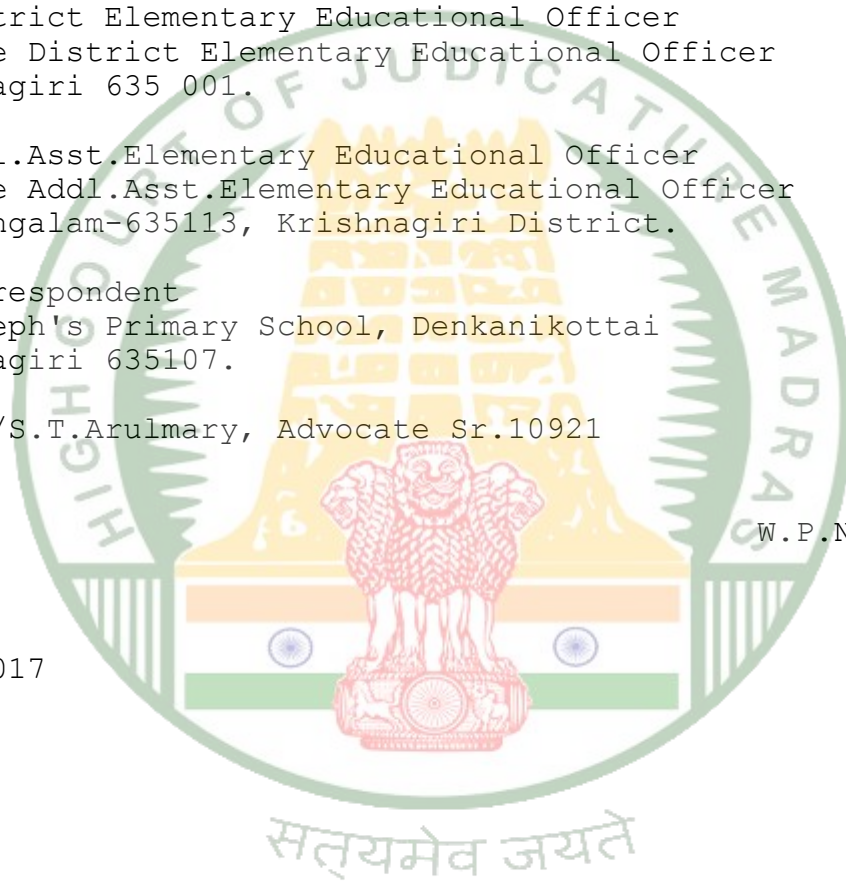
To

- 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 District Elementary Educational Officer
O/o.The District Elementary Educational Officer
Krishnagiri 635 001.
- 4.The Addl.Asst.Elementary Educational Officer
O/o.The Addl.Asst.Elementary Educational Officer
Kelamangalam-635113, Krishnagiri District.
- 5.The Correspondent
St.Joseph's Primary School, Denkanikottai
Krishnagiri 635107.

+1cc to M/S.T.Arulmary, Advocate Sr.10921

W.P.No.4209/2017

rk[col]
srg 7/3/2017



WEB COPY