

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.7426 of 2017

Mrs.B.Shakila Banu

.. Petitioner

-vs-

1. The Secretary to Government
School Education Department
Government of Tamil Nadu
Fort St.George
Chennai 600 009
2. The Director of School Education
College Road, DPI Campus
Chennai 600 006
3. Chief Educational Officer
Panagal Maligai
Saidapet
Chennai 600 015
4. District Educational Officer, Chennai East
Jaigopal Garodia Government Higher
Secondary School
Choolaimedu, Chennai 600 094
5. The Correspondent
Hajee Essa Abba Sait's Higher
Secondary School
No.3, Anderson Street
Chennai 600 001

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the fourth respondent to grant approval of the petitioner's appointment as B.T.Assistant (English) in the fifth respondent's minority aided school and to pay the entire arrears of salary, increment, incentives and other consequential monetary benefits without insisting the petitioner to write TET exam.

For Petitioner :: Mr.V.Raghupathi

For Respondents:: Mr.P.Sanjay Gandhi
Additional Government Pleader
for R1 to 4

ORDER

The petitioner, having the B.A.,B.Ed., qualification, was appointed as B.T.Assistant (English) in the fifth respondent religious minority school on 20.6.2016 in the place of Tmt.Mazharunnisa, who was upgraded to B.T.Assistant on 1.6.2004. Subsequently, the fifth respondent school has sent the proposal on 9.8.2016 to the fourth respondent along with the xerox copies of the certificates to prove that the petitioner had possessed all the requisite qualifications. But till date the fourth respondent has not granted the approval of her appointment. Hence the petitioner is before this Court.

2. Mr.P.Sanjay Gandhi, learned Additional Government Pleader takes notice on behalf of the respondents 1 to 4.

3. The issue is squarely covered by the order passed by me in W.P.Nos.5631 to 5634 of 2015 dated 9.2.2016 (D.Solomon Prabhakar, etc., etc., v. The Director of School Education, Chennai and 3 others), wherein I have held that the minority educational institutions are entitled to fill up the vacancies in the sanctioned post without taking prior approval from the educational authorities. It is pertinent to extract the relevant paragraphs of the said order as follows:-

"5. It is no doubt true that the fourth respondent School is a minority institution. It is also an admitted fact that subsequent to the petitioners' appointment, the management of the fourth respondent School has forwarded a proposal to the third respondent for approval. However, the third respondent, by way of passing the impugned orders, rejected their respective appointment on the ground that they have not cleared the TET examination. In my view, such reasoning given by the third respondent cannot be sustained in view of the ratio laid down by the Hon'ble Apex Court in Pramati Educational & Cultural Trust's case (cited supra). For better appreciation, paragraph 47 thereof is extracted below:

"47. In the result, we hold that the Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution and the Constitution (Eighty-Sixth Amendment) Act, 2002 inserting Article 21A of the Constitution do not alter the basic structure or framework of the Constitution and are constitutionally valid. We also hold that the 2009 Act is not ultra vires Article 19(1) (g) of the Constitution. We, however, hold that the 2009 Act insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution. Accordingly, Writ Petition (C) No.1081 of 2013 filed on behalf of Muslim Minority Schools Managers' Association is allowed and Writ Petition (C) Nos.416 of 2012,152 of 2013, 60 of 2014, 95 of 2014, 106 of 2014, 128 of 2014, 144 of 2014, 145 of 2014, 160 of 2014 and 136 of 2014 filed on behalf of non-minority private unaided educational institutions are dismissed. All I.As stand disposed of. The parties, however, shall bear their own costs."

6. From the above said judgment of the Hon'ble Apex Court, it is clear that the Right of Children to Free and Compulsory Education Act, 2009, cannot be applied to the minority institution. Therefore, in the cases on hand, as stated above, since the fourth respondent School is a minority institution, the reasoning given by the third respondent in the impugned order holding that the petitioners have not passed TET examination is contrary to the said judgment of the Hon'ble Apex Court. Thus, the impugned orders passed by the third respondent giving such reasons are set aside. Consequently, a direction is issued to the respondents to approve the respective appointment of the

petitioners in the fourth respondent School from the date of their initial appointment and confer all the consequential benefits thereof. The respondents are directed to complete the said exercise within a period of eight weeks from the date of receipt of a copy of this order."

4. In the light of the above, the proposal sent by the fifth respondent minority educational institution appointing the petitioner in the post of B.T.Assistant (English) on 20.6.2016 with the requisite qualification needs to be considered, as the petitioner was appointed in a sanctioned post. Therefore, the fourth respondent is hereby directed to consider the proposal sent by the fifth respondent School and pass orders granting approval of the appointment of the petitioner from the date of her appointment, within a period eight weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. Consequently, W.M.P.No.8081 of 2017 is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

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4. The District Educational Officer,
Chennai East
Jaigopal Garodia Government Higher
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Choolaimedu
Chennai 600 094

+1cc to Mr.V. Raghupathi, Advocate, S.R.No.18952
+1cc to the Government Pleader, S.R.No.19472

CA(CO)
EU 12.4.17

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