

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.30667 & 30668 of 2017

Sr.A.Kulandai Mary .. Petitioner in W.P.No.30667 of 2017
Sr.I.Arockia Mary .. Petitioner in W.P.No.30668 of 2017

-VS-

1. The Government of Tamil Nadu
rep.by the Additional Chief Secretary
Department of School Education (C2)
Fort St.George
Chennai 600 009
2. The Director of Elementary Education
DPI Campus, College Road
Chennai 600 006
3. The District Elementary Educational Officer
Office of the District Elementary Educational Officer
Salem
4. Assistant Elementary Educational Officer
Office of the Assistant Elementary Educational Officer
Yercaud 636 602
5. The Correspondent
Nazreth Girls Primary School
33/2, Church Road
Yercaud 636 601
Salem District .. Respondents in both the writ petitions

Petitions under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified 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 first respondent and the consequential proceedings dated 06.04.2017 in A.Thi.Mu.No.1398/AA2/2017 & A.Thi.Mu.No.1399/AA2/2017 on the file of the third respondent and quash the same in respect of the petitioners based on the Division Bench orders dated 24.08.2016 and made in W.A.No.213 of 2016, directing the respondents to approve the appointment of the petitioners Sr.A.Kulandai Mary and Sr.I.Arockia Mary working as Secondary Grade Assistants in Nazreth Girls Primary School,

33/2, Church Road, Yercaud 636 601, Salem District w.e.f. 02.06.2015 & 02.07.2013, respectively with all service benefits.

For Petitioners :: Ms.A.Arul Mary

For Respondents :: Mr.R.A.S.Senthilvel
Additional Government Pleader
for R1 to 4

ORDER

These writ petitions have been filed by Sr.A.Kulandai Mary and Sr.I.Arockia Mary, who are working as Secondary Grade Assistants in Nazreth Girls Primary School, 33/2, Church Road, Yercaud 636 601, Salem District, the fifth respondent herein, which is a minority educational institution, with effect from 02.06.2015 & 02.07.2013 respectively, challenging the impugned orders of refusal to approve their appointments.

2. Learned counsel for the petitioners submitted that the petitioners were appointed as Secondary Grade Assistants in the sanctioned vacancies, occurred due to the transfer of Sr.M.Anthoniammal on 1.6.2015 and the voluntary retirement of Mrs.K.Infant Therese on 1.7.2013, respectively. Since the appointments of the petitioners were duly approved by the School Committee, proposals were sent to the respondents 1 to 4 on 16.6.2015 & 1.8.2013 respectively seeking orders of approval of their appointments. In the proposals, it has been made clear that as per the staff fixation order passed by the District Elementary Educational Officer, Salem, the third respondent herein, when the vacancies arose in the sanctioned posts, the petitioners were appointed, for which the orders of approval were sought for. But the third respondent has rejected the said proposals holding that the petitioners have not cleared the Teacher Eligibility Test. Learned counsel for the petitioners further submitted that when the fifth respondent School is a minority educational institution receiving grant-in-aid, the teachers appointed in the fifth respondent school are exempted from passing the Teacher Eligibility Test, as per the decision of the Hon'ble Division Bench of this Court in the judgment in Secretary to Government, Education Department, Chennai and others v. S.Jeyalakshmi and another, 2016 (5) CTC 639 : 2016 (7) MLJ 155.

3. Heard the learned Additional Government Pleader taking notice on behalf of the respondents 1 to 4 also.

4. The issue raised in these writ petitions is no longer res integra, as the Hon'ble Division Bench of this Court in the judgment in Secretary to Government, Education Department, Chennai and others v. S.Jeyalakshmi and another, 2016 (5) CTC

639 : 2016 (7) MLJ 155, while considering the question as to whether the teachers working in minority institutions, both aided and unaided, should pass the Teacher Eligibility Test, has held 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 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 Tamil Nadu, is not applicable to the minority institutions. Similarly, G.O.Ms.No.76 dated 18.3.2015 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.

62. However, keeping in mind the larger interest in which the Government has issued the above G.Os., this Court feels that the minority institutions may also consider conducting a refresher course and also some interactive sessions to all the Teachers during annual vacation, in order to ensure and improve the quality of Teachers.

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. In the light of the above settled legal position that the teachers working in the minority educational institutions are not required to pass the Teacher Eligibility Test, the impugned orders are set aside and the respondents 1 to 4 are directed to approve the appointments of the petitioners in the post of Secondary Grade Assistants in the fifth respondent School with effect from the date of their appointments, in the light of the proposals sent by the fifth respondent, and release the salary including arrears within a period of four weeks from the date of receipt of a copy of this order. The writ petitions are allowed. Consequently, W.M.P.Nos.33577 to 33582 of 2017 are closed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

ss

To

1. The Additional Chief Secretary
Department of School Education
Fort St.George
Chennai 600 009
2. The Director of Elementary Education
DPI Campus, College Road
Chennai 600 006

3. The District Elementary Educational Officer
Office of the District Elementary Educational Officer
Salem
 4. The Assistant Elementary Educational Officer
Office of the Assistant Elementary Educational Officer
Yercaud 636 602
- + 3 cc to Ms.A.Arul Mary Advocate, SR.78
+ 1 cc to The Govt.Pleader, SR.92521

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