

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.10290 of 2015
and M.P.Nos.1 and 2 of 2015

Mrs.S.Roselin

... Petitioner

vs.

1. The Director of School Education,
DPI Complex, College Road,
Chennai-6.
2. The Chief Educational Officer,
Office of the Chief Educational Officer,
Salem-636 001.
3. The District Educational Officer,
Office of the District Educational Officer,
Salem-636 001.
4. The Management, C.S.I. Higher Secondary School,
Attur, Represented by its Correspondent. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the third respondent to approve the appointment of the petitioner herein in the post of Graduate Assistant (B.T. Assistant) for Tamil subject in the fourth respondent school, by considering the proposals made by the fourth respondent school dated 09.07.2012, 14.09.2012, 09.10.2012, 21.03.2013, 28.08.2013 along with relevant papers within the specific time limit fixed by this Court.

For Petitioner : Mr.T.M.Karthikeyan
for M/s.C.Rajasekaran

For Respondents : Mr.P.Sanjai Gandhi,
Additional Government Pleader
for R1 to R3 N.A for R4

O R D E R

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner was appointed to the post of Graduate Assistant (Tamil) in the services of the fourth respondent Minority Aided School on 10.01.2012 due to the vacancy caused on account of retirement of Mrs.J.Rosemary on 31.05.2010, who was working as Tamil Teacher. The fourth respondent has also sent necessary proposal seeking approval of her appointment and the third respondent, vide communication dated 23.08.2013 has returned the proposal on the ground that she has to acquire Teacher Eligibility Test (TET) and hence, the petitioner came forward with the present writ petition seeking approval of her appointment.

3. The learned counsel appearing for the petitioner has drawn the attention of this Court to the judgment rendered by a Division Bench of this Court in Secretary to Government, Government of Tamil Nadu, Education Department, Chennai-9 and others Vs. S.Jeyalakshmi and others [2016 (7) MLJ 155] as well as the judgment dated 24.11.2016 made in W.A.[MD] No.1019/2013 etc., batch, and the order dated 15.12.2016 made in WP.Nos.43302 to 43305/2016 and would submit that as per the above cited Division Bench judgment, a teacher working in Religious Minority Educational Institution is not required to pass TET, as the provisions of the Right to Education Act, 2008, cannot be made applicable to them and prays for appropriate orders.

4. Per contra, Mr.P.Sanjay Gandhi, learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that in order to ensure quality teaching to be imparted to the students, the respondents thought fit to impose a condition to pass Teacher Eligibility Test as a condition precedent for according approval and therefore, prays for dismissal of this writ petition.

5. This Court has considered the rival submissions and also perused the materials placed before it.

6. It is relevant to extract paragraph Nos.59, 60 and 62 of the Division Bench Judgment reported in 2016 [7] MLJ 155 [cited supra]:-

".....

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 and 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 and 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 18.03.2015 issued by the Government of Puducherry, is also not applicable to the 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."

In the considered opinion of the Court, the ratio laid down in the above cited decision is squarely applicable to the facts of this case.

7. In the result, this Writ Petition is disposed of directing the third respondent to consider the request for approval for appointment of the petitioner to the post of B.T. Assistant Tamil submitted by the fourth respondent in the light of the above cited decisions and pass appropriate orders according approval, subject to fulfillment of all other norms and the respondents are directed to release the salary of the petitioner as well as the arrears of salary, if any, within a period of two weeks 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 above cited judgment, the fourth respondent, taking into consideration the interest and welfare of the students, shall also conduct refresher courses and interactive sessions during annual vacations and other holidays in order to ensure and improve the quality of teaching. It is the bounden duty of the

petitioner to improve her quality of education in the larger interest of the student community. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm

To

1. The Director of School Education,
DPI Complex, College Road,
Chennai-6.
2. The Chief Educational Officer,
Office of the Chief Educational Officer,
Salem-636 001.
3. The District Educational Officer,
Office of the District Educational Officer,
Salem-636 001.

+1cc to Government Pleader, sr 14268

+1cc to Mr.C.Rajasekaran, Advocate, sr 13875

W.P.Nos.10290 of 2015

RV(CO)
RMP(02/03/17)

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