

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.8892 of 2017

and

W.M.P.Nos.9802 to 9804 of 2017

Bro. X. Babu

... Petitioner

Versus

1. The Govt. of Tamil Nadu,
Rep. by the Additional Chief Secretary,
Department of School Education,
Fort St. George,
Madras-600 009.
2. The Principal Secretary/State Level Commissioner,
For the Differently Abled,
Jawaharlar Nehru Inner Ring Road,
K.K.Nagar, Chennai- 600 078.
3. The Assistant Director,
Commission for the Differently Abled,
Jawaharlar Nehru Inner Ring Road,
K.K.Nagar, Chennai-600 078.
4. The District Differently Abled Welfare Officer,
Collectorate Campus,
Thiruvannamalai,
Thiruvannamalai District.
5. The Correspondent
Amalarakkini School for the Blind,
Amalivanam,
Susainagar (Post)
Cetpet Taluk,
Thiruvannamalai District - 632 326.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance 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 1st respondent and the

consequential proceedings dated 23.10.2014 in A.Di.Mu.4694/C.Pa.1/2014 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 W.A.No.213 of 2016 and made in W.A.(MD) No.1019 of 2013 dated 24.11.2016, directing the respondents to approve the appointment of the petitioner Bro.X.Babu, working as Secondary Grade Assistant in Amalarakkini School for the Blind, Amalivanam, Susainagar (Post), Chetpet Taluk, Thiruvannamalai District-632 326, w.e.f. 02.06.2014, with all service benefits.

For Petitioner : Fr.Xavier Arulraj,
Senior Counsel
for Ms.A.Arul Mary

For Respondents : Mr.M.Dig Vijaya pandian
Additional Government Pleader
for R1 to 4

ORDER

The petitioner is working in the 5th respondent minority School viz., Amalarakkini School for the Blind, Amalivanam, Susainagar Post, Cetpet Taluk, Thiruvannamalai District, as a Secondary Grade Assistant with effect from 02.06.2014. As he has obtained B.Sc., (Maths) from the Bharathidasan University and B.Ed., (Special Education-Visual Impairment) from National Institute for the Visually Handicapped, his candidature was considered for the said post in a vacancy created by promotion of one Bro.Level, with effect from 02.06.2014. The said promotion was also approved by the 3rd respondent herein viz., Assistant Director, Commission for the Differently Abled, Chennai vide proceedings dated 23.10.2014, in A.Di.Mu.No.4694/C.Pa.1/2014. Therefore, it has been submitted before me that the said post is a regular sanctioned post with Grant-in-Aid by the Government. In view of the above, a proposal for the appointment of the petitioner was forwarded to the 2nd respondent through the 4th respondent viz., the District Differently Abled Welfare Officer, Thiruvannamalai District with relevant documents for approval on 03.06.2014. The 4th respondent also forwarded the same to the third respondent in his proceedings dated 01.09.2014. But, the third respondent viz., Assistant Director, Commission for the Differently Abled, Chennai had returned the proposal, questioning whether the petitioner has completed the TET or not? The said order is questioned before this Court and consequently sought for quashing of G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 as it is made in applicable in respect of the Minority Educational Institution.

2. Heard the learned Senior Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

3. The learned senior counsel appearing for the petitioner directly referring to the judgment of the Division Bench of this Court reported in (2016) 7 MLJ [Secretary to Government Vs. S.Jeyalakshmi], drawn the attention of this Court to paragraph Nos.60 and 61 of the said order and they are reproduced hereunder:

"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 institution. Similarly, G.O.Ms.No.76 dated 18.03.2015 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 and Cultural Trust V. Union of India* (Supra) the Government cannot take shelter under the guise of discrimination to impose restrictions on minority institutions."

4. A perusal of the above observations and the ratio clearly shows 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 not applicable to the minority institutions. Therefore, when the petitioner was appointed in the 5th respondent school viz., Amalarakkini School for Blind, Amalivanam, Susai Nagar Post, Cetpet Taluk, Thiruvannamalai District, which is the minority educational institution, the impugned order passed by the third respondent returning the proposal, questioning whether the petitioner has completed TET, is liable to be interfered with. The recommendation for approval of the appointment of the petitioner made by the 4th respondent to the third respondent dated 01.09.2014, clearly shows that the 5th respondent school is a minority educational institution.

5. Therefore, when the 4th respondent, accepting the minority status of the 5th respondent has made a recommendation, the 3rd respondent in all fairness ought not to have returned the proposal. In any event, when the 5th respondent school is a minority institution, as per the ratio laid down by the Division Bench, G.O.Ms. No.181 School Education (C2) Department, dated 15.11.2011 issued by the Government calling for the teachers working in the Minority Educational institution to pass TET, is wholly inapplicable. Therefore, the same is hereby quashed. However, the Division Bench in paragraph No.62 of the aforementioned order has held that keeping in mind the larger interest in which the Government has issued the above G.Os, felt 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.

6. The Writ Petition stands allowed and the impugned order is set aside. This Court directs the 5th respondent to conduct 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. Consequently, the respondents are directed to release the salary of the teachers and also to pay the arrears of the salary within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vsm/rli

To

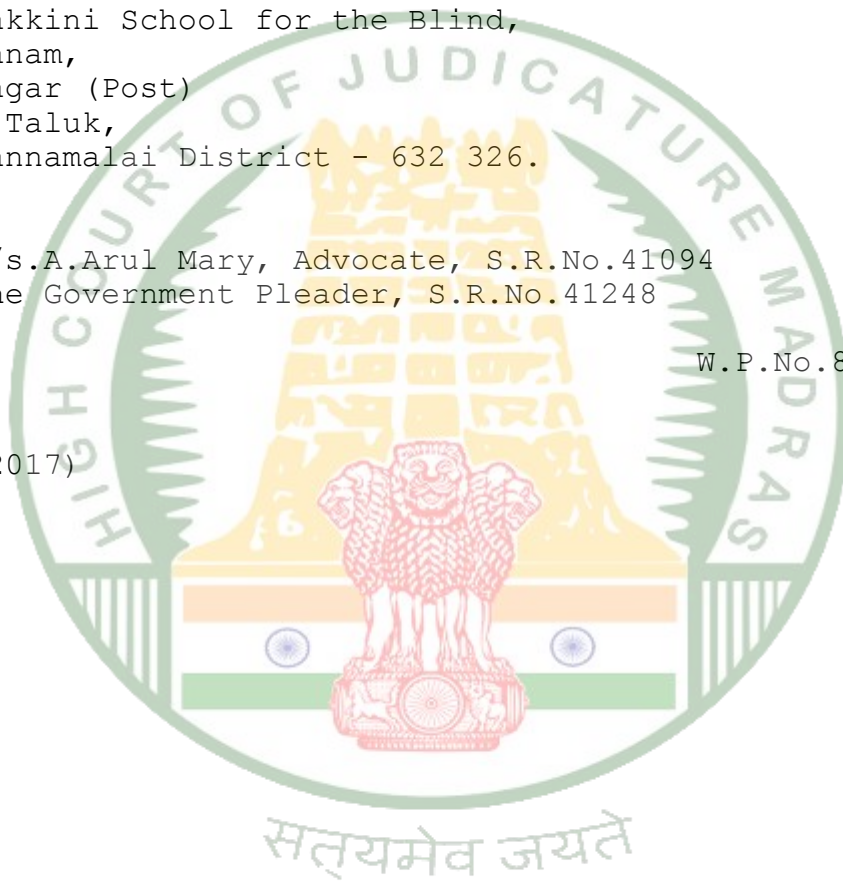
1. The Additional Chief Secretary,
Govt. of Tamil Nadu,
Department of School Education,
Fort St. George,
Madras-600 009.
2. The Principal Secretary/
State Level Commissioner,
For the Differently Abled,
Jawaharlar Nehru Inner Ring Road,
K.K.Nagar, Chennai- 600 078.

3. The Assistant Director,
Commission for the Differently Abled,
Jawaharlar Nehru Inner Ring Road,
K.K.Nagar, Chennai-600 078.
4. The District Differently Abled Welfare Officer,
Collectorate Campus,
Thiruvannamalai,
Thiruvannamalai District.
5. The Correspondent
Amalarakkini School for the Blind,
Amalivanam,
Susainagar (Post)
Cetpet Taluk,
Thiruvannamalai District - 632 326.

+1cc to M/s.A.Arul Mary, Advocate, S.R.No.41094
+1cc to the Government Pleader, S.R.No.41248

W.P.No.8892 of 2017

SVI (CO)
CA(23/06/2017)



WEB COPY