

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.Nos.1129 to 1132/2017 & WMP.Nos.1082 to 1093/2017

Mrs.P.Alphonsa Mary	..	Petitioner in WP.No.1129/2017
Mr.S.Sudharson Selva Kumar	..	Petitioner in WP.No.1130/2017
Mr.D.Swamynathan	..	Petitioner in WP.No.1131/2017
Mr.A.Philomin Joseph Raj	..	Petitioner in WP.No.1132/2017

Vs

1.The Additional Chief Secretary
Government of Tamil Nadu
Department of School Education,
[C2], Fort St George, Chennai 600009.

2.The Director of School Education
DPI Campus, College Road
Chennai 600 006.

3.The Inspector of Anglo-Indian Schools
O/o.the Inspector of Anglo-Indian Schools
DPI Complex, Nungambakkam,
Chennai 600 006.

4.The Correspondent
St.Mary's Anglo-Indian Higher Secondary
School, 110, Armenian Street,
George Town, Chennai 600 001.

.. Respondents in
all the Writ petitions

Prayer in WP.No.1129/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for 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 15.07.2016 in O.Mu.No.1194/A/2016 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 Mrs.P.Alphonsa Mary, working as B.T. Assistant [Tamil] in St Marys Anglo-Indian Higher Secondary School, 110, Armenian Street, George Town, Chennai 600 001, w.e.f.17.06.2013 with all service benefits.

Prayer in WP.No.1130/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for 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 15.07.2016 in O.Mu.No.1196/A/2016 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 Mr.S.Sudharson Selva Kumar, working as B.T. Assistant [Science] in St Marys Anglo-Indian Higher Secondary School, 110, Armenian Street, George Town, Chennai 600 001, w.e.f. 16.07.2012 with all service benefits.

Prayer in WP.No.1131/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for 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 15.07.2016 in O.Mu.No.1195/A/2016 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 Mr.D.Swamynathan, working as B.T. Assistant [English] in St Marys Anglo-Indian Higher Secondary School, 110, Armenian Street, George Town, Chennai 600 001, w.e.f. 01.06.2012 with all service benefits.

Prayer in WP.No.1132/2017:- 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 15.07.2016 in O.Mu.No.1193/A/2016 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 Mr.A.Philomin Joseph Raj, working as B.T. Assistant [Maths] in St Marys Anglo-Indian Higher Secondary School, 110, Armenian Street, George Town, Chennai 600 001, w.e.f. 21.06.2013 with all service benefits.

For Petitioners in		
all WPs	:	Dr.Fr.Xavier Arulraj, Senior Counsel assisted by Ms.A.Arul Mary
For RR 1 to 3		
in all WPs	:	Mr.K.Dhananjayan, Spl.GP

COMMON ORDER

By consent, these writ petitions are taken up for final disposal as the issue involved and to be adjudicated is one and the same. Mr.K.Dhananjayan, learned Special Government Pleader accepts notice on behalf of the respondents 1 to 3.

2 The petitioner in WP.No.1129/2017 would aver that the 4th respondent / School is an Anglo-Indian School and it is receiving grant-in-aid from the Government called as "Deficit Grant" and it was established and administered by the Catholic Religious Congregation of the "Selesians of Don Bosco" and it is also a registered Society bearing Regn.S.No.20 of 1945-1946 in the name and style of "The South India Selesian Society" and it is administering very many number of educational institutions for the welfare of Catholic Christian Minority Community and it is governed and protected by Article 30[1] of the Constitution of India and it is also declared as a Minority Educational institution pursuant to the orders passed by this Court and it was acted upon by the Government. The petitioner would further aver that she was appointed as a B.T. Assistant [Tamil] in the 4th respondent / School with effect from 17.06.2013 FN in the vacancy arising out of the retirement of one Mary Jesintha as Secondary Grade Teacher, whose appointment has been approved by the 2nd respondent vide proceedings dated 06.02.2013. The 4th respondent / School submitted a proposal to the 3rd respondent for approval of the appointment of the petitioner with effect from 17.06.2013, on 22.06.2016 and however, the 3rd respondent, vide impugned proceedings dated 15.07.2016, has not considered the approval on the ground of non-passing of the Teacher

Eligibility Test [TET] by the petitioner and that as and when orders are received from the Government, the proposal for approval will be considered and challenging the legality of the same, the petitioner came forward to file the present writ petition in WP.No.1129/2017.

3 The petitioner in WP.No.1130/2017 would aver that the 4th respondent / School is an Anglo-Indian School and it is receiving grant-in-aid from the Government called as "Deficit Grant" and it was established and administered by the Catholic Religious Congregation of the "Selesians of Don Bosco" and it is also a registered Society bearing Regn.S.No.20 of 1945-1946 in the name and style of "The South India Selesian Society" and it is administering very many number of educational institutions for the welfare of Catholic Christian Minority Community and it is governed and protected by Article 30[1] of the Constitution of India and it is also declared as a Minority Educational institution pursuant to the orders passed by this Court and it was acted upon by the Government. The petitioner would further aver that she was appointed as a B.T. Assistant [Science] in the 4th respondent / School with effect from 16.07.2012 FN in the vacancy arising out of the promotion of one Mrs.S.Bernice Priscilla and whose appointment has been endorsed by the 3rd respondent vide proceedings dated

26.09.2012. The 4th respondent / School submitted a proposal to the 3rd respondent for approval of the appointment of the petitioner with effect from 16.07.2012, on 09.10.2012 and however, the 3rd respondent, vide impugned proceedings dated 15.07.2016, has not considered the approval on the ground of non-passing of the Teacher Eligibility Test [TET] by the petitioner and that as and when orders are received from the Government, the proposal for approval will be considered and challenging the legality of the same, the petitioner came forward to file the present writ petition in WP.No.1130/2017.

4 The petitioner in WP.No.1131/2017 would aver that the 4th respondent / School is an Anglo-Indian School and it is receiving grant-in-aid from the Government called as "Deficit Grant" and it was established and administered by the Catholic Religious Congregation of the "Selesians of Don Bosco" and it is also a registered Society bearing Regn.S.No.20 of 1945-1946 in the name and style of "The South India Selesian Society" and it is administering very many number of educational institutions for the welfare of Catholic Christian Minority Community and it is governed and protected by Article 30[1] of the Constitution of India and it is also declared as a Minority Educational institution pursuant to the orders passed by this Court and it was acted

upon by the Government. The petitioner would further aver that she was appointed as a B.T. Assistant [English] in the 4th respondent / School with effect from 01.06.2012 FN in the vacancy arising out of the demise of one Mrs.M.Uma Maheswari as B.T. Assistant [Science] and the said post was converted into B.T.Assistant [English] to meet out the requirements of the 4th respondent / School as per G.O.Ms.Nos.100 and 144, School Education Department, dated 27.06.2003 and 04.07.2008 respectively. The 4th respondent / School submitted a proposal to the 3rd respondent for approval of the appointment of the petitioner with effect from 01.06.2012, on 07.08.2012 and however, the 3rd respondent, vide impugned proceedings dated 15.07.2016, has not considered the approval on the ground of non-passing of the Teacher Eligibility Test [TET] by the petitioner and that as and when orders are received from the Government, the proposal for approval will be considered and challenging the legality of the same, the petitioner came forward to file the present writ petition in WP.No.1131/2017.

5 The petitioner in WP.No.1132/2017 would aver that the 4th respondent / School is an Anglo-Indian School and it is receiving grant-in-aid from the Government called as "Deficit Grant" and it was established and administered by the Catholic Religious Congregation of

the "Selesians of Don Bosco" and it is also a registered Society bearing Regn.S.No.20 of 1945-1946 in the name and style of "The South India Selesian Society" and it is administering very many number of educational institutions for the welfare of Catholic Christian Minority Community and it is governed and protected by Article 30[1] of the Constitution of India and it is also declared as a Minority Educational institution pursuant to the orders passed by this Court and it was acted upon by the Government. The petitioner would further aver that she was appointed as a B.T. Assistant [Maths] in the 4th respondent / School with effect from 21.06.2013 FN in the vacancy arising out of the voluntary retirement of one Mrs.Hentrita Maria Selvam and the said voluntary retirement was also countersigned by the 3rd respondent on 06.08.2013 and the above said post is a regular sanctioned post, covered by the Grant-in-Aid Scheme. The 4th respondent / School submitted a proposal to the 3rd respondent for approval of the appointment of the petitioner with effect from 21.06.2013, on 22.06.2016 and however, the 3rd respondent, vide impugned proceedings dated 15.07.2016, has not considered the approval on the ground of non-passing of the Teacher Eligibility Test [TET] by the petitioner and that as and when orders are received from the Government, the proposal for approval will be considered and

challenging the legality of the same, the petitioner came forward to file the present writ petition in WP.No.1132/2017.

6 Dr.Fr.Xavier Arul Raj, learned Senior Counsel, assisted by Ms.A.Arul Mary, learned counsel on record, has invited the attention of this Court to the judgment rendered by a Division Bench of this Court reported in **[2016] 7 MLJ 155 [Secretary to Government, Government of Tamil Nadu, Education Department, Chennai-9 and others Vs. S.Jeyalakshmi and others]**, and would submit that the Division Bench has taken into consideration very many decisions rendered by the Hon'ble Supreme Court of India, more particularly, the judgment reported in **2014 [8] SCC 1 [Pramati Educational and Cultural Trust V. Union of India]**, and held that the Government cannot insist upon the Minority Institution, both aided or un-aided, to abide by any regulation framed under the provisions of the Right to Education Act, and as such, 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. So also the Government Order in G.O.Ms.No.76, dated 18.03.2015 issued by the Government of Puducherry and in the light of the said judgment, the impugned orders are *per se* unsustainable. It is further contended by

the learned Senior Counsel for the petitioners that the above cited judgment has also taken note of the decision rendered by a Division Bench of the Madurai Bench of this Court [in which I was one of the party to the said judgment] in WA [MD] No.1019/2013 etc., batch and a common judgment was passed on 24.11.2016, wherein this Court has set aside the orders passed by the learned Single Judge, holding that the Government cannot insist, both aided or un-aided, to abide any regulation framed under the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and as such, G.O.Ms.No.181, School Education [C2] Department, dated 15.11.2011 is not applicable to the Minority Institution and therefore, prays for quashment of the impugned orders with appropriate directions.

7 Per contra, Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents 1 to 3 would vehemently contend that legal advise is being sought for to challenge the decision rendered in **[2016] 7 MLJ 155** [cited supra] and till such decision is taken, the impugned orders may not be quashed.

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

9 In the considered opinion of this Court, the judgment reported in **[2016] 7 MLJ 155** [cited supra], is squarely applicable to the facts of these cases. It is not in serious dispute that the 4th respondent / School is an Aided Minority Institution and as such, the above cited Government Orders will not be applicable. Though it is vehemently contended by the learned Special Government Pleader that legal advise is being sought to challenge the above cited decision, the said decision is still awaited and it cannot be a ground to dismiss these writ petitions.

10 In the result, the writ petitions are allowed and the impugned orders of the 1st respondent dated 15.11.2011 and the consequential proceedings of the 3rd respondent dated 15.07.2016, are hereby set aside and the 3rd respondent is directed to consider the proposals/approvals submitted by the 4th respondent / School in respect of the petitioners afresh, on merits and in accordance with law and pass orders as expeditiously as possible and not later than eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioners as well as to the 4th respondent / School.

11 The 4th respondent / School shall also take note of the observations made in Paragraph 62 of the above cited decision, more particularly, the interest and welfare of the students studying in the said institution and may also consider conducting refresher courses in a periodical intervals and also some interactive sessions to all the Teachers during annual vacation or any other holidays, in order to ensure and improve the quality of teaching. No costs. Consequently, the connected miscellaneous petitions are closed.

18.01.2017

Index : No

Internet : Yes

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To

- 1.The Additional Chief Secretary
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[C2], Fort St George, Chennai 600009.
- 2.The Director of School Education
DPI Campus, College Road
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M.SATHYANARAYANAN, J.,
AP

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