

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.Nos.3208 & 3209/2017 & WMP.Nos.3147 & 3148/2017

Mrs.Mary Elizabeth	..	Petitioner in WP.No.3208/2017
Mrs.D.Vinitha	..	Petitioner in WP.No.3209/2017

Vs

1. The Additional Chief Secretary
Government of Tamil Nadu
The Department of School Education [C2]
Fort St George, Madras 600 009.
2. The Director of Elementary Education,
DPI Campus, College Road,
Chennai 600 006.
3. The District Elementary Educational Officer
O/o.The District Elementary Educational Officer
Gandhi Nagar, Thiruvannamalai
Thiruvannamalai District 606601.
4. The Additional Assistant Elementary Educational
Officer, O/o.The Additional Assistant Elementary
Educational Officer, Arni, Thiruvannamalai District.
5. The Correspondent
RCM Girls Elementary School
Arni 632 301, Thiruvannamalai District.

..Respondents in both WPs

Prayer in WP.No.3208/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of mandamus directing the respondents 1 to 4 to honour the Pay Bill submitted by the 5th respondent for the period from 15.11.2016 onwards, in respect of the petitioner working as Secondary Grade Assistant in RCM Girls Elementary School, Arni, Thiruvannamalai District 632301 as per the orders of the Division Bench of this Court in WP.No.21076/2013 and WP.No.12570/2015 and in the batch of writ appeals in WA.No.213 and 572/2016.

Prayer in WP.No.3209/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of directing the respondents 1 to 4 to honour the Pay Bill submitted by the 5th respondent for the period from 15.11.2016 onwards, in respect of the petitioner working as Secondary Grade Assistant in RCM Girls Elementary School, Arni, Thiruvannamalai District 632301 as per the orders of the Division Bench of this Court in WP.No.21080/2013 and WP.No.12675/2015 and in the batch of writ appeals in WA.No.213 and 572/2016.

For Petitioners in

both WPs

: Dr.Father Xavier Arul Raj, Senior
Counsel assisted by
Ms.A.Arul Mary

For R1 to R4 in

both 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 4.

2 The petitioner in WP.No.3208/2017 would aver that she was appointed as a Secondary Grade Assistant in the services of the 5th respondent / School with effect from 16.06.2011 in the vacancy caused on account of the resignation of one N.Sonia on 15.06.2011 and it is also a regular sanctioned post and receiving Grant-in-Aid from the Government. The petitioner would further aver that the said school was established and being administered by the Catholic Religious Congregation of the "The Roman Catholic Congregation of Daughters of Mary Help of Christians" and for the purpose of legal perpetuity, it is a registered Society bearing Registration S.No.23/1946-1947, in the name and style of "The Salesian Sisters' Society [India]" and it has been established and is administering a number of educational institutions for the welfare of the Catholic Christian Minority Community and its rights are guaranteed under Article 30[1] of the Constitution of India. The petitioner, on an earlier occasion, had filed WP.No.21076/2013 and WP.No.12570/2015 and got obtained positive orders and despite the fact that in the judgment reported in 2016 [7] MLJ 155 [The Secretary to Government, Government of Tamil Nadu, Education Department, Chennai-9 and others Vs. S.Jeyalakshmi and others], wherein it has been held that the provisions of the Right to Education Act, 2009, is not applicable to the Minority

Institutions and though the salary was released and paid to the petitioner, as per the oral instructions, the 5th respondent/School was directed not to submit the Pay Bill of the petitioner and though it was submitted for the months of December and January 2016, the Pay Bills were not honoured by the respondents and as such, the salary was not released for the petitioner from 15.11.2016 to 30.11.2016 and for the entire month of December 2016 and therefore, the petitioner came forward to file WP.No.3208/2017.

3 The petitioner in WP.No.3209/2017 would aver that she was appointed as a Secondary Grade Assistant in the services of the 5th respondent / School with effect from 17.06.2011 in the vacancy caused on account of the resignation of one Miss.J.Primrose on 15.06.2011 and it is also a regular sanctioned post and receiving Grant-in-Aid from the Government. The petitioner would further aver that the said school was established and being administered by the Catholic Religious Congregation of the "The Roman Catholic Congregation of Daughters of Mary Help of Christians" and for the purpose of legal perpetuity, it is a registered Society bearing Registration S.No.23/1946-1947, in the name and style of "The Salesian Sisters' Society [India]" and it has been established and is administering a number of educational institutions for the welfare of the Catholic Christian Minority Community and its rights are guaranteed under Article 30[1] of the Constitution of India. The petitioner, on an earlier occasion, had filed WP.No.21080/2013 and this Court, vide order dated 01.08.2013 in MP.No.2/2013 in WP.No.21080/2013, directed the respondents to grant temporary approval of her appointment and to pay salary and since it was not complied with, contempt petition was filed and subsequently, temporary approval was also accorded and the petitioner, challenging the conditional order, filed WP.No.12675/2015 and the said writ petition along with the batch of other writ petitions were disposed of by this Court taking into consideration, the judgment reported in 2016 [7] MLJ 155 [The Secretary to Government, Government of Tamil Nadu, Education Department, Chennai-9 and others Vs. S.Jeyalakshmi and others], wherein it has been held that the provisions of the Right to Education Act, 2009, is not applicable to the Minority Institutions and in utter violation of the said order, there was an oral instruction to the 5th respondent/School, not to submit the Pay Bill of the petitioner and though it was submitted for the months of December and January 2016, the Pay Bills were not honoured by the respondents and as such, the salary was not released for the petitioner from 15.11.2016 to 30.11.2016 and for the entire month of December 2016 and therefore, the petitioner came forward to file WP.No.3209/2017.

4 Dr. Father Xavier Arul Raj, learned Senior Counsel assisted by Ms.A.Arul Mary, learned counsel on record, would submit that the oral instructions given to the 5th respondent/School, not to present the Pay Bill and not releasing the salary for the petitioners, is in, per se, violation of the orders passed by this Court in the above cited writ petitions and is also against the decision 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 further invited the attention of this Court to the proceedings of the Director of School Education, in Na.Ka.NO.34116/D1/E4/2013 dated 31.01.2017 and would submit that the said official had instructed the District Educational Officer as well as the subordinate officials to act according to the above cited orders passed by this Court and take necessary steps to pay salary from the date of joining duty by getting Grant-in-Aid and therefore, prays for appropriate orders. In this regard, the 5th respondent/School has sent a representation to the 4th respondent on 16.12.2016 and since no orders have been passed, the petitioners are constrained to approach this Court by filing the present writ petitions.

5 This Court heard the submissions of Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents 1 to 4 and perused the materials placed before this Court.

6 In the light of the ratio laid down by the 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], the provisions of the Right to Education Act, 2009, are inapplicable to the Minority Institutions and therefore, a pass in Teacher Eligibility Test in respect of the teachers employed in the said Institutions cannot be insisted. It is also an uncontroverted fact that the petitioners have been appointed in a regularly sanctioned vacancies and as such, they are entitled to receive salary for the duties performed by them. The Director of School Education has taken into consideration the said fact and issued the above cited proceedings dated 31.01.2017 to the District Educational Officer which comes under his jurisdiction to take appropriate steps. In the considered opinion of the Court, the above cited decision is equally applicable to the cases on hand and the respondents 1 to 4 are also bound by the above cited judgment.

7 In the light of the above facts and circumstances, the respondents 1 to 4 are directed to issue appropriate directions to the subordinate officials to take note of the judgment 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 issue appropriate directions for release of grant and payment of salary to the teachers employed in the Minority Institutions and the said exercise is to be completed within a period of six weeks from the date of receipt of a copy of this order.

8 Insofar as the present writ petitions are concerned, in the light of the above facts and circumstances and the reasons assigned, the 4th respondent is directed to consider the representation of the 5th respondent/School dated 16.12.2016 on merits and in accordance with law and pass orders within a period of two weeks from the date of receipt of a copy of this order and communicate the decision taken, to the 5th respondent/School.

9 The writ petitions are disposed of with the above directions. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS-VI)

//True Copy//

Sub-Assistant Registrar

To

1. The Additional Chief Secretary
Government of Tamil Nadu
The Department of School Education [C2]
Fort St George, Madras 600 009.
2. The Director of Elementary Education,
DPI Campus, College Road,
Chennai 600 006.
3. The District Elementary Educational Officer
O/o.The District Elementary Educational Officer
Gandhi Nagar, Thiruvannamalai
Thiruvannamalai District 606601.

4. The Additional Assistant Elementary Educational Officer, O/o.The Additional Assistant Elementary Educational Officer, Arni, Thiruvannamalai District.

5. The Correspondent
RCM Girls Elementary School
Arni 632 301, Thiruvannamalai District.

+5 Ccs to Mr. A. Arul Mary, advocate sr 8351

+2 Ccs to The Govt. Pleader sr 8866,8867

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