

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.32961 & 32962 of 2017

Mr.K.Shaji Nelsa Kumar.. Petitioner in W.P.No.32961 of 2017
Mr.M.Thiyaga rajan .. Petitioner in W.P.No.32962 of 2017

-vs-

1. The Director of School Education
DPI Campus
Chennai 600 006
2. Chief Educational Officer
Nagercoil
Kanyakumari District
3. District Educational Officer
Thuckalay
Kanyakumari District
4. The Correspondent
Hacker Memorial Higher Secondary School
Neyyoor
Kanyakumari District
.. Respondents in both the writ petitions

W.P.No.32961 of 2017 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents herein to approve the petitioner's appointment as B.T.Assistant (History) in the Hacker Memorial Higher Secondary School, Neyyoor in the sanctioned vacancy caused by the retirement of Mr.R.Sundsra Dhas, with effect from 10.06.2013, in the light of the proposal resubmitted by the fourth respondent in his proceedings No.Ref.No.368/2017-18 dated 20.11.2017 and grant all other service and monetary benefits consequential benefits.

W.P.No.32962 of 2017 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents herein to approve the petitioner's appointment as B.T.Assistant (History) in the Hacker Memorial Higher Secondary School, Neyyoor in the

sanctioned vacancy caused by the retirement of Mr.S.Stephen Raj, with effect from 10.06.2013, in the light of the proposal resubmitted by the fourth respondent in his proceedings No.Ref.No.367/2017-18 dated 20.11.2017 and grant all other service and monetary benefits consequential benefits.

For Petitioners:: Mr.P.Ganesan

For Respondents:: Mr.V.Jayaprakash Narayanan
Special Government Pleader
for R1 to 3
Mr.S.Bharathirajan for R4

ORDER

These writ petitions have been filed by Mr.K.Shaji Nelsa Kumar and Mr.M.Thiyaga rajan, who were appointed in the post of B.T.Assistant (History) in the Hacker Memorial Higher Secondary School, Neyyoor, the fourth respondent herein, which is a minority educational institution receiving grant-in-aid from the first respondent.

2. Learned counsel for the petitioners submitted that the petitioners were appointed in the sanctioned vacancies, occurred due to the retirement of Mr.R.Sundsra Dhas and Mr.S.Stephen Raj respectively, with effect from 10.6.2013. Since the appointments of the petitioners were duly approved by the School Committee, proposals were sent to the respondents 1 to 3 seeking orders of approval of their appointments on 25.8.2013. In the proposals, it has been made clear that as per the staff fixation order passed by the District Educational Officer, Thuckalay, Kanyakumari District, 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 respondents 1 to 3 failed to consider the said proposals. Therefore, reminders were also sent by the fourth respondent School on 15.10.2015 and 19.9.2017 citing the reason that the petitioners, who were appointed to the post of B.T.Assistant (History) in the fourth respondent School, are working without even receiving salary from the date of appointments. Yet, the respondents 1 to 3 have not come forward to consider the proposals, in spite of the Management complying with the defects as pointed out by the third respondent in his proceedings dated 13.10.2017. Learned counsel for the petitioners further submitted that when the fourth respondent School is a minority educational institution receiving grant-in-aid, the teachers appointed in the fourth 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, followed by an order in W.P.No.27871 of 2017 dated 1.11.2017.

3. Heard the learned Special Government Pleader taking notice on behalf of the respondents 1 to 3.

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 writ petitions are allowed and the respondents 1 to 3 are directed to approve the appointments of the petitioners in the post of B.T.Assistant (History) in the fourth respondent School with effect from 10.6.2013, in the light of the proposals sent by the fourth respondent, and release the salary including arrears within a period of four weeks from the date of receipt of a copy of this order. Consequently, W.M.P.Nos.36351 & 36352 of 2017 are closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

ss

To

1. The Director of School Education
DPI Campus
Chennai 600 006

2. The Chief Educational Officer
Nagercoil
Kanyakumari District

3. The District Educational Officer
Thuckalay
Kanyakumari District

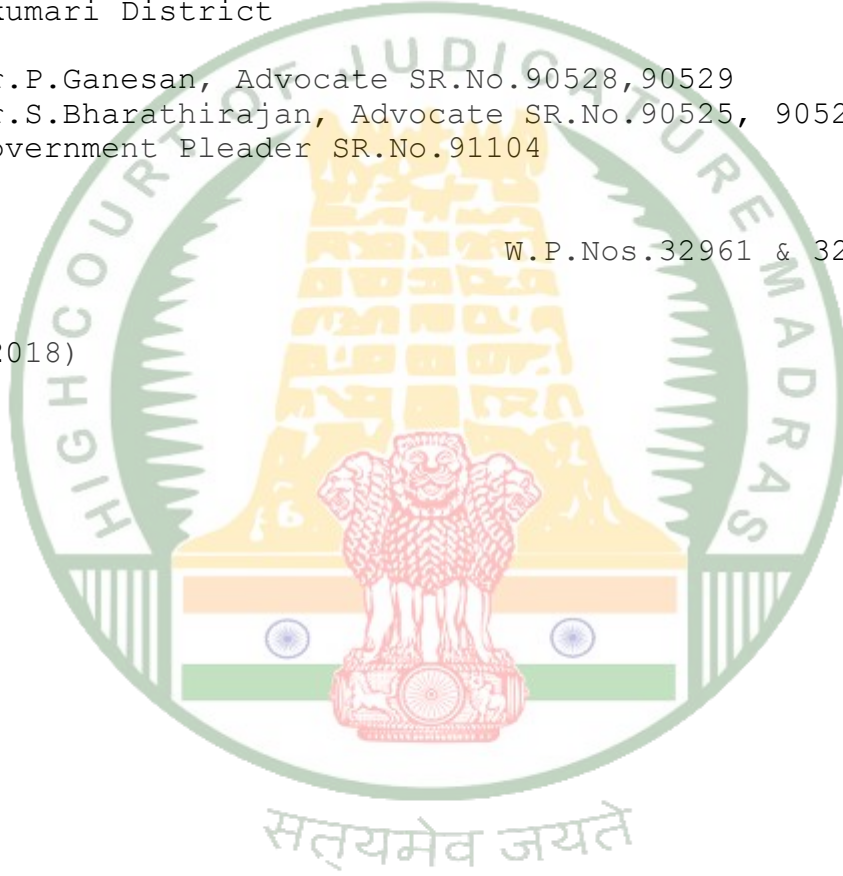
+2cc to Mr.P.Ganesan, Advocate SR.No.90528,90529

+1cc to Mr.S.Bharathirajan, Advocate SR.No.90525, 90526

+1cc to Government Pleader SR.No.91104

W.P.Nos.32961 & 32962 of 2017

SAI (CO)
GN(11/01/2018)



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