

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2017

CORAM :

THE HONOURABLE Mr.JUSTICE T.RAJA

W.P.No.33029 of 2017
and
W.M.P.No.36401 of 2017

A.Sheela Selvarani

... Petitioner

Vs.

- 1.The State of Tamil Nadu
rep. by its Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.
- 2.The Director of Elementary Education,
College Road, Chennai-600 006.
- 3.The District Elementary Educational Officer,
Nilgris, Coonoor-643 102.
- 4.The Assistant Elementary Educational Officer,
Coonoor Range, Coonoor-643 101.
- 5.The Correspondent,C.S.I Primary School,
Adderley Estate,
Range-I, Mission Hill,
Coonoor-643 102.
Nilgiris District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the 3rd respondent DEEO to approve the appointment of the petitioner as Secondary Grade Teacher in the 5th respondent School with effect from the date of appointment viz., 12.01.2012 in the 5th respondent school by obtaining necessary proposal in relation to it from the 4th respondent AEEO and the 5th respondent school and further directing the respondents 3 and 4 to release the salary and other benefits with effect from the date of her appointment.

For Petitioner : Mrs.H.Mari Sowmi Rexi
For Respondents : Mr.V.Jayaprakash Narayanan Spl GP
(For R1 & R2)

ORDER

This writ petition has been filed praying for issuance of a Writ of Mandamus directing the 3rd respondent to approve the appointment of the petitioner as Secondary Grade Teacher in the 5th respondent School with effect from the date of appointment viz., 12.01.2012 and to release the salary and other benefits with effect from the date of her appointment.

2.It is stated that the 5th respondent is Minority Educational Institution receiving grant-in-aid from the Government. The petitioner has been appointed with effect from 12.01.2012 in the post of Secondary Grade Teacher, which fell vacant due to the transfer of then incumbent one Mrs.V.Jansi Rani Jeba Ruby to C.S.I Primary School, Milk Village, Ottupatarai, Coonoor. The petitioner has been appointed only in a sanctioned post. The petitioner has joined duty on 12.01.2012. Thereafter, the 5th respondent-School has submitted proposal to the 3rd respondent, District Elementary Educational Officer on 20.02.2012 through the 4th respondent, Assistant Elementary Educational Officer, requesting to approve the appointment of the petitioner, but, the same was not considered by the respondents 3 & 4. Further, the proposal for approval was returned by the 4th respondent vide his letter 05.06.2017. Hence, the petitioner has come forward with the present writ petition before this Court.

3.It is not know how the respondents 3 & 4 who are holding the responsible posts in the education department are unaware of the settled legal position by this Court as well as by the Hon'ble Supreme Court. In this regard, it is appropriate to place reference in the judgment reported in 2016-4 LW 841 (The Secretary to Government, Government of Tamil Nadu & Others Vs. S.Jeyalakshmi & another) wherein it has been held that the teachers appointed in a minority educational institution receiving grant-in-aid are not required to pass the Teachers Recruitment Test. The relevant portions in the said decision reads 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."

Therefore, when the issue whether the teachers appointed in minority educational institution receiving grant-in-aid are required to pass the TET is no longer res integra, the issue has been settled by the order of this Court. In the present also, since the 5th respondent school is an minority educational institution, the petitioner who has been appointed in the 5th respondent-school as Secondary Grade Teacher is not required to pass the TET.

4.The learned Special Government Pleader appearing for the respondents 1 & 2 is not unable to support the case of the official respondents in not granting the approval of the appointment of the petitioner as Secondary Grade Teacher in the 5th respondent school.

5.In view of the above settled position, this writ petition deserves to be allowed.

6. Accordingly, the writ petition is allowed, with a direction to the respondents 3 & 4 to accord approval to the appointment of the petitioner in the 5th respondent school forthwith. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

ssv

To

- 1.The Secretary,
State of Tamil Nadu
Department of School Education,
Fort St.George, Chennai-600 009.
- 2.The Director of Elementary Education,
College Road, Chennai-600 006.
- 3.The District Elementary Educational Officer,
Nilgris, Coonoor-643 102.
- 4.The Assistant Elementary Educational Officer,
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- 5.The Correspondent, C.S.I Primary School,
Adderley Estate,
Range-I, Mission Hill,
Coonoor-643 102.
Nilgiris District.

+ 1 cc to M/s.Isaac Chambers, Advocate, SR.90776

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