

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition No.16493 of 2015
and
M.P.Nos.2,3 & 4 of 2015

R.Dhanapal

...Petitioner

Vs.

1. The State Government of Tamil Nadu
Rep by its Secretary
Education Department (Higher Education)
Fort St. George, Chennai - 600 009.
2. The Director of School Education
[Higher Education]
Nungambakkam, Chennai - 600 006.
3. The Chief Educational Officer
Office of the Chief Education officer
Saidapet, Chennai - 600 018.
4. The District Educational Officer
Office of the District Educational Officer
Chennai East, Chennai.
5. The Correspondent
CSI Kellett Higher Secondary School
Triplicane, Chennai - 600 005.

...Respondents

PETITION filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records culminating in the order of the second respondent dated 16.11.2012 made in Na.Ka.No.88573/D1/E4/2012 and quash the same and consequently direct the second and third respondents herein to approve the petitioner's appointment as B.T.Assistant in Tamil under the fifth respondent school by granting the time limit extended by the first respondent in G.O.(Ms.) No.181 School Education (C2) Department dated 15.11.2011 for acquiring the pass in Teacher Eligibility Test.

For Petitioner : Mr. G.Thilakavathi
Senior Counsel
For M/s.R.Gopinath

For Respondents : Mr.P.Sanjay Gandhi [For R1 to R4]
Additional Government Pleader
No appearance [For R5]

ORDER

This writ petition is filed against the impugned proceedings passed by the Director of School Education (Higher Secondary), Chennai/the second respondent herein, by which the request for grant of approval of appointment of Mr.R.Dhanapal in the fifth respondent school /CSI Kellett Higher Secondary School, Triplicane, for the post of B.T.Assistant [Tamil] was refused.

2.Mrs.G.Thilakavathi, learned Senior Counsel appearing on behalf of the petitioner, assailing the impugned order, contended that the passing of TET by a teacher who is going to be appointed or appointed in any minority institution has been held beyond any doubt by the ratio laid down by the Apex Court in the case of Pramati Educational and Cultural Trust and Others Vs. Union of India and Ors. reported in (2014) 4 MLJ 486 (SC), wherein it has been held that "Right of Children to Free and Compulsory Education Act, 2009 [for short 'the 2009 Act'] insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution. Accordingly, Writ Petition (C) No.1081 of 2013 filed on behalf of Muslim Minority Schools Managers' Association was allowed.

3.Further, when it has been held that if the 2009 Act is made applicable to a minority school, the Right of Minority Instituting guaranteed under Article 30 (1) of the Constitution will be curtailed, the impugned order passed by the second respondent /Director of School Education [Higher Secondary], Nungambakkam, rejecting the application of 5th respondent to grant an order of approval in favour of Mr.R.Dhanapal, who was appointed as B.T.Assistant [Tamil] is liable to be set-aside.

4.I find merits in her contentions, the reason is that the fifth respondent is a Minority Educational Institution. Therefore, if the fifth respondent school appointed the petitioner as B.T.Assistant [Tamil] on 12.06.2012, neither G.O. (Ms) No.181 School Education (C2) Department dated 15.11.2011 granting five years to enable the teachers like the petitioner who are already working in the school to secure a pass in the TET nor the 2009 Act would apply. Hence, the impugned order is

liable to be set aside.

5.This apart, a perusal of the proposal of appointment order dated 12.06.2012 would also show that the petitioner was appointed as B.T. Assistant [Tamil] with effect from 12.06.2012 FN. Therefore, when the fifth respondent has appointed the petitioner as B.T. Assistant [Tamil] in a sanctioned vacancy caused on retirement of Mr.S.Palani with effect from 31.05.2012 AN. It goes without saying that the minority educational institution need not get prior permission before filling up of the sanctioned vacancy arising in the sanctioned post in the fifth respondent school herein.

7.Therefore, the writ petition stands allowed and the impugned order is set aside by directing the second and third respondents to grant approval from the date of appointment of the writ petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

may

To

1. The Secretary
Education Department (Higher Education)
Fort St. George, Chennai - 600 009.
2. The Director of School Education
[Higher Education]
Nungambakkam, Chennai - 600 006.
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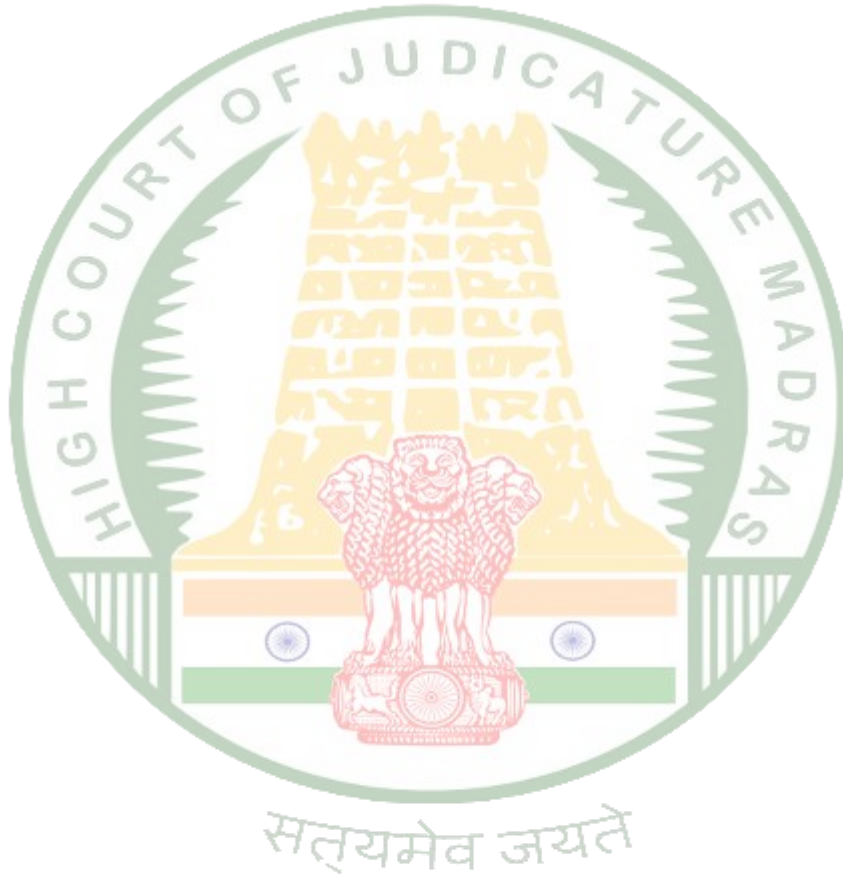
CSI Kellett Higher Secondary School
Triplicane, Chennai - 600 005.

+1cc to Mr.R.Gopinath, Advocate, S.R.No.75075

+1cc to the Government Pleader, S.R.No. 75273

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RRK(05/12/2017)



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