

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:01.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.2338/2017

Mrs.G.Tamilarasi

... Petitioner

Vs

- 1.The Secretary,
School Education Department
Government of Tamil Nadu
Fort St. George, Chennai-19.
- 2.The Director of School Education
College Road, DPI Campus
Chennai 600 006.
- 3.The Chief Educational Officer
Chennai North, Egmore.
- 4.The District Educational Officer
Chennai North, Egmore,
Chennai 600 008.
- 5.The Correspondent
Kannada Sangha Higher Secondary School
No.3, United India Nagar, Ayanavaram
Chennai 600 023.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records in Na.Ka.No3981/A3/2015 dated 22.06.2016 issued by the 4th respondent and quash the same and consequently direct the respondents to grant approval to the appointment of the petitioner as Tamil Pandit in 5th respondent School.

For Petitioner : Mrs.P.Thenmozhi Shiva Perumal

For RR 1 to 4 : Mr.K.Dhananjayan, Spl.GP

ORDER

By consent, the writ petition is taken up for final disposal. Mr.K.Dhananjayan, learned Special Government Pleader accepts notice on behalf of the respondents.

2 The petitioner would aver that she had passed B.A. Degree in Tamil in the year 1998 ; M.A. Post Graduate degree in Tamil in the year 2006 and B.Ed., degree in the year 2010. The petitioner would further aver that she was appointed as Graduate Assistant on 07.06.2004 in the services of the 5th respondent / School which is a Linguistic Minority Educational Institution and subsequently, the 5th respondent / School has sent a proposal seeking for approval of her appointment in the post of Tamil Pandit, consequent to the promotion of Thiru.E.Radhakrishnan as Headmaster from 01.06.2015 and it was returned by the 4th respondent on the ground that since relevant particulars as to the qualification of the petitioner and the Teacher Eligibility Test have not been enclosed and the 5th respondent / School was requested to enclose necessary documentary evidence as to the acquiring of Teacher Eligibility Test by the petitioner and challenging the legality of the same, the petitioner came forward to file the present writ petition.

3 The learned counsel for the petitioner has drawn the attention of this Court to the judgment rendered by a Division Bench of this Court reported in 2016 [5] CTC 639 [The Secretary to Government, Government of Tamil Nadu, Education Department, Fort St George, Chennai-9 and others Vs. S.Jeyalakshmi and others], and would submit that in the above cited judgment, the judgment reported in 2014 [8] SCC 1 [Pramati Educational and Cultural Trust V. Union of India] has been followed and as per the ratio laid down in the said decision, the Government cannot insist upon the Minority Institution, both Aided and Unaided, to abide by any Regulation framed under the provisions of the RTE Act and therefore, G.O.Ms.No.181, School Education [C2] Department dated 15.11.2011, is not applicable to the Minority Institutions and in the light of the said decision, the learned counsel appearing for the petitioner prays for quashment of the impugned order dated 22.06.2016 issued by the 4th respondent with a further direction to approve the appointment of the petitioner and to pay arrears of salary.

4 Per contra, Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents 1 to 4 would submit that legal advise is being sought, to challenge the decision reported in 2016 [5] CTC 638 [cited supra] and prays for time to get further instructions.

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

6 The Division Bench of this Court, in the above cited decision, has also placed reliance on the decision of the Hon'ble Apex Court reported in 2014 [8] SCC 1 [Pramati Educational and Cultural Trust V. Union of India] and it is relevant to extract the following paragraphs :-

".....

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 and 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 and 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 18.03.2015 issued by the Government of Puducherry, is also not applicable to the 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."

7 In the light of the ratio laid down by the Division Bench of this Court in the above cited decision, it is not obligatory on the part of the teacher who is working in a Religious Minority Educational Institution to get herself qualified with the Teacher Eligibility Test [TET] and as such, the return of the proposal on the part of the 4th respondent is not in order.

8 In the considered opinion of this Court, the decision rendered by the Division Bench of this Court reported in 2016 [5] CTC 639 [cited supra] is squarely applicable to the facts of the present case and it is not in serious dispute that the approval for appointment of the petitioner as B.T. Assistant is in respect of a sanctioned post and as per the above cited decision, the provisions of the Right to Education Act, are not applicable to both the aided and un-aided Minority Institutions and since the 5th respondent / School is an Aided Minority Institution, the provisions of the said Act are inapplicable and as such, the 4th respondent cannot insist the petitioner to pass TET.

9 In the result, the writ petition is partly allowed and the impugned proceedings of the 4th respondent dated 22.06.2016 is hereby set aside and the 5th respondent/School is directed to re-submit the proposal to the 4th respondent within a period of two weeks from the date of receipt of a copy of this order and the 4th respondent, upon receipt of the same, is directed to consider the said proposal on merits and in accordance with law, if the papers are otherwise in order and pass appropriate orders within a period of six weeks from the date of receipt of such proposal and communicate the decision taken, to the petitioner as well as to the 5th respondent / School. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

AP

To

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+1cc to Ms.Thenmozhi, Advocate Sr.6619
+1cc to the Government Pleader Sr.6464

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srg 16/2/2017

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