

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.3715/2017 & WMP.No.3782/2017

Sultana R.Z.

..

Petitioner

Vs

1. The Secretary to Government
School Education Department
Government of Tamil Nadu
Fort St George, Chennai-9.
2. The Director of School Education,
College Road, DPI Campus,
Chennai 600 005.
3. The Chief Educational Officer
Vellore, Vellore District.
4. The District Educational Officer
Tirupattur, Vellore District.
5. The Correspondent
Nusrathullislam Girls Higher Secondary
School, PB No.4, Pernambut 635810.

Respondents

Prayer:- 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 pay the arrears of increment, incentives, Earned Leave Salary and other monetary benefits accrued to her and also to continue to pay the enhanced salary eligible to the post apart from increment, incentives, Earned Leave Salary and monetary benefits etc., without insisting the petitioner to write TET exams.

For Petitioner : Mr.V.Raghupathi
For Respondents : Mr.V.Anandamoorthy, AGP [Edn]

ORDER

By consent, the writ petition is taken up for final disposal. Mr.V.Anandamoorthy, learned Additional Government Pleader [Edn] accepts notice on behalf of the respondents.

2 The petitioner would aver that she has passed M.Sc., B.Ed., M.Phil., and was appointed by the 5th respondent as B.T. Assistant [Maths] on 15.09.2010 in the regular vacancy caused due to resignation of Tmt.M.M.Amirtha Begum, B.T.Assistant [Maths] on 14.09.2010, subject to the approval of the 4th respondent. The 5th respondent, being a Minority Institution, had also submitted a proposal to the 4th respondent intimating about the appointment of the petitioner as B.T. Assistant [Maths] in the regular vacancy caused due to resignation and prayed for approval. The 5th respondent, while forwarding the proposal, had also indicated that the petitioner is eligible to receive salary in the scale of pay at Rs.9300-34800 + GP Rs.4400/- along with other monetary benefits. The grievance now expressed by the petitioner is that despite very many representations and requests, the respondents 3 and 4 have not increased her salary and also not paid any incentives and other increments on the ground that the petitioner has not cleared the Teacher Eligibility Test as per G.O.Ms.No.181, School Education [C2] Department, dated 18.11.2011 and therefore, 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 reported in 2016 [7] MLJ 155 [DB] [State of Tamil Nadu rep.by the Secretary to Government, Education Department, Fort St George, Chennai-9 and others Vs. S.Jeyalakshmi and others] and would submit that as per the above cited judgment, once teachers are appointed in the Minority institutions, on fulfillment of qualification and other criteria, they cannot be expected to write the Teacher Eligibility Test and qualify in the said examination at a much later point of time and would further add that in paragraph 60 in the above cited judgment, it has been observed that "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....." and therefore, prays for appropriate orders, directing the respondents to release her salary, increments and other monetary benefits within a stipulated time.

4 Per contra, Mr.V.Anandamoorthy, learned Additional Government Pleader [Education] would submit that since the petitioner did not acquire the Teacher Eligibility Test as per the provisions of the Right to Education Act, she is

not entitled to any benefits.

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

6 A Division Bench of this Court, in the above cited judgment, in paragraphs No.55 and 60, has made it very clear about the legal position and to reach the conclusion, also placed reliance upon the decision rendered by the Hon'ble Apex Court reported in 2014 [8] SCC 1 : 2014 [4] MLJ 486 [SC] [Pramati Educational and Cultural Trust V. Union of India] .

7 In the light of the ratio laid down in the above cited decisions, there may not be any impediment on the part of the respondents 1 to 4 to consider the claim of the petitioner for increasing the salary of the petitioner and payment of incentives and other increments, subject to fulfillment of other norms.

8 In the result, the writ petition stands disposed of and the 4th respondent is directed initiate appropriate proposal as to the payment of increased salary, incentives and other increments due and payable to the petitioner within a period of four weeks from the date of receipt of a copy of this order and submit the same to the 3rd respondent, who on receipt of the same, is directed to consider the said proposal on merits and in accordance with law and pass orders within a further period of four weeks thereafter and communicate the decision taken, to the petitioner as well as to the 5th respondent / School.

9 In the light of the fact that passing of Teacher Eligibility Test is not mandated in respect of the teachers employed in the Minority Institutions, the 5th respondent / School shall take every endeavour to conduct orientation classes for the teachers employed by it, for the benefit and interest of the students studying in the said institution. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS-V)

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Sub-Assistant Registrar

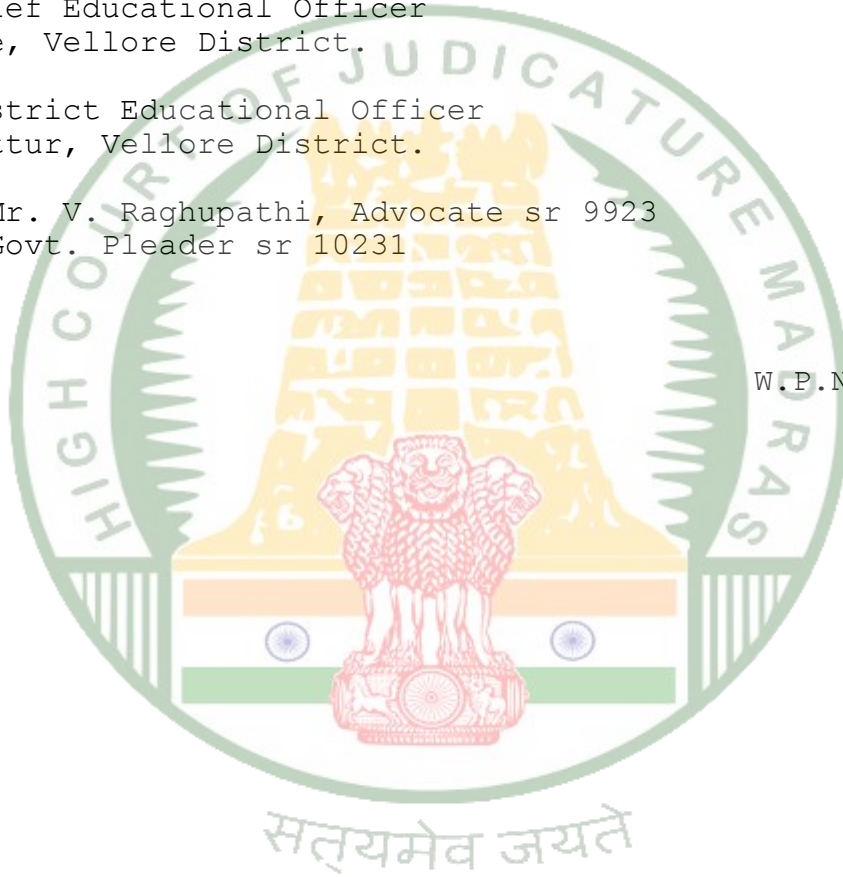
To

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+1 CC to Mr. V. Raghupathi, Advocate sr 9923
+1 CC to Govt. Pleader sr 10231

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