

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.Nos.1556 to 1559/2017 & WMP.Nos.1472 to 1483/2017

Miss.P.Cornelia Jenifer Leomarose	...Petitioner in WP.No.1556/2017
Mrs.A.Reena Mary	...Petitioner in WP.No.1557/2017
Miss.S.Theresa	...Petitioner in WP.No.1558/2017
Miss.P.Jenifer Lourdou Mariam	...Petitioner in WP.No.1559/2017

Vs

1. Government of Tamil Nadu rep.by
The Additional Chief Secretary
Department of School Education(C2)
Fort St George, Chennai 600 009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.
3. The Inspector of Anglo Indian Schools
O/o.The Inspector of Anglo Indian Schools
DPI Complex, Nungambakkam,
Chennai 600 006.
4. The Correspondent
Sacred Heart Convent Anglo Indian Higher
Secondary School,
Villupuram District 605602.

...Respondents in all WPs

Prayer in WP.No.1556/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records pertaining to the impugned G.O.Ms.No.181, School Education [C2] Department, dated 15.11.2011 on the file of the 1st respondent and the consequential proceedings dated 26.12.2016 in O.Mu.No.2243/A/2016 on the file of the 3rd respondent and quash the same in respect of the petitioner based on the Division

Bench orders dated 24.08.2016 and made in WA.No.213/2016 and made in WA[MD] No.1019/2013 dated 24.11.2016, directing the respondents to approve the appointment of the petitioner Miss.P.Cornelia Jenifer Leomarose working as Middle Grade Assistant at Sacred Heart Convent Anglo Indian Higher Secondary School, Villupuram 605602, with effect from 03.06.2015 FN with all service benefits.

Prayer in WP.No.1557/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records pertaining to the impugned G.O.Ms.No.181, School Education [C2] Department, dated 15.11.2011 on the file of the 1st respondent and the consequential proceedings dated 26.12.2016 in O.Mu.No.2244/A/2016 on the file of the 3rd respondent and quash the same in respect of the petitioner based on the Division Bench orders dated 24.08.2016 and made in WA.No.213/2016 and made in WA[MD] No.1019/2013 dated 24.11.2016, directing the respondents to approve the appointment of the petitioner Mrs.A.Reena Mary, working as Middle Grade Assistant at Sacred Heart Convent Anglo Indian Higher Secondary School, Villupuram 605602, with effect from 03.10.2016 with all service benefits.

Prayer in WP.No.1558/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records pertaining to the impugned G.O.Ms.No.181, School Education [C2] Department, dated 15.11.2011 on the file of the 1st respondent and the consequential proceedings dated 26.12.2016 in O.Mu.No.--/A/2016 on the file of the 3rd respondent and quash the same in respect of the petitioner based on the Division Bench orders dated 24.08.2016 and made in WA.No.213/2016 and made in WA[MD] No.1019/2013 dated 24.11.2016, directing the respondents to approve the appointment of the petitioner Miss.S.Theresa, working as Middle Grade Assistant at Sacred Heart Convent Anglo Indian Higher Secondary School, Villupuram 605602, with effect from 14.10.2016 with all service benefits.

Prayer in WP.No.1559/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records pertaining to the impugned G.O.Ms.No.181, School Education [C2] Department, dated 15.11.2011 on the file of the 1st respondent and the consequential proceedings dated 26.12.2016 in O.Mu.No.2242/A/2016 on the file of the 3rd respondent and quash the same in respect of the petitioner based on the Division Bench orders dated 24.08.2016 and made in WA.No.213/2016 and made in WA[MD] No.1019/2013 dated 24.11.2016, directing the respondents to approve the appointment of the petitioner

Miss.P.Jenifer Lourdu Mariam, working as Middle Grade Assistant at Sacred Heart Convent Anglo Indian Higher Secondary School, Villupuram 605602, with effect from 03.06.2015 FN with all service benefits.

For Petitioners in
all Writ Petitions : Dr.Father Xavier Arul Raj,
Senior Counsel assisted by
Ms.A.Arul Mary

For R1 to R3 in
all Writ Petitions : Mr.K.Dhananjayan, Spl.GP

COMMON ORDER

By consent, these writ petitions are taken up for final disposal as the issue involved and to be adjudicated is one and the same. Mr.K.Dhananjayan, learned Special Government Pleader accepts notice on behalf of the respondents 1 to 3.

2 The petitioner in WP.No.1556/2017 would aver that she was appointed as a Middle Grade Assistant in the services of the 4th respondent / School with effect from 03.06.2015 in the vacancy caused on account of the retirement of Tmt.Alma Wright as Middle Grade Assistant on 31.05.2011 AN and her appointment was also countersigned by the 3rd respondent and it is also a regular sanctioned post, covered by the Deficit Grant-in-Aid Scheme. The petitioner joined as a Middle Grade Assistant in the services of the said school on 03.06.2015. The petitioner would further aver that the said school was established and being administered by the Catholic Religious Congregation of the "Carmelite Sisters of Saint Teresa" and for the purpose of legal perpetuity, it is a registered Society bearing Registration S.No.789/1988, in the name and style of "Carmelite Sisters of St. Teresa of Tamil Nadu Province Villupuram" and it has been established and is administering a number of educational institutions for the welfare of the Catholic Christian Minority Community and its rights are guaranteed under Article 30[1] of the Constitution of India. The petitioner would also aver that necessary proposal has been forwarded to the 3rd respondent for approval of the appointment of the petitioner and the 3rd respondent has returned the proposal on 26.12.2016 stating that approval for appointment of the petitioner would not be given as the petitioner has not completed the Teacher Eligibility Test [TET] Challenging the legality of the order of the 1st respondent in G.O.Ms.NO.181 dated 15.11.2011 as well as the proceedings of the 4th respondent dated 26.12.2016, the petitioner came forward to file WP.No.1556/2017.

3 The petitioner in WP.No.1557/2017 would aver that she was appointed as a Middle Grade Assistant in the services of the 4th respondent / School with effect from 03.10.2016 in the vacancy caused on account of the retirement of Mrs.Dumen=il Patricia Mary as Middle Grade Assistant on 30.09.2016 and the said retirement was also approved by the 3rd respondent and it is also a regular sanctioned post, covered by the Deficit Grant-in-Aid Scheme. The petitioner joined as a Middle Grade Assistant in the services of the said school on 03.10.2016. The petitioner would further aver that the said school was established and being administered by the Catholic Religious Congregation of the "Carmelite Sisters of Saint Teresa" and for the purpose of legal perpetuity, it is a registered Society bearing Registration S.No.789/1988, in the name and style of "Carmelite Sisters of St. Teresa of Tamil Nadu Province Villupuram" and it has been established and is administering a number of educational institutions for the welfare of the Catholic Christian Minority Community and its rights are guaranteed under Article 30[1] of the Constitution of India. The petitioner would also aver that necessary proposal has been forwarded to the 3rd respondent for approval of the appointment of the petitioner and the 3rd respondent has returned the proposal on 26.12.2016 stating that approval for appointment of the petitioner would not be given as the petitioner has not completed the Teacher Eligibility Test [TET] Challenging the legality of the order of the 1st respondent in G.O.Ms.NO.181 dated 15.11.2011 as well as the proceedings of the 4th respondent dated 26.12.2016, the petitioner came forward to file WP.No.1557/2017.

4 The petitioner in WP.No.1558/2017 would aver that she was appointed as a Middle Grade Assistant in the services of the 4th respondent / School with effect from 14.10.2016 in the vacancy caused on account of the retirement of Mrs.Mary Bridget Rodgers as Middle Grade Assistant on 30.05.2015 and the said appointment was also countersigned by the 3rd respondent on 03.09.2015 and it is also a regular sanctioned post, covered by the Deficit Grant-in-Aid Scheme. The petitioner joined as a Middle Grade Assistant in the services of the said school on 14.10.2016. The petitioner would further aver that the said school was established and being administered by the Catholic Religious Congregation of the "Carmelite Sisters of Saint Teresa" and for the purpose of legal perpetuity, it is a registered Society bearing Registration S.No.789/1988, in the name and style of "Carmelite Sisters of St. Teresa of Tamil Nadu Province Villupuram" and it has been established and is administering a number of educational institutions for the welfare of the Catholic Christian Minority Community and its

rights are guaranteed under Article 30[1] of the Constitution of India. The petitioner would also aver that necessary proposal has been forwarded to the 3rd respondent for approval of the appointment of the petitioner and the 3rd respondent has returned the proposal on 26.12.2016 stating that approval for appointment of the petitioner would not be given as the petitioner has not completed the Teacher Eligibility Test [TET] Challenging the legality of the order of the 1st respondent in G.O.Ms.NO.181 dated 15.11.2011 as well as the proceedings of the 4th respondent dated 26.12.2016, the petitioner came forward to file WP.No.1558/2017.

5 The petitioner in WP.No.1559/2017 would aver that she was appointed as a Middle Grade Assistant in the services of the 4th respondent / School with effect from 03.06.2015 FN, in the vacancy caused on account of the retirement of Mrs.Sybil Rouse, as Middle Grade Assistant on 31.05.2013 and it was also countersigned by the 3rd respondent on 31.05.2013 and it is also a regular sanctioned post, covered by the Deficit Grant-in-Aid Scheme. The petitioner joined as a Middle Grade Assistant in the services of the said school on 03.10.2016. The petitioner would further aver that the said school was established and being administered by the Catholic Religious Congregation of the "Carmelite Sisters of Saint Teresa" and for the purpose of legal perpetuity, it is a registered Society bearing Registration S.No.789/1988, in the name and style of "Carmelite Sisters of St. Teresa of Tamil Nadu Province Villupuram" and it has been established and is administering a number of educational institutions for the welfare of the Catholic Christian Minority Community and its rights are guaranteed under Article 30[1] of the Constitution of India. The petitioner would also aver that necessary proposal has been forwarded to the 3rd respondent for approval of the appointment of the petitioner and the 3rd respondent has returned the proposal on 26.12.2016 stating that approval for appointment of the petitioner would not be given as the petitioner has not completed the Teacher Eligibility Test [TET] Challenging the legality of the order of the 1st respondent in G.O.Ms.NO.181 dated 15.11.2011 as well as the proceedings of the 4th respondent dated 26.12.2016, the petitioner came forward to file WP.No.1559/2017.

6 Dr. Father Xavier Arul Raj, learned Senior Counsel assisted by Ms.A.Arul Mary, learned counsel on record, has drawn the attention of this Court to the judgment rendered by a Division Bench of this Court reported in 2016 [7] MLJ 155 [Secretary to Government, Government of Tamil Nadu, Education Department, Chennai-9 and others Vs. S.Jeyalakshmi and others], as well as the judgment dated 24.11.2016 made in WA [MD] NO.1019/2013 etc., batch, and the order dated 15.12.2016 made in WP.Nos.43302 to 43305/2016 and would submit that as per the

above cited Division Bench judgment, a teacher working in Religious Minority Educational Institution is not required to pass TET as the provisions of the Right to Education Act, 2008, cannot be made applicable to them and therefore, prays for quashment of the impugned orders.

7 Per contra, Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents 1 to 3 would contend that legal advice is being sought, to challenge the decision rendered in [2016] 7 MLJ 155 [cited supra] and prays for time to get further instructions.

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

9 It is relevant to extract paragraph Nos.59, 60 and 62 of the Division Bench Judgment reported in 2016 [7] MLJ 155 [cited supra]:-

".....

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."

10 In the considered opinion of the Court, the above cited decision which has been followed in the subsequent two orders, are fully applicable to the facts of the cases on hand, as it is not in dispute that the approval of the petitioners' appointment sought, is in respect of a sanctioned post, that too, in a religious Minority Educational Institution.

11 In the result, the writ petitions are allowed and the impugned orders dated 15.11.2011 and 26.12.2016 passed by the 1st respondent and the 3rd respondent respectively are set aside and the 3rd respondent is directed to take appropriate steps for granting approval of the petitioners' appointment subject to fulfillment of all other norms and the said official is also directed to release the salaries of the petitioners as well as the arrears of salaries, if any, within a period of two months from the date of receipt of a copy of this order. It is also made clear that in the light of the observation made in Paragraph No.62 of the above cited judgment, the 4th respondent, taking into consideration the interest and welfare of the students, shall also conduct refresher courses and interactive sessions during annual vacations and other holidays in order to

ensure and improve the quality of teaching. It is the bounden duty of the petitioners to improve her quality of education in larger interest of the student community. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1. The Additional Chief Secretary
Government of Tamil Nadu
Department of School Education,
Fort St George, Chennai 600 009.
2. The Director of School Education,
DPI Campus, College Road, Chennai 600 006.
3. The Inspector of Anglo Indian Schools
O/o.The Inspector of Anglo Indian Schools
DPI Complex, Nungambakkam, Chennai 600 006.
4. The Correspondent
Sacred Heart Convent Anglo Indian Higher
Secondary School,
Villupuram District 605602.

+6cc to Ms.Arul Mery, Advocate, S.R.No.4241

VD(CO)
RS(07/03/2017)

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