

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.15707 of 2017

R.Lourdu Marry

...Petitioner

-vs-

1. The State Commissioner for the Differently Abled
SRTC Campus
K.K.Nagar
Chennai
 2. The District Differently Abled Welfare Officer
Krishnagiri
Krishnagiri District
 3. The Correspondent
I.E.L.C. School for the Blind
No.46/2, Mission Compound
Bargur, Krishnagiri District
- ...Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents to approve the appointment of the petitioner as Secondary Grade Assistant in the IELC School for the Blind from 01.09.2015, the date of appointment of the petitioner and confer all the consequential benefits by considering the proposal made by the third respondent management dated 27.08.2015.

For Petitioner :: Mr.V.Sivalingam for
Mr.B.Balavijayan

For Respondents :: Mr.T.M.Pappiah
Special Government Pleader
for R1 & 2

ORDER

The petitioner was selected in the interview and thereupon appointed as Secondary Grade Assistant for the blind on 1.9.2015 by the Correspondent of the I.E.L.C. School for the Blind, Krishnagiri District in the post that fell vacant due to the voluntary retirement of one Mr.G.Suthandirakumar, Secondary

Grade Teacher on 31.8.2015. The third respondent management also forwarded a proposal on 27.8.2015 for approval of her appointment to the second respondent along with all the documents indicating clearly the educational qualifications of the petitioner. But the second respondent did not pass any orders. Therefore, the third respondent sent reminders periodically. Only thereafter, the second respondent-District Differently Abled Welfare Officer, Krishnagiri sent a letter to the first respondent seeking approval of the petitioner's appointment as Secondary Grade Teacher from the date of her appointment by proceedings dated 9.5.2016. Again the management sent one more reminder to the respondents 1 & 2 on 7.1.2017 requesting to grant approval of her appointment. But till date, the respondents 1 & 2 have not come forward to consider the proposal, as a result the physically challenged students in the third respondent school are facing huge problems. Besides, the petitioner is also not able to meet her both ends, in view of the non-payment of salary. It was also submitted that it is a well settled legal position that the third respondent school being a minority educational institution, once the post is sanctioned, after a teacher working in the sanctioned post vacates the said post either on retirement, resignation, transfer, etc., the concerned school need not once again obtain prior permission to fill up the vacancy in the sanctioned post. Therefore, the petitioner has come to this Court seeking a direction to the second respondent to pass orders on the proposal sent by the third respondent.

2. Mr.T.M.Pappiah, learned Special Government Pleader for the respondents, finding that the third respondent school is meant for physically challenged and that the petitioner was also selected to the post of Secondary Grade Assistant and a proposal also has been sent by the third respondent indicating that the petitioner has fulfilled all the educational qualifications, sought for sufficient time to consider the proposal.

3. A similar issue was also considered by me in W.P.No.31382 of 2014 (M.Manogaran v. The Joint Director (Elementary Education), Chennai and two others) and by order dated 15.3.2016, I have held as follows:-

"7. Further, the third respondent School is a minority institution, therefore, the Right of Children to Free and Compulsory Education Act, 2009, cannot be applied to the case on hand in view of the ratio laid down by the Hon'ble Apex Court in Pramati Educational & Cultural Trust's case (cited supra). For better appreciation, paragraph 47 thereof is extracted below:

"47. In the result, we hold that the

Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution and the Constitution (Eighty-Sixth Amendment) Act, 2002 inserting Article 21A of the Constitution do not alter the basic structure or framework of the Constitution and are constitutionally valid. We also hold that the 2009 Act is not ultra vires Article 19(1)(g) of the Constitution. We, however, hold that 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 is allowed and Writ Petition (C) Nos.416 of 2012, 152 of 2013, 60 of 2014, 95 of 2014, 106 of 2014, 128 of 2014, 144 of 2014, 145 of 2014, 160 of 2014 and 136 of 2014 filed on behalf of non-minority private unaided educational institutions are dismissed. All I.As stand disposed of. The parties, however, shall bear their own costs."

8. In view of the above said facts and circumstances of the case and also by following the ratio laid down by the Hon'ble Apex Court as stated above, this Court gives a direction to the respondents to approve the appointment of the petitioner as Secondary Grade Teacher in the third respondent School from 20.06.2011 and confer all the consequential benefits thereof. The respondents are directed to complete the said exercise within a period of eight weeks from the date of receipt of a copy of this order."

4. In the light of the above, recording the submission made by the learned Special Government Pleader for the respondents 1 & 2, I direct the second respondent to pass orders, accepting the proposal sent by the third respondent School for approval of

the appointment of the petitioner as Secondary Grade Assistant with effect from 1.9.2015, within a period of four weeks from the date of receipt of a copy of this order and confer all the consequential benefits arising therefrom. With this direction, the writ petition stands disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner for the Differently Abled
SRTC Campus
K.K.Nagar
Chennai
2. The District Differently Abled Welfare Officer
Krishnagiri
Krishnagiri District

+1cc to Mr.B.Balavijayan, Advocate Sr.44152

+1cc to the Government Pleader, Sr. 44197

W.P.No.15707 of 2017

VR(05/07/2017)

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