

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2017

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA

W.P. No.16082 of 2017 & W.M.P. No.17375 of 2017

St. Antony's Primary School
Melakarisalkulam
Rayagiri 627 757
Sivagiri Taluk
Tirunelveli District
represented by its Secretary
M. Antony, S/o Michael

Petitioner

vs.

- 1 The Director of Elementary Education
DPI Campus
College Road
Chennai 600 006
- 2 The District Elementary Educational Officer
Tirunelveli District
Tirunelveli
- 3 The Assistant Elementary Educational Officer
Vasudevanallur 627 758
Tirunelveli District

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents to approve the appointment of teacher Thiru. A. Johnson in the post of Secondary Grade Teacher in the petitioner school from the date of appointment on 29.07.2015 with all consequential and other attendant benefits, including payment of salary based on the proposal forwarded by the petitioner school dated 31.07.2015 and 28.02.2017 within a time frame.

For petitioner	Mr. G. Sankaran
For respondents	Mr. V. Jayaprakash Narayanan Special Government Pleader

ORDER

Mr. V. Jayaprakash Narayanan, learned Special Government Pleader, accepts notice for the respondents. With consent, this writ petition is taken up for final disposal, at the admission stage itself.

2.This writ petition has been preferred seeking a writ of mandamus directing the respondents to approve the appointment of one A.Johnson in the post of Secondary Grade Teacher in the petitioner school from the date of his appointment on 29.07.2015 with all consequential and other attendant benefits, including payment of salary based on the proposals dated 31.07.2015 and 28.02.2017 forwarded by the petitioner school within a time frame.

3.According to the petitioner school, it is a Christian minority educational institution receiving grant-in-aid from the State Government for the teachers working in the said school. While so, when a vacancy to the post of Secondary Grade teacher arose on 06.04.2015 due to the promotion of one incumbent by name Philomine Mary Selvam as Headmaster with effect from 06.04.2015, A. Johnson was appointed as Selection Grade teacher on 29.07.2015 as he was fully qualified to hold the said post. Subsequent to his appointment, the petitioner school also forwarded a proposal to the second respondent through the third respondent on 31.07.2015 seeking approval for appointment of the said A. Johnson in the post of Secondary Grade teacher. But, the third respondent returned the said proposal on 19.08.2015 on the premise that the said A. Johnson has not passed Teachers Eligibility Test (TET).

4.According to the learned counsel for the petitioner, as per the judgment of the Supreme Court in *Pramati Educational and Cultural Trust (Regd.) and Others vs. Union of India and others*¹, the Right of Children to Free and Compulsory Education Act, 2009, is not applicable to minority aided/unaided educational institutions and as such, the petitioner school's proposal seeking approval for appointment of A.Johnson cannot be returned by the third respondent on the ground that he has not passed the TET, especially, when the petitioner school, in its proposal dated 31.07.2015, has made it very clear that, in the vacancy which arose on account of promotion of Philomine Mary Selvam to the post of Headmaster in the same school, A. Johnson, who is also having the requisite qualification for the post of Secondary Grade teacher, was appointed and that the third respondent is bound to know this settled legal position.

5.Heard the learned counsel on either side.

6.Even a bare perusal of the proceedings dated 19.08.2016 of the third respondent makes it clear that the proposal forwarded by the petitioner school has been returned only on the premise that A. Johnson has not passed the TET.

¹ (2014) 8 SCC 1

7.Be that as it may, the learned Special Government Pleader submitted that subject to verification of the educational qualification of the said A. Johnson, the proposal sent by the petitioner school seeking approval of his appointment as Secondary Grade teacher will be considered.

8.In view of the above submission made by the learned Special Government Pleader, the third respondent is directed to forward the petitioner school's proposal to the second respondent, after verifying the educational qualification of A. Johnson for the post in question, except pass in the TET, which is not required in a minority educational institution. It is further directed that within two weeks from the date of receipt of the petitioner school's proposal from the third respondent, the second respondent shall consider the same and pass appropriate orders.

This writ petition stands disposed of with the above directions. Costs made easy. Connected W.M.P. is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cad

To

1.The Director of Elementary Education
DPI Campus
College Road
Chennai 600 006

2.The District Elementary Educational Officer
Tirunelveli District
Tirunelveli

3.The Assistant Elementary Educational Officer
Vasudevanallur 627 758
Tirunelveli District

+lcc to Mr.G.Sankaran, Advocate SR.No.44828

+lcc to Government Pleader SR.No.44749

W.P. No.16082 of 2017

KK(CO)

GN(19/07/2017)