

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.1652/2017

Shalini Nancy

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Petitioner

Vs

1.The Principal Secretary to Government,
State of Tamilnadu,
Education Department,
Fort Gt.George, Chennai-600 009.

2.The Director of School Education
DPI Compound, College Road,
Nungambakkam, Chennai-600 006.

3.The Chief Educational Officer,
Vellore District.

4.The District Educational Officer,
Tindivanam,
Villupuram District.

5.Walter Scudder Higher Secondary School,
Rep.by its Correspondent,
Tindivanam-604 001,
Villupuram District.

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Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to calling for the entire records connected with the impugned order of the 4th Respondent by his proceedings in A.T.Mu.8450/A2/2012 dated

06.03.2013 and Quash the same and consequently, direct the respondents 1 to 4 to disburse salary to the petitioner for the period from 10.09.2012 to date, within a time frame fixed by this Court.

For Petitioner : Mr.S.Sathia Chandran

For RR 1 to 4 : Mr.V.Anandamoorthy, AGP

ORDER

By consent, the writ petition is taken up for final disposal. Mr.V.Anandamoorthy, learned Additional Government Pleader accepts notice on behalf of the respondents 1 to 4.

2 The petitioner is a holder of B.Sc., degree as well as B.Ed., and also successfully completed the Post Graduate Degree in Tamil in Master of Arts from Annamalai University and claims that she is qualified to be appointed as B.T. Assistant. The petitioner would further aver that the 5th respondent / School is an Aided Minority Institution and she joined the services of De Valois Higher Secondary School, Kasam, Katpadi, during July 2009 as a Management Teacher, sponsored by the Parents-Teachers Association and on 10.09.2012, she was appointed as a B.T. Assistant [Science] in the place of Tr.Samuel Surendaradoss, who was in the services of the 5th respondent / School, consequent upon his transfer as B.T. Assistant [Science] to De Valois Higher Secondary

School, Kasam, Katpadi. The 5th respondent submitted a proposal for approval of the petitioner's appointment to the 4th respondent on 18.10.2012 and pending approval, the petitioner continues to discharge her duties honestly and sincerely. However, the 4th respondent has returned the proposal vide impugned proceedings dated 06.03.2013 on the ground that as per the provisions of the Right to Education Act, 2008, the petitioner has not passed the Teacher Eligibility Test [TET] and hence, the proposal for approval of her appointment cannot be considered and returned the same 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 written Memo dated 06.03.2013 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.V.Anandhamoorthy, learned Additional 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 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.

7 In the result, the writ petition is allowed and the impugned order passed by the 4th respondent dated 06.03.2013 is set aside and the 5th respondent / School is directed to resubmit the proposal seeking approval of the petitioner's appointment as B.T.Assistant [Science] to the 4th respondent, within a period of two weeks from the date of receipt of a copy of this order and if the papers are otherwise in order, the 4th respondent, upon receipt of the same, is directed to consider the said proposal on merits and in accordance with law, in the light of the observations made in this writ petition and pass orders within a further period of eight weeks thereafter and

M.SATHYANARAYANAN, J.,
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communicate the decision taken, to the petitioner and shall also pass

appropriate orders as to the payment of salary to the petitioner.

8 The writ petition stands disposed of with the above direction. No costs.

24.01.2017

Index : No

Internet : Yes

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