

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.11.2017

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THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.27871 of 2017

M.Brigil Kingsly

...Petitioner

Versus

1. Director of Elementary Education,
DPI Compound,
College Road, Chennai.
 2. District Elementary Educational Officer,
Tirunelveli Education District,
Tirunelveli.
 3. The Assistant Elementary Educational Officer,
Kalakad, Tirunelveli District.
 4. The Correspondent,
TDTA Primary & Middle School,
Punitherion Street, Palayamkottai,
Tirunelveli.
- Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to approve the appointment of the petitioner as B.T.Assistant (Science) in TDTA Middle School, Idayankulam, Kalakkad Range, Thirunelveli District, w.e.f. 24.09.2010, in the light of the proposal submitted by the 4th respondent and grant all other service and monetary benefits consequent thereto.

For Petitioner : Mr.P.Ganesh

For Respondents : Mr.R.A.S.Senthilvel,
1 to 3 Additional Government Pleader

O R D E R

The present Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the respondents 1 and 2 to approve the appointment of the petitioner as B.T. Assistant (Science) in TDTA Middle School, Idayankulam, Kalakkad Range, Thirunelveli District, w.e.f. 24.09.2010, in the light of the proposal

submitted by the 4th respondent and grant all other service and monetary benefits consequent thereto.

2. The case of the petitioner is that she was appointed as B.T. Assistant in Science Subject by the 4th respondent, namely, the Correspondent, TDTA Primary and Middle School, Palayamkottai, Tirunelveli on 24.09.2010 in a permanent sanctioned vacancy which accrued on account of promotion given to one incumbent, namely, S.Mohan. Since the petitioner has passed S.S.L.C. in the year 1991, Higher Secondary in the year 1993 and degree in the year 1996 and B.Ed. In the year 1997, she was found eligible for the post of B.T. Assistant (Science). Mentioning all these qualifications for the post of B.T. Assistant-Science, the 4th respondent, being a Minority Government Aided Educational Institution under the Diocese of Tirunelveli, sent a proposal along with all necessary documents to the Assistant Elementary Educational Officer, the 3rd respondent herein seeking an order approving her appointment. Since the respondents 2 and 3 dragged on the proceedings for more than a year, without passing any order in respect of the proposal sent by the petitioner school, even after remainder, it was rejected by the 2nd respondent on the ground that the petitioner failed to pass the Teachers Eligibility Test. With this remark, the proposal was returned to the 4th respondent by the 3rd respondent.

3. Learned Counsel for the petitioner submitted that since the 4th respondent, being a minority Government Aided Educational Institution, the provisions of RTE Act, 2009 has been made inapplicable by the Hon'ble Apex Court as held in Pramati Educational and Cultural Trust and others v. Union of India and others, (2014) 4 MLJ 486 (SC). Therefore, when it is the settled legal position, the proposal sent by the 4th respondent seeking an order of approval of the appointment of the petitioner as B.T. Assistant Science cannot be refused. The petitioner also filed W.P.(MD) NO.5423/2013 etc. batch on the file of the Madurai Bench of this Court and this Court, while allowing the writ petition filed by the petitioner, gave a direction to the Government to release the salary to the teachers and also to pay the arrears of salary in view of the settled position of law that the Minority Educational Institutions while appointing the teachers can do so without even having passed Teachers Eligibility Test.

4. Mr.R.A.S.Senthilvel, learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that this Court as well as the Apex Court has settled the issue involved in this writ petition for filling up of vacancies against the sanctioned strength of Teaching and Non-teaching staff by the Minority Institutions and the same is no longer res integra. Therefore, the rejection order has been passed inadvertently and

the same can be set aside with a direction to the respondents 1 and 2 to approve the appointment of the petitioner as B.T. Assistant (Science).

5. Recording the said submission of the learned Additional Government Pleader appearing for the respondents 1 to 3, the Writ Petition is allowed with a direction to the 2nd respondent to approve the appointment of the petitioner as B.T. Assistant (Science) in the 4th respondent School w.e.f. 24.09.2010 in the light of the proposal submitted to the 4th respondent, within a period of four weeks from the date of receipt of a copy of this Order. No costs.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. Director of Elementary Education,
DPI Compound,
College Road, Chennai.
2. District Elementary Educational Officer,
Tirunelveli Education District,
Tirunelveli.
3. The Assistant Elementary Educational Officer,
Kalakad, Tirunelveli District.

+1 CC to Mr.K. Govindaraj, Advocate sr 77275.
+1 CC to Govt. Pleader sr 77656.

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SP(09/11/2017)