

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.08.2017
CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
W.P.No.32864 of 2013 and
M.P.No.2 of 2013 and
M.P.No.1 of 2014

S.Selvamary

.. Petitioner

Vs

- 1.The State of Tamil Nadu, rep. by its
Secretary to Government,
School Education Department,
Secretariat, Chennai -600 009.
- 2.The Director of School Education,
Chennai - 600 006.
- 3.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
- 4.The District Educational Officer,
Cheranmahadevi, Tirunelveli District.
- 5.Correspondent,
Annai Theresa High School,
Meenavankulam-627 502.
Nanguneri Taluk,
Tirunelveli District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 2nd respondent in his proceedings Na.Ka.No. 037552/D2/E3/2013, dated 17.05.2013 in so far as denial of approval of appointment of the petitioner retrospectively from 01.06.2009 and Na.Ka.No.34116/D1/E4/2013, dated 07.11.2013 and the consequential order passed by the 4th respondent in his proceedings Na.Ka.No.4449/A3/2013, dated 18.11.2013 and quash the same and direct the respondents to approve the appointment of the petitioner as B.T.Assistant (Science) from 01.06.2009 and confer all the consequential benefits.

For Petitioner : Mr.P.Ganesan
for M/s.C.S.Associates

For Respondents: Mrs.M.E.Raniselvam
Addl. Government Pleader
for respondents 1 to 4

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 2nd respondent in his proceedings Na.Ka.No.037552/D2/E3/2013, dated 17.05.2013 in so far as denial of approval of appointment of the petitioner retrospectively from 01.06.2009 and Na.Ka.No.34116/D1/E4/2013, dated 07.11.2013 and the consequential order passed by the 4th respondent in his proceedings Na.Ka.No.4449/A3/2013, dated 18.11.2013 and quash the same and direct the respondents to approve the appointment of the petitioner as B.T.Assistant (Science) from 01.06.2009 and confer all the consequential benefits.

2. The facts in a nutshell are as under: It is the case of the petitioner that since she was working as management staff, her name was registered in the register maintained by R.C. Diocese School and based on such registration, she was appointed as B.T. Assistant (Science) on 01.06.2009. The appointment of the petitioner was also approved with effect from 24.11.2011 on the ground that the post has to be filled up by Mathematics qualified person, whereas the management filled up only the Science qualified person and the post came to be converted from Mathematics to Science only on 24.11.2011 and, therefore, the appointment could be approved only from 24.11.2011.

3. It is stated that assailing approval of his appointment only from 24.11.2011, the petitioner made a representation to the second respondent requesting to approve her appointment from the initial appointment on 01.06.2009. The second respondent, vide the order under challenge dated 17.05.2013, rejected the request of the petitioner on the ground that if the approval is to be given from the date of initial appointment on 01.06.2009, the government has to incur additional expenses by way of salary for 29 months; exemption from acquiring the Teachers Eligibility Test is to be granted; and further the appointment of the petitioner was made without obtaining prior permission for conversion of subject.

4. Being aggrieved by the order of the second respondent, the petitioner made a representation on the ground that inasmuch as the petitioner is employed in a minority institution, there is no question of following subject roster and in any event, the petitioner cannot be penalized for the conversion sought by the Management. In any event, it was pleaded that once conversion is given, that will not take effect prospectively and will take effect retrospectively from the date on which the post became vacant, more so when the petitioner was discharging her duties in the said post. However, the Joint Director of School

Education rejected the representation of the petitioner by order dated 25.10.2013.

5. Thereafter, the fourth respondent, by proceedings dated 18.11.2013, cancelled the approval of appointment of the petitioner on the ground that the petitioner is ineligible without passing the Teachers Eligibility Test.

6. In such backdrop, the present writ petition is filed for the relief stated supra.

7. The learned counsel appearing on behalf of the petitioner contended that conversion of the subject will be effective retrospectively and not prospectively and the petitioner had been deprived of service benefits of almost 29 months for no fault of hers. He added that qua minority institutions, subject roster is not applicable.

8. It is the next contention of the learned counsel appearing on behalf of the petitioner that when there are inadequate Teachers Eligibility Test qualified personnel, it is not known as to how the appointments made after 15.11.2011 can be said to be of candidates who are ineligible.

9. Per contra, the learned Additional Government Pleader appearing on behalf of respondents 1 to 4 submits that the appointment of the petitioner by the fifth respondent without having B.T. Teacher (Science) post on 01.06.2009 is illegal and invalid and, therefore, the refusal to order approval of appointment of the petitioner from 01.06.2009 is in order. She further contended that the fifth respondent cannot appoint a B.T. Teacher in Secondary Grade Teacher vacant post before they get orders converting the Secondary Grade Teacher post as B.T. Teacher (Science) post from the competent educational authority.

10. I heard Mr.P.Ganesan for M/s.C.S.Associates, learned counsel for the petitioner and Mrs.M.E.Rani Selvam, learned Additional Government Pleader for the respondents 1 to 4 and perused the documents available on record.

11. At the outset, it is to be noted that at the time of admission of this writ petition an order of interim stay was granted and the same is in force even as on date.

12. The fact that the petitioner was working as management staff and her name was registered in the register maintained by R.C. Diocese School and based on such registration, she was appointed as B.T. Assistant (Science) on 01.06.2009 is not in dispute. In fact, the appointment of the petitioner was also approved with effect from 24.11.2011 on the ground that the post has to be filled up by Mathematics qualified person, whereas the

management filled up only the Science qualified person and the post came to be converted from Mathematics to Science only on 24.11.2011 and, therefore, the appointment could be approved only from 24.11.2011. It is not the case of the respondent authorities that the petitioner secured appointment from 01.06.2009 in the fifth respondent school based on misrepresentation or fraud. Therefore, the petitioner cannot be penalized for the acts of the fifth respondent. It is also not as if the fifth respondent had converted the post at the behest of the petitioner. The fifth respondent, which is a minority school, would have decided to convert the post of B.T. Assistant based on its necessity. Nothing has been placed on record by either side that such conversion was solely to accommodate the petitioner and not in the interest of the school.

13. A Division Bench of this Court in W.A.Nos.213 of 2016, etc. batch (The Secretary to Government and two others Vs. S.Jeyalakshmi and others), by judgment 24.08.2016, has categorically held that G.O.Ms.No.181, dated 15.11.2011, cannot be made applicable to Minority Educational Institutions. In this regard, it is apposite to refer to paragraphs 59 to 61 and 63 of the said judgment, which read as under:

"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 & Cultural Trust that RTE Act, 2009 is not applicable to the minority institutions. Therefore, we have no hesitation to hold that 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 or 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.

61. Though the intention of the Government is that there should not be any discrimination among the Teachers working in non-minority Schools and minority Schools with respect to qualification and that there should be uniformity in the teaching imparted to the children, in view of the decision of the Apex Court in Pramati Educational & Cultural Trust, the Government cannot take shelter under the guise of discrimination to impose restrictions on minority institutions.

....

63. In the result, the writ petitions are allowed and the writ appeals are dismissed with a direction to the Government to release the salary of the Teachers and also to pay the arrears of salary within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected M.Ps are closed."

14. Admittedly, the petitioner's appointment as B.T. Assistant (Science) has been made against the sanctioned post in the 5th respondent school and such appointment of the petitioner was approved with effect from 24.11.2011, though it is not in dispute that she was working in the sanctioned post from 01.06.2009. It may be mentioned herein that the petitioner was appointed in a sanctioned posts arising out of the retirement of the erstwhile teacher.

15. The issue as to whether the provisions of the Right of Children to Free and Compulsory Education Act 2009, would be applicable or not to a minority institution is pending consideration before the Hon'ble Supreme Court, as could be seen from the decision in Ashwini Thanappan vs. Director of Education and another, reported in (2014) 8 SCC 272, and, therefore, this Court does not propose to traverse into the said issue at this juncture, but for following the Division Bench judgment, referred supra.

16. In such view of the matter, the writ petition is allowed with the following directions:

- (i) the impugned orders are set aside and the respondents are directed to approve the appointment of the petitioner as B.T. Assistant (Science) from 01.06.2009 and confer all the consequential benefits, clearly stating that such approval is subject to the result of the case pending before the Hon'ble Supreme Court in Aswini Thanappan, supra.
- (ii) the petitioner shall be given salary in the course of his employment, if not already paid, within a

period of four weeks from the date of receipt of a copy of this order and no steps shall be taken to remove her from service.

(iii) The petitioner shall also be paid arrears of salary, if any, forthwith.

(iv) No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1.The Secretary to Government,
School Education Department,
Secretariat, Chennai -600 009.

2.The Director of School Education,
Chennai - 600 006.

3.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.

4.The District Educational Officer,
Cheranmahadevi, Tirunelveli District.

+1cc to Mr.C.S.Associates, Advocate, S.R.No.60800

+1cc to the Government Pleader, S.R.No.60541

सत्यमेव जयते

W.P.No.32864 of 2013 and
M.P.No.2 of 2013 and
M.P.No.1 of 2014

rrs 30/11/2018

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