

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 30.06.2017

ORDERS PRONOUNCED ON: 02.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

W.P.NO.32977 OF 2013

M.P.NO.2 OF 2013

G.Daisy Kirubavathy

... Petitioner

Vs.

1. State of Tamil Nadu
Rep. by its Secretary to Government
School Education Department
Secretariat,
Chennai - 600 009.

2. Director of School Education
Chennai - 600 006.

3. District Educational Officer
Coimbatore,
Coimbatore District.

4. The Correspondent
C.S.I. Boys Higher Secondary School
Coimbatore,
Coimbatore District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the third respondent in his proceedings O.Mu.No.9555/A2/2012 dated 28.12.2012 and quash the same and direct the respondents to approve the appointment of the petitioner as B.T. Assistant (Science) from 02.04.2012 and confer all the consequential benefits.

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

For Respondents : Mr.T.M.Pappiah
1 to 3 Special Government Pleader

For Respondent 4 : Mr.S.Bharathirajan

O R D E R

By way of filing this writ petition, the petitioner seeks to quash the impugned order passed by the third respondent / the District Educational Officer, Coimbatore, Coimbatore District, in rejecting her appointment, vide proceedings dated 28.12.2012, with a consequential direction to the respondents to approve her appointment s B.T. Assistant (Science) in the fourth respondent school from 02.04.2012 and confer all the consequential benefits.

2. Mr.P.Ganesan, learned counsel appearing for the petitioner submitted that the petitioner joined in C.S.I. Diocese School in 1988 as Management staff and her name was also registered in the register maintained by the Diocese. Her turn came up for consideration when one post of B.T. Assistant (Science) became vacant in 2008 and she was appointed as B.T. Assistant (Science) on 08.09.2008 by the Management and posted at C.S.I. Girls Higher Secondary School, Coimbatore. However, since the post happened to be surplus, the proposal for approval of her appointment was not forwarded and thereafter, one post of B.T. Assistant (Science) became vacant in C.S.I. Boys Higher Secondary School, Coimbatore in 2009 and the Management directed her to appear for interview on 14.12.2009. Accordingly, she took part in the interview held on 14.12.2009. Since there was some dispute between the Management and Moderator, she was selected and appointed as B.T. Assistant (Science) only on 06.01.2012 at C.S.I. Boys Higher Secondary School Erode. Since she was interviewed, selected and appointed for a vacant post at Coimbatore, she brought the matter to the Moderator and the Moderator instructed the Committee to modify the appointment order. Accordingly, the appointment order was modified and she was posted at C.S.I. Boys Higher Secondary School, Coimbatore, on 30.03.2012 and she joined duty on 02.04.2012. Subsequent to her appointment, the School Management has forwarded the proposal to the third respondent for approval on 22.11.2012. However, without considering the same, the third respondent rejected the approval by way of passing the impugned order.

3. It is further submitted by the learned counsel for the petitioner that in a similar circumstances, this Court, in W.P.No.32314 of 2015, dated 12.10.2015, by taking note of the order passed by the Hon'ble Supreme Court in holding that the teachers who were appointed prior to G.O.Ms.No.181, School Education Department, dated 15.11.2011, will remain protected, gave interim direction to the respondents to temporarily approve the appointment of the petitioner therein as B.T. Assistant (Tamil) in terms of the orders passed by the Hon'ble Supreme Court.

4. Learned counsel appearing for the petitioner has placed reliance upon a judgment of the Hon'ble Supreme Court in PRAMATI EDUCATIONAL AND CULTURAL TRUST VS. UNION OF INDIA AND OTHERS [2014 (8) SCC 1] whereby the Supreme Court held that the Right of Children to Free and Compulsory Education Act, 2009, would not apply to the minority institution. Therefore, since the fourth respondent school is a minority institution, the impugned order passed by the third respondent in rejecting the appointment of the petitioner on the ground that she has not passed the TET examination does not carry any merit and on that basis, he prayed for allowing the writ petition.

5. On the other hand, the third respondent has filed a counter affidavit denying the allegations made by the petitioner. It is stated in the counter affidavit that though the petitioner was appointed on 08.09.2008 as management staff, proposal for approval of her appointment was not forwarded to the third respondent, since the post in which she has been appointed happened to be a surplus post. Thereafter, the petitioner joined the fourth respondent School on 02.04.2012 and the school forwarded the proposal to the third respondent for approval of her appointment only in November 2012. After scrutinizing the proposals, the third respondent returned the proposal vide letter dated 28.12.2012 stating that she has not passed the Teacher's Eligibility Test and hence, her appointment could not be approved. Further it is stated that as per sub section (1) of Section 23 of RTE Act 2009, the National Council for Teacher Education has been appointed as the Academic Authority by the Government of India and the said authority has indicated to all the States that the Teachers to be recruited in future in the Elementary segment should have passed the Teacher's Eligibility Test to be conducted by the appropriate Government in accordance with the guidance framed by the NCTE. Therefore, no appointment in Aided schools should be made by violating the provisions of RTE Act and the NCTE guidelines. The Act came into force from 01.04.2010 onwards and G.O.Ms.No.181, School Education Department, dated 15.11.2011 was issued in accordance with the act. The petitioner joined service only after issuance of the said Government Order viz., on 02.04.2012. Thus, the respondents prayed for dismissal of the writ petition.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. It is no doubt true that the fourth respondent school is a minority institution. It is also an admitted fact that subsequent to the petitioner's appointment on 06.01.2012, the management of the fourth respondent School has forwarded a proposal to the third respondent for approval on 22.11.2012.

However, the third respondent, by way of passing the impugned order, rejected the appointment of the petitioner on the ground that she has not cleared the TET examination. In my view, such reasoning given by the third respondent cannot be sustained, since the said reasoning given by the third respondent is contrary to the G.O.Ms.No.181, School Education Department, dated 15.11.2011, wherein, it is directed to approve all the appointments made prior to 15.11.2011. Admittedly, the petitioner appeared for interview on 14.12.2009, much prior to the said Government Order dated 15.11.2011. Due to some dispute between the Management and the Moderator, the petitioner was selected and appointed as B.T. Assistant (Science) only on 06.01.2012.

8. Further, the fourth 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 Supreme Court in PRAMATI EDUCATIONAL AND CULTURAL TRUST VS. UNION OF INDIA AND OTHERS [2014 (8) SCC 1]. 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."

9. In view of the above said facts and circumstances of the case and also by following the ratio laid down by the Hon'ble Supreme Court as stated above, this Court gives a

direction to the respondents to approve the appointment of the petitioner as B.T. Assistant (Science) in the fourth respondent School from 02.04.2012 and confer all the consequential benefits thereon. 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.

10. With the above observations and directions, the writ petition stands allowed by setting aside the impugned order dated 28.12.2012 passed by the third respondent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

TK

To

1. The Secretary to Government
Government of Tamil Nadu
School Education Department
Secretariat, Chennai - 600 009.
2. The Director of School Education
Chennai - 600 006.
3. The District Educational Officer
Coimbatore, Coimbatore District.

+1cc to Mr.S.Bharathirajan, Advocate, S.R.No.55072

+1cc to M/s.C.S. Associates, Advocate, S.R.No.55412

W.P.NO.32977 OF 2013

CS IV

CA(10/08/2017)

WEB COPY