

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.Nos.44259 & 44260/2016 & WMP.Nos.38105 to 38108/2016

Mrs.Ishrath Sultana	..	Petitioner in
		WP.No.44259/2016
A.Mohamed Saleem	..	Petitioner in
		WP.No.44260/2016

Vs

- 1.The Secretary to Government
State of Tamil Nadu, Education
Department, Fort St George
Chennai-9.
- 2.The Director of School Education,
DPI Compound, College Road
Nungambakkam, Chennai-6.
- 3.The Chief Educational Officer
Vellore District.
- 4.The District Educational Officer
Thirupathur, Vellore District. ..Respondents 1 to 4 in
both writ petitioners
- 5.The Correspondent
Islamiah Girls Higher Secondary School
Vaniyambadi 635 751,
Vellore District. ..5thRespondent Writ
Petition 44259/2016
- 6.The Correspondent
Islamiah Boys Higher secondary School,
Vaniyambadi, 635 751
Vellore District. ... 5th Respondentin
wp.44260/2016

Prayer in WP.No.44259/2016:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records connected with the impugned order passed by the 4th respondent vide Mu.Mu.No.5917/Aa4/2012 dated 14.11.2012 and quash the same insofar as Condition No.1 to 3 insisting the petitioner to pass TET as per G.O.Ms.No.181, dated 15.11.2011, within five years

and till such passing of the same denying the annual increment to the petitioner and directing the 4th respondent to disburse salary to the petitioner from 01.01.2013 to 30.04.2014 and annual increment from 15.06.2012 onwards with interest.

Prayer in WP.No.44260/2016:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records connected with the impugned order passed by the 4th respondent vide Mu.Mu.No.1594/Aa4/2012 dated 03.10.2012 and quash the same insofar as Condition No.1 to 3 insisting the petitioner to pass TET as per G.O.Ms.No.181, dated 15.11.2011, within five years and till such passing of the same denying the annual increment to the petitioner and directing the 4th respondent to disburse salary to the petitioner 01.09.2012 onwards with interest.

For Petitioner in
both Writ Petitions : Mr.S.N.Ravichandran

For Respondents in
both Writ Petitions : Mr.K.Dhananjayan, Spl.GP

COMMON ORDER

By consent, the writ petitions are taken up for final disposal. Mr.K.Dhananjayan, learned Special Government Pleader accepts notice on behalf of the respondents.

2 The petitioner in WP.No.44259/2016 claims that she belongs to Muslim Backward Class community and she has completed B.Sc. [Botany] and also B.Ed., and registered her educational qualification in the District Employment Exchange. The petitioner would further aver that the 5th respondent / School is an Aided Minority Institution and a vacancy arose for the post of B.T.Assistant [Science] on 01.06.2011 due to the retirement of one Mr.Siddique on 31.05.2011. The petitioner was selected and appointed as B.T.Assistant [Science] by the 5th respondent/School vide order dated 15.06.2011 and she joined the said School on the same day and discharging her duties. The 5th respondent / School Management has also submitted a proposal seeking approval of her appointment and the 4th respondent, vide order dated 14.11.2012, accorded the approval for appointment subject to the condition that the petitioner shall pass the Teacher Eligibility Test [TET] within five years as per G.O.Ms.No.181, School Education [C2] Department dated 15.11.2011. The grievance expressed by the petitioner is that the 4th respondent, all of a sudden, without any notice, whatsoever, has stopped paying the salary to the petitioner from 01.01.2013 without assigning any reason, may be on the pretext that the petitioner did not clear TET and challenging the legality of the impugned proceedings dated 14.11.2012 issued by

the 4th respondent, calling upon the petitioner to get herself qualified by passing TET, came forward to file the present writ petition.

3 The petitioner in WP.No.44260/2016 claims that she belongs to Muslim Backward Class community and he has completed B.Sc. [Maths] and also B.Ed., and registered his educational qualification in the District Employment Exchange. The petitioner would further aver that the 5th respondent / School is an Aided Minority Institution and a vacancy arose for the post of B.T.Assistant [Maths] on 01.08.2011 due to the promotion of one Mr.J.Amjad Babu on 01.08.2011. The petitioner was selected and appointed as B.T.Assistant [Maths] by the 5th respondent/School vide order dated 01.09.2011 and he joined the said School on the same day and discharging his duties. The 5th respondent / School Management has also submitted a proposal seeking approval of her appointment and the 4th respondent, vide order dated 03.10.2012, accorded the approval for appointment subject to the condition that the petitioner shall pass the Teacher Eligibility Test [TET] within five years as per G.O.Ms.No.181, School Education [C2] Department dated 15.11.2011. The grievance expressed by the petitioner is that the 4th respondent, all of a sudden, without any notice, whatsoever, has stopped paying the salary to the petitioner from 01.01.2013 without assigning any reason, may be on the pretext that the petitioner did not clear TET and challenging the legality of the impugned proceedings dated 14.11.2012 issued by the 4th respondent, calling upon the petitioner to get himself qualified by passing TET, came forward to file the present writ petition.

4 The learned counsel for the petitioners would submit that in the light of 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], the teachers employed in Minority Institution need not pass TET and as such, the impugned proceedings of the 4th respondent dated 14.11.2012 and 03.10.2012 respectively are liable to be quashed and prays for appropriate orders.

5 Per contra, Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents, would submit that legal advise is being sought to challenge the above cited decision and seeks time to get instructions.

6 This Court has considered the rival submissions and also perused the materials placed before it.

7 The Division Bench of this Court, in the above cited decision, has also placed reliance on the decision of the Hon'ble Apex Court reported in 2014 [8] SCC 1 [Pramati

Educational and Cultural Trust V. Union of India] and it is relevant to extract the following paragraphs :-

".....

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 and Cultural Trust that RTE Act, 2009, is not applicable to the Minority Institutions. Therefore, we have no hesitation to hold that the 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 and 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.

.....

62. However, keeping in mind the larger interest in which the Government has issued the above G.Os., this Court feels that the Minority Institutions may also consider conducting a refresher course and also some interactive sessions to all the Teachers during annual vacation, in order to ensure and improve the quality of Teachers."

In the light of the ratio laid down by the Division Bench of this Court in the above cited decision, this Court is of the view that the impugned proceedings of the 4th respondent is

liable to be quashed.

7 In the result, the writ petitions are partly allowed and the impugned proceedings of the 4th respondent dated 14.11.2012 and 03.10.2012 respectively are hereby set aside insofar as conditions No.1 and 2 [WP.No.44259/2016] and 1 to 3 [WP.No.44260/2016] and the respondents are directed to confer all consequential benefits to the petitioners within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioners. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

AP
To

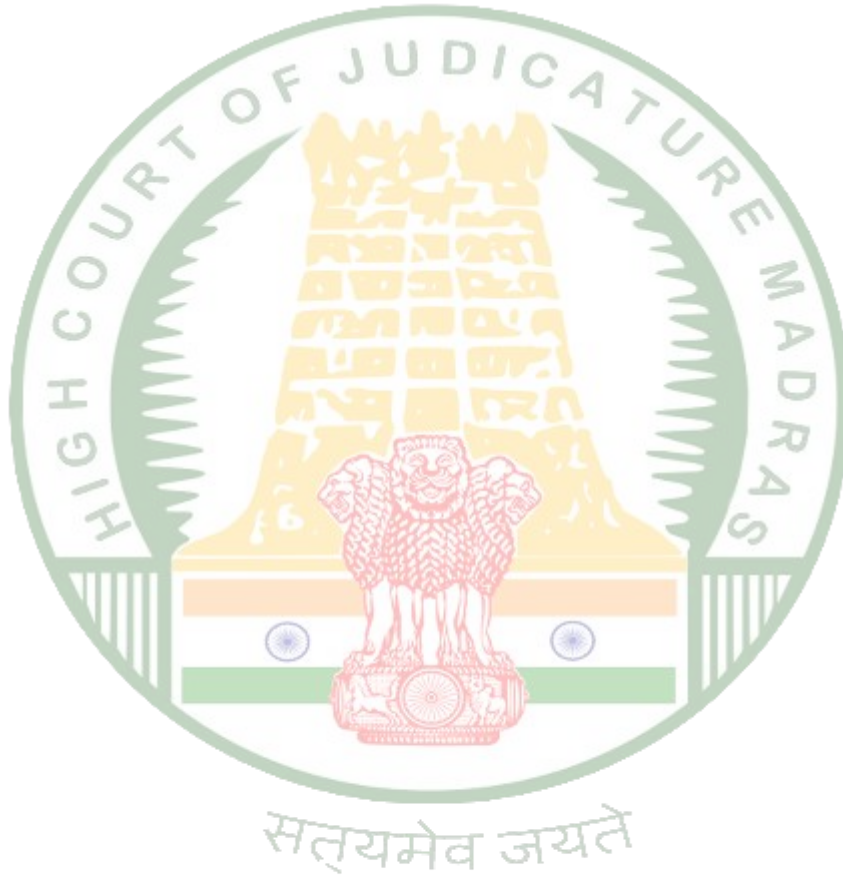
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+2 Cc to Mr.S.N.Ravichandran Advocate, Sr.No.66
+1 cc to Government Pleader Advocate Sr.No.220

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KJ(CO)
GN(19/01/2017)

02.01.2017



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