

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.01.2017
CORAM
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
W.P.No.44685 of 2016 &
WMP.No.38528 of 2016

P.P.Catherine Binu

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Petitioner

Vs

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Education Department,
Fort St George,
Chennai-9.
- 2.The Director,
School Education Department,
College Road, Chennai-6.
- 3.The Joint Director,
School Education Department (Secondary)
College Road, Chennai-6.
- 4.The Chief Educational Officer
Nagercoil, Kanyakumari District.
- 5.The District Educational Officer
Nagercoil, Kanyakumari District.
- 6.The Correspondent
Christian Welfare High School,
Thadikarakonam, Kanyakumar District.
629 851.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of mandamus directing the respondents 1 to 6 herein to forthwith approve the appointment of the petitioner as Graduate Teacher with effect from 20.06.2011 upto 14.10.2012 and pay salary of the petitioner from 20.06.2011 upto 14.10.2012 in terms of the order in WP (MD) No.8066/2012 dated 23.08.2013 and the proceedings of the 1st respondent in letter No.42680/TRB/014 dated 21.04.2015 with all consequential benefits and count the said period alongwith her service from 15.10.2012 for all purposes.

For Petitioner : Mr.V.Krishnamurthy
For Respondents : Mr.K.Dhananjayan, Spl.GP

O R D E R

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

2. The petitioner claims that she is qualified with M.Sc (Chemistry) and B.Ed and she was appointed as Graduate Teacher in Science in the 6th respondent School in the sanctioned post on 16.06.2011 and the 5th respondent vide proceedings in Na.Ka.No.5058/A4/2015 dated 04.11.2015 has accorded approval of her appointment and salary from 15.10.2012, i.e next date of her passing the Teacher Eligibility Test.

3. The grievance now expressed by the petitioner is that since she is employed in a Religious Minority School, the provisions of RTE Act cannot be made eligible. In this regard, a representation dated 17.08.2011 was addressed by the 6th respondent to the 5th respondent praying for approval of the appointment of petitioner with effect from the date of her initial appointment, i.e 20.06.2011 and pay the arrears from that date to 14.10.2012. Despite receipt and acknowledgment, no orders have been and hence the petitioner came forward to file the present writ petition.

4. The learned counsel for the petitioner would submit that the matter in issue is squarely covered by 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 therefore prays for appropriate orders.

5. Per contra, Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents, would contend that the petitioner has straightaway submitted a representation dated 22.12.2014 addressed to the 5th respondent and in all fairness, she ought to have submitted the representation through proper channel and therefore would contend that the petitioner may submit a fresh representation through the 6th respondent.

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

7. In the Division Bench judgment 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], it has been held as follows -

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 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 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 18.3.2015 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.

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.

8. Though the petitioner has prayed for a larger relief, this Court in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner either in her representation or in this writ petition, permits the petitioner to submit a representation to the 6th respondent alongwith a copy of this order passed in this writ petition, within a period of two weeks from the date of receipt of a copy of this order. On such receipt, the 6th respondent shall forward the same through proper channel to the 2nd respondent who on receipt of the same, shall consider the said proposal on merits and in accordance with law, in the light of the above cited judgment and pass appropriate orders, within a period of eight weeks from the date of receipt of the proposal and communicate the decision taken, to the petitioner as well as to the 6th respondent.

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

सत्यमेव जयते
Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rgr

To

1. The Secretary,
Education Department,
Fort St George
Chennai-9.
- 2.The Director,
School Education Department,
College Road, Chennai-6.
- 3.The Joint Director,
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- 5.The District Educational Officer
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- 6.The Correspondent
Christian Welfare High School,
Thadikarakonam, Kanyakumar District.
629 851.

+1cc to Mr.V. Krishnamurthy, Advocate, S.R.No.361
+1cc to the Government Pleader, S.R.No.761

cnr (CO)
md(24/01/2017)

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सत्यमेव जयते

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