



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2017

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN**W.P(MD) No.15341 of 2015
and M.P. (MD) No.1 of 2015**

J.S.Anitha

... Petitioner

-vs-

1. The District Elementary Educational Officer,
Tirunelveli.
 2. The Additional Assistant Elementary Educational Officer,
Manoor at Rastha,
Tirunelveli District.
 3. The Correspondent,
T.D.T.A.Primary and Middle Schools,
Nanjankulam-627 357
Tirunelveli District.
- ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 1st respondent in his proceedings Na.Ka.No.2634/A2/2015 dated 27.07.2015, quash the same and direct the respondents to approve the appointment of the petitioner from the date of appointment, i.e., 29.04.2014 and confer all the consequential benefits.

For Petitioner : Mr.V.Panneer Selvam

for C.S Associates

For R1 & R2 : Mr.A.K.Baskara Pandian
Spl. Govt. Pleader

ORDER

This writ petition has been filed, seeking to quash the impugned order dated 27.07.2015 passed by the 1st respondent in Na.Ka.No.2634/A2/2015, by which, the proposal sent by the 3rd respondent School (in short "the school") for approval of appointment of the petitioner as Secondary Grade Teacher has been rejected, on the ground that there are surplus of posts in some



other schools. The petitioner also sought a direction to the respondents to approve the appointment of the petitioner from the date of appointment, i.e., 29.04.2014 and confer all the consequential benefits.

2. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader, appearing for the respondents 1 & 2.

3. The 3rd respondent school is a minority institution, run by TDTA Management. One post of Secondary Grade Teacher in the school fell vacant on account of retirement of one Jeba Chandra Arumaiammal 28.04.2014. In that vacancy, the school appointed the petitioner as Secondary Grade Teacher and she joined duty on 29.04.2014.

4. The school submitted a proposal to the 1st respondent requesting to approve her appointment as Secondary Grade Teacher from 29.04.2014 and disburse grant-in-aid towards her salary. But the 1st respondent returned the proposal vide proceedings dated 27.07.2015, on the ground stated supra. Aggrieved by the same, the petitioner is before this Court with the relief stated supra.

5. The learned counsel for the petitioner has brought to the attention of this Court the Judgment of the Division Bench of this Court in W.A.Nos.213 and 572 of 2016 etc. batch, dated 24.08.2016, wherein a direction was issued to the Government to release the salary of the Teachers and also to pay the arrears of salary within a period of two months.

6. Article 45 of the Constitution of India directed the States to ensure to provide free and compulsory education to all children until they complete the age of 14 years and this should be done within a period of 10 years from the commencement of the Constitution. Article 45 was amended by the 86th Constitution Amendment Act, 2002 and it reads "the State shall endeavour to provide early childhood care and education for all children until they complete the age of 14 year". Under the very same enactment, the right to education became a fundamental right to the children between the age group of 6 to 14. Thereafter, parliament enacted the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter called "RTE Act") with the object of providing free education, which came into force from 01.04.2010.

6.1. With the view to improve the quality of education and to provide quality education to children, Section 23 of the RTE Act makes it mandatory for a person, who seeks appointment in the schools covered under RTE Act to possess minimum qualification as laid down by the Academic Authority. As per Section 23 (1) of RTE Act National Council for Teacher Education (NCTE) was notified as Academic Authority. The authority, while providing for guidelines to conduct Teacher Eligibility Test indicated that the teacher should have passed Teacher Eligibility Test (in short



"TET") to be conducted by the appropriate Government in accordance with the guidelines in order to get appointment as Teacher.

6.2. Accepting this recommendation, the Government of Tamil Nadu issued G.O.Ms.No.181 School Education Department dated 14.12.2015. The Government also passed G.O.Ms.25 dated 06.02.2014, under which, the minimum marks to be obtained by various categories were prescribed was also quashed by the Hon'ble Division Bench. The constitutional validity of RTE Act was under challenge before the Supreme Court in the case of **Society for Unaided Private Schools of Rajasthan vs. Union of India, 2012 (6) SCC 1**. The Apex Court while upholding the constitutional validity held that the Act is applicable to all schools, except the unaided minority schools.

6.3. In the case of **Pramati Educational and Cultural Trust vs. Union of India, 2014 (4) MLJ 486**, the Hon'ble Supreme Court held that under Article 31 of the Constitution of India, all minorities, whether based on religion or language shall have the right to establish and administer educational institutions of their choice and therefore, those institutions have a special constitutional right to establish and administer educational schools of their choice.

7. The Hon'ble Division Bench of this Court in the case of W.A.(MD) No.213 and 572 of 2016, based on the judgment in Pramati's case, held that G.O.181 dated 14.12.2015, which was issued prior to the directions of NCET, cannot be made applicable to minority institutions. The Hon'ble Division Bench of this Court in the said decision has only suggested that the minority institution may consider conducting a refresher course and also some interactive sessions in order to ensure the quality of teachers.

8. This Court, in the case of **B.Infanse vs. The Director of Elementary Education, College Road, Chennai and others [W.P.(MD) Nos.5231 etc., batch decided on 25.02.2014]**, while dealing with the issue of surplus of posts, has been pleased to hold as under:

"3. Considering the very same issue, this Court in W.P(MD)No.5872 of 2012, dated 12.12.2013, after taking note of the earlier decision was pleased to hold in paragraph Nos.5 to 7 and the same reads as follows:-

"5.Considering the very same issue, this Court was pleased to pass the following order:

"2.The case of the petitioner is that he was appointed as Secondary Grade Teacher in the third respondent school on 01.02.2010 in a vacancy caused on account of voluntary retirement of one



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other ground on which the impugned order has been passed also cannot be sustained as other school is bound to have a minimum of two teachers and therefore, in adequacy of student's strength cannot be a ground for not approving the appointment of the petitioner. However, the petitioner cannot seek a direction to third respondent to comply with the direction of the first and second respondents, by transferring the surplus staff available in other schools.

7. In such way of the matter, the writ petition is allowed and the respondents are directed to approve the appointment of the petitioner on the date of her appointment within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. No costs"

4. Considering the same, these Writ Petitions are allowed on the very same terms. No costs. Consequently, connected Miscellaneous Petitions are closed."

9. Therefore, in view of the legal position enunciated above, this Court is of the view that the impugned order dated 27.07.2015 is liable to be set aside.

10. Accordingly, this writ petition is allowed and the impugned order dated 27.07.2015 is set aside. The 1st respondent is directed to approve forthwith the appointment of the petitioner as Secondary Grade Teacher in the 3rd respondent school with effect from 29.04.2014 and disburse the grant-in-aid towards her salary and allowances with all attendant benefits, within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To:

1. The District Elementary Educational Officer,
Tirunelveli.

2. The Additional Assistant Elementary Educational Officer,
Manoor at Rastha,

<https://hcservices.courts.gov.in/hcservices/>
Tirunelveli District.



3. The Correspondent,
T.D.T.A.Primary and Middle Schools,
Nanjankulam-627 357
Tirunelveli District.

+1 cc to Mr.V.Panneer selvam , Advocate in SR.No. 11317
+1 cc to Special Government Pleader in SR.No:11153

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AE/SV MMS/17.04.2017/6P/6C

W.P (MD) No.15341 of 2015
27.02.2017