



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.05.2017

CORAM:

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P. (MD) No.20429 of 2015

and

M.P. (MD) Nos.1 to 3 of 2015 & W.M.P. (MD) No.11294 of 2016

R.Mercy Anjela, D/o.P.Raju,
B.T.Assistant (Tamil),
R.V.Fathima Middle School, Thiruppathur,
Sivagangai District.

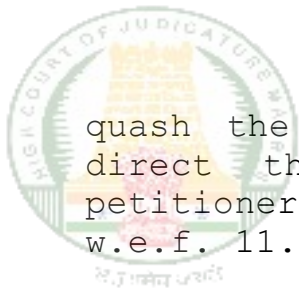
... Petitioner

Vs.

1. The Government of Tamilnadu,
Rep. By the Additional Chief Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.
2. The Director of Elementary Education,
DPI Campus, College Road,
Chennai-600 006.
3. The District Elementary Educational Officer,
The Office of the District Elementary Educational Officer,
Sivagangai, Sivagangai District.
4. The Assistant Elementary Educational Officer,
The Office of the Assistant Elementary Educational Office,
Thiruppathur, Sivagangai District.
5. The Correspondent,
R.C.Fatima Middle School,
Thiruppathur,
Sivagangai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned G.O.(Ms)No:181, School Education (C2) Department, dated 15.11.2011 on the file of the 1st respondent and consequential proceedings dated 12.11.2015 in Aa.Thi.Mu.No:1806/A2/2015 on the file of the 4th respondent and to



quash the same in respect of the petitioner, and consequently direct the respondents to approve the appointment of the petitioner as B.T. Assistant (Tamil) in the 5th respondent school w.e.f. 11.06.2013 with all service benefits.

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For Petitioner
For R-1 to R-4

: Mr.M.Thirunavukkarasu
: Mr.T.R.Janarthanan,
Additional Government Pleader.

O R D E R

The above Writ Petition has been filed challenging the rejection of the approval of the appointment of the petitioner as B.T. Assistant (Tamil) with effect from 11.6.2013 by the fourth respondent school on the ground that she did not possess the teacher eligibility test (in short 'TET').

2. The case of the petitioner is that the fifth respondent school is an aided minority institution and it is governed by some of the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the rules framed thereunder. The petitioner passed B.Lit in the month of November 2003 from Ramasamy Tamil College, Karaikudi which is affiliated to Madurai Kamaraj University. She was appointed as B.T. Assistant Tamil on 11.06.2013 in the fifth respondent School in a vacancy caused on account of the promotion given to one Smt.P.Rabel Marry and has been working in that school. At the time of her appointment, she qualified B.Lit with B.Ed. The 5th respondent school sent the proposal to approve the appointment of the petitioner to the 4th respondent on 06.07.2014. The said proposal was returned by the 4th respondent to the 5th respondent on 18.07.2015 with certain remarks to rectify the mistake. On receipt of same, the 5th respondent has rectified remarks and resubmitted the proposal seeking approval to the appointment of the petitioner as B.T. Assistant (Tamil) to the 4th respondent. However, the 4th respondent by proceedings dated 12.11.2015 in Aa.Thi.Mu.No.1806/A2/2015 rejected the approval of the appointment of the petitioner for the post of B.T. Assistant (Tamil) as she has not acquired TET. As against order of rejection of approval, the petitioner has come forward with the present writ petition.

3. The official respondents 1 to 4 filed a counter affidavit stating that the subject matter in issue, namely, the applicability of law laid down by the Hon'ble Apex Court in **Pramati Educational and Cultural Trust & others -Vs- Union of India** has now been referred to the Larger Bench and the same is kept pending and therefore, prayed for the dismissal of the Writ Petition.



4. Heard both side and perused the records.

5. However, when the matter came up for consideration, both the parties would contend that the Division Bench of this Court has considered the issue in question in a batch of writ appeals and writ petitions in the case of The Secretary to Government, Government of Tamil Nadu and others -Vs- S.Jeyalakshmi and another reported in **2016 (7) MLJ 155** wherein I am also one of the party to the Judgment and we have 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 and Cultural Trust-Vs- Union of India (supra) 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.

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."

6. In the light of the afore-cited judgment and since the approval of the appointment has been rejected on the ground that the petitioner did not possess TET, this Court is of the considered view that the ratio laid down by the Division Bench of this Court would certainly apply to the case on hand. In other words, 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 and as per the observation made in the afore-said judgement, 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.

7. In the result, the order impugned in this writ petition stands set aside and this writ petition is allowed as prayed for. Consequently, the third respondents is directed to approve the appointment of the petitioner as B.T. Assistant (Tamil) with effect from 11.06.2013 and also to pay the arrears of salary within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Vacation Officer

/True Copy/

Sub Assistant Registrar

To

1. The Additional Chief Secretary to Government of Tamil Nadu
Department of School Education,
Fort St. George, Chennai-600 009.

2. The Director of Elementary Education,
<https://hcservices.ecourts.gov.in/hcservices/>
DPI Campus, College Road,
Chennai-600 006.



3. The District Elementary Educational Officer,
The Office of the District Elementary Educational Officer,
Sivagangai, Sivagangai District.

4. The Assistant Elementary Educational Officer,
The Office of the Assistant Elementary Educational Office,
Thiruppathur, Sivagangai District.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 57916

+ 1 CC TO Mr.V.B.SUNDARESWAR, ADVOCATE IN SR No. 57528

SKN

TE/SV-MMS/SAR-II : 08/06/2017 : 5P/7C

ORDER MADE IN
W.P.(MD)No.20429 of 2015 and
M.P.(MD)Nos.1 to 3 of 2015 &
W.M.P.(MD)No.11294 of 2016
Dated :- 25.05.2017