



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2017

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CORAM:

THE HON'BLE Mr.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.1394 of 2017

and

W.M.P. (MD) Nos.1143 and 1144 of 2017

S.M.Janiba

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep.by its Secretary,
Department of School Education,
Fort St.George, Chennai 600 009.

2.The Director of School Education,
College Road, Chennai 600 006.

3.The Chief Educational Officer,
Chief Educational Office,
Nagercoil, Kanyakumari District.

4.The District Educational Officer,
District Educational Office,
Kuzhithurai, Kanyakumari District 629 163.

5.The Correspondent,
Higher Secondary School Mottakkala,
Edaicode Post 629 152,
Kanyakumari District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 4th respondent pertaining to the order in Oo.Mu.No.6710/A2/2016 dated 29.11.2016 and to quash the same and consequently direct the respondents to approve the appointment of the petitioner as School Assistant (Science) in the 5th respondent school from the date of appointment i.e. from 01.12.2015 with all attendant benefits within a stipulated time that may be prescribed by this Court.



For Petitioner
For Respondents

: Mr.S.C.Herold Singh
: Mr.S.Sathish Kumar, G.A.for R1 to 5

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O R D E R

This writ petition has been filed, seeking to quash the impugned order passed by the respondent concerned, by which, the proposal sent by the respondent / School for approval of appointment of the petitioner for the post of School Assistant (Science) was rejected, on the ground of non enclosure of TET certificate. The petitioner also sought a direction to the official respondents to approve the appointment with effect from 01.12.2015 with all service benefits.

2.Heard on either side.

3.In the respondent / school (hereinafter referred to as "the school") the above said post fell vacant. In that vacancy, the respondent / school appointed the petitioner for the above said post.

4.The school submitted a proposal to the respondent concerned requesting to approve the said appointment and disburse grant-in-aid towards his salary. But the respondent concerned returned the proposal, 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 to 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 endure 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 referred to as "RTE Act") with the object of providing free education, which came into force from 01.04.2010.



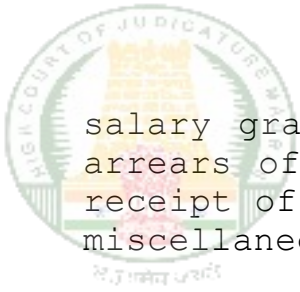
6.1. With the view to improve the quality of education and to provide quality education to children, Section 23 of the RTE Act makes it mandatory for a person, who seeks appointment in the schools covered under RTE Act to possess minimum qualification as laid down by the Academic Authority. As per Section 23 (1) of RTE Act National Council for Teacher Education (NCTE) was notified as the 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 Science Nadu issued G.O.Ms.No.181 School Education Department dated 15.11.2011. 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 15.11.2011, 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 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. Therefore, it is clear that the impugned order is liable to be set aside in view of the legal position enunciated in W.A.(MD) No.213 and 572 of 2016.

8. Accordingly, this writ petition is allowed and the impugned order dated 29.11.2016 is set aside. The 4th respondent is directed to approve the appointment of the petitioner as School Assistant (Science) with effect from 01.12.2015 and release the



salary grant to him from the date of appointment and to pay the arrears of salary within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Department of School Education,
Fort St. George, Chennai 600 009.
2. The Director of School Education,
College Road, Chennai 600 006.
3. The Chief Educational Officer,
Chief Educational Office,
Nagercoil, Kanyakumari District.
4. The District Educational Officer,
District Educational Office,
Kuzhithurai,
Kanyakumari District 629 163.

+ 1 CC TO Mr. S.C. HEROLD SINGH, ADVOCATE IN SR No. 10378

NBJ

TE/MMS : 09/05/2017 : 4P/6C

W.P. (MD) No. 1394 of 2017 and
W.M.P. (MD) Nos. 1143 and 1144 of 2017
23.02.2017