

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 23.02.2017

CORAM:

THE HON'BLE Mr. JUSTICE S. VAIDYANATHAN
W.P. (MD) No. 2024 of 2017
and
W. M.P. (MD) Nos. 1671 to 1673 of 2017

M. Joseph Kala Denika

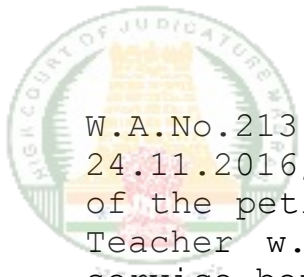
... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Additional Chief Secretary,
Department of School Education,
Fort St. George,
Chennai - 9.
2. The Director of Elementary Education,
DPI Campus,
College Road,
Chennai - 6.
3. The District Elementary Educational Officer,
The Office of the District Educational Officer,
Tirunelveli District - 627 001.
4. The Assistant Elementary Educational School,
Radhapuram - 627 111,
Tirunelveli District.
5. The Correspondent,
St. John's Primary School,
Vattavilai, Udayathoor (PO),
Radhapuram - 627 111,
Tirunelveli 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 pertaining to the impugned G.O. (Ms) No. 181, School Education (C2) Department, dated 15.11.2011 on the file of the 1st respondent and the consequential proceedings dated 27.03.2015 in Na. Ka. No. 301/A1/2015 on the file of the 4th respondent and quash the same in respect of the petitioner based on the Division Bench orders dated 24.08.2016 and made in



W.A.No.213 of 2016 and made in W.A.(MD)No.1019 of 2013 dated 24.11.2016, directing the respondents to approve the appointment of the petitioner M.Joshph Kala Denika, working as Secondary Grade Teacher w.e.f. 07.10.2014 in the 5th respondent school with all service benefits.

WEB COPY

For Petitioner : Mr.V.John Kennedy
For Respondents : Mr.Sathish Kumar, G.A. For R1 to 4

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 Secondary Grade Teacher 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 07.10.2014 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 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 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.

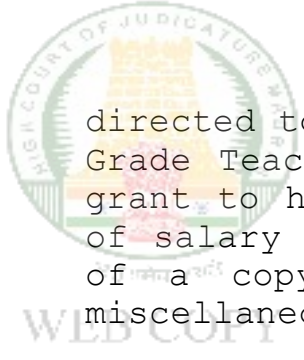
6.2. Accepting this recommendation, the Government of Tamil Nadu issued G.O.Ms.No.181 School Education Department dated 15.11.2011. The Government also passed G.O.Ms.25 dated 06.02.2014, under which, the minimum marks to be obtained by various categories were prescribed was also quashed by the Hon'ble 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 case 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.

<https://hcservices.ecourts.gov.in/hcservices/>

8. Accordingly, this writ petition is allowed and the impugned order dated 27.03.2015 is set aside. The 4th respondent is



directed to approve the appointment of the petitioner as Secondary Grade Teacher with effect from 07.10.2014 and release the salary grant to her 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.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Additional Chief Secretary,
Department of School Education,
Fort St. George,
Chennai - 9.
2. The Director of Elementary Education,
DPI Campus,
College Road,
Chennai - 6.
3. The District Elementary Educational Officer,
The Office of the District Educational Officer,
Tirunelveli District - 627 001.
4. The Assistant Elementary Educational School,
Radhapuram - 627 111,
Tirunelveli District.

+1cc to M/S. V.JOHN KENNEDY, Advocate, SR.No.10339.

W.P. (MD) No.2024 of 2017
23.02.2017

SDS/RR/SAR 4/02.06.2017/4P/6C