



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.1196 of 2016 and
WMP(MD) Nos.978 & 979 of 2016

P.Nickson Devasahayam

... 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 District Educational Officer,
Cheranmahadevi @ Tirunelveli,
Tirunelveli District-627 001.
4. The Correspondent,
St.Terasa's Higher Secondary School,
Vadakkankulam, 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 relating to the impugned proceedings issued by the 3rd respondent herein in O.Mu.no.5409/Aa2/2015 dated 04.01.2016, quash the same and further direct the 3rd respondent herein to approve the petitioner's appointment as B.T.Assistant (Science) in the 4th respondent school w.e.f.24.06.2013 with salary and other attendant benefits .

For Petitioner : Mr.A.Ajith Geethan

For R1 to R3 : Mr.K.P.Krishna Doss
Govt. Advocate**ORDER**

This writ petition has been filed, seeking to quash the impugned order dated 04.01.2016 passed by the 3rd respondent in O.Mu.no.5409/Aa2/2015, by which, the 4th respondent school (in service records of the school) was directed to enclose the TET pass certificate of the petitioner. The petitioner also sought a

direction to the 3rd respondent herein to approve the petitioner's appointment as B.T.Assistant (Science) in the 4th respondent school w.e.f.24.06.2013 with salary and other attendant benefits.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate, appearing for the respondents 1 to 3.

3. The school is a recognized aided minority institution. One post of Secondary Grade Teacher in the school fell vacant on account of promotion of one Kalaiselvi. In that vacancy, on the basis of upgradation of the said post into B.T.Assistant, the school appointed the petitioner with effect from 24.06.2013.

4. The school submitted a proposal to the 3rd respondent, requesting to approve his appointment as B.T.Assistant (Science) from 24.06.2013 and disburse grant-in-aid towards his salary. But the 3rd respondent returned the proposal vide impugned order, 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 the Academic Authority. The authority, while providing for guidelines to conduct Teacher Eligibility Test indicated that the <https://hdservicescourts.gov.in/hoselides/> 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 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. Therefore, it is clear that the impugned order dated 04.01.2016 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 04.01.2016 is set aside. The 3rd respondent is directed to approve the appointment of the petitioner as B.T.Assistant (Science) in the 4th respondent school with effect from 24.06.2013 and release the salary 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. No costs. Consequently, connected miscellaneous petitions are closed.

SD/-

ASSISTANT REGISTRAR (PROTOCOL)

/TRUE COPY/

SUB ASSISTANT REGISTRAR



To:

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

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

3. The District Educational Officer,
Cheranmahadevi @ Tirunelveli,
Tirunelveli District-627 001.

4. The Correspondent,
St.Terasa's Higher Secondary School,
Vadakkankulam, Tirunelveli District.

+1 CC TO MR.A.AJITH GEETHAN,ADVOCATE,SR NO.11105

+1 CC TO SPECIAL GOVERNMENT PLEADER SR NO.11171

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MAS/SV-MMS/SAR3:19.04.2017:4P-7C

W.P (MD) No.1196 of 2016
27.02.2017