



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2017

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN**W.P(MD) No.2509 of 2017****& WMP(MD) No.2102 of 2017**

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N.Paramakannan

... Petitioner

-vs-

1. The Govt. of Tamil Nadu,
Rep. by its Principal Secretary,
Health and Family Welfare Department,
Secretariat, Fort St.George,
Chennai.
2. The Director of School Education,
College Road, Chennai.
3. The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
4. The District Educational Officer,
Cheranmahadevi at Tirunelveli,
Tirunelveli District.
5. Theerthapathy Higher Secondary School,
Rep. by its Secretary,
Ambasamudram,
Tirunelveli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to approve the petitioner's appointment as B.T.Assistant (Maths) in the 5th respondent school with effect from 20.04.2011 without insisting the pass in TET as per the proceedings of the 2nd respondent in Na.Ka.No.34116/D1/E4/2013 dated 20.01.2017 and disburse the attendant monetary benefits within a time frame fixed by this Hon'ble Court.

For Petitioner : Mr.M.Saravanan

For R1 to R4 : Mr.M.Rajarajan

Govt. Advocate

O R D E R

This writ petition has been filed for the issuance of a writ of mandamus, directing the respondents to approve the petitioner's appointment as B.T.Assistant (Maths) in the 5th respondent school with effect from 21.04.2011 without insisting upon the pass in TET as per the proceedings of the 2nd respondent in



Na.Ka.No.34116/D1/E4/2013 dated 20.01.2017 and disburse the attendant monetary benefits

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate Pleader, appearing for R1 to R4.

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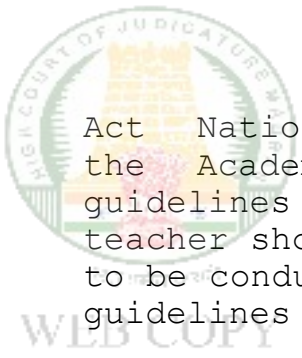
3. The 5th respondent school (in short "the school") is an aided non minority institution and the school called for suitable candidates from the District Employment Officer, Tirunelveli in addition to issuance of advertisement in a Tamil Newspaper on 21.03.2011 to fill up the post of B.T.Assistant (Maths); that the petitioner applied for the said post, participated in the interview and was subsequently selected as B.T.Assistant (Maths); that the petitioner also joined service on 21.04.2011.

4.The school submitted a proposal to the fourth respondent requesting to approve the appointment of petitioner as BT Assistant (Maths) from 21.04.2011 and disburse the monetary benefits to him. But the fourth respondent returned the proposal and directed to resubmit the proposal after rectifying the deficiencies pointed out therein. Despite re-submission of the proposal to the fourth respondent by the school, the same was not considered so far and it was orally informed that TET is the necessary and prescribed qualification for the post of B.T.Assistants. Hence, the present Writ Petition has been filed.

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 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 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. At this juncture, learned counsel for the petitioner drew the attention of this Court the proceedings of the 2nd respondent dated 20.01.2017, by which a direction was issued to the Chief Educational Officers to approve the appointment of teachers appointed in minority and non-minority institutions without TET qualifications from the date of appointment and therefore, the request of the petitioner may also be considered in the light of the said proceedings.

8. In view of the above, the respondents 1 to 4 are directed to approve the appointment of the petitioner as B.T.Assistant (Maths) in the 5th respondent school with effect from 21.04.2011 without insisting upon TET qualification in the light of the proceedings of the 2nd respondent in Na.Ka.No.34116/D1/E4/2013 dated 20.01.2017 and disburse the attendant and monetary benefits, within a period of two months from the date of receipt of a copy of this order.

With the above observation and direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar



To:

1. The Principal Secretary,
Govt. of Tamil Nadu,
Health and Family Welfare Department,
Secretariat, Fort St.George, Chennai.

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

3. The Chief Educational Officer,
Tirunelveli, Tirunelveli District.

4. The District Educational Officer,
Cheranmahadevi at Tirunelveli,
Tirunelveli District.

+1 CC to M/s.THE SPECIAL GOVERNMENT PLEADER, SR No. 11165

+1 CC to M/s.R.SUBRAMANIAN, Advocate, SR No. 11065

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PSM/SV-MMS/SAR3/17.04.2017/4P/7C

W.P (MD) No.2509 of 2017
27.02.2017