



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2017

CORAM :

THE HONOURABLE MR.JUSTICE **S.VAIDYANATHAN**

W.P(MD)No.3568 of 2017

and

W.M.P(MD)Nos.2886 to 2888 of 2017

Sr.A.Josephine

... Petitioner

vs.

- 1)The Government of Tamil Nadu,
Rep by the Additional Chief Secretary,
Department of School Education,
Fort St.George, Madras-600 009.
- 2)The Director of School Education, DPI Campus,
College Road, Chennai-600 006.
- 3)The Chief Educational Officer,
Office of the Chief Educational Officer,
Madurai District.
- 4)The District Educational Officer,
Office of the District Educational Officer,
Madurai, Madurai District.
- 5)The Correspondent,
Nirmala Girls' Higher Secondary School,
161, Kamarajar Salai, Madurai - 625 009. ... Respondents

PRAYER; Writ Petition filed under Article 226 of the Constitution of India, praying this Court 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 3.11.2016 in Na.Ka.No.4701/A4/2016, on the file of the 4th respondent, and quash the same in respect of the petitioner, based on the Division Bench orders dated 24.8.2016 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 Sr.A.Josephine, as B.T.Assistant(Tamil Pandit) in St.Nirmala's Girls' Higher Secondary School, No.161, Kamarajar Salai, Madurai - 625 009, w.e.f. 3.6.2016. with all service benefits.



For Petitioner : Mr.V.John Kennedy
For R 1 to 4 : Mr.A.K.Baskarapandian
Special Govt.Pleader

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ORDER

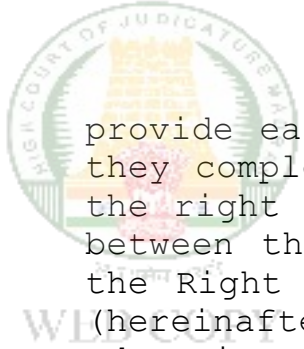
This Writ of Certiorarified Mandamus has been filed, to quash the impugned G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011, on the file of the 1st respondent, the consequential proceedings dated 3.11.2016 in Na.Ka.No.4701/A4/2016, on the file of the 4th respondent, and quash the same in respect of the petitioner, based on the Division Bench orders dated 24.8.2016 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 Sr.A.Josephine, as B.T.Assistant(Tamil Pandit) in St.Nirmala's Girls' Higher Secondary School, No.161, Kamarajar Salai, Madurai - 625 009, w.e.f. 3.6.2016. with all service benefits.

2.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader, who takes notice for the respondents 1 to 4. By consent, the writ petition itself is taken up for final disposal at the admission stage.

3.The 5th respondent is an aided private school; one post of Secondary Grade Teacher in the school fell vacant due to the promotion of the then incumbent; in that vacancy, the 5th respondent school appointed the petitioner and till date, she continues to work in the school as B.T.Assistant(Tamil Pandit), the school submitted a proposal to the fourth respondent requesting to approve the petitioner's appointment as B.T. Assistant(Tamil Pandit) from 03.06.2016 and to disburse grant-in-aid towards her salary; the fourth respondent by the impugned order, returned the proposal, stating that candidates who only passed the TET Test alone can be appointed as B.T.Assistants as per G.O.Ms.No.181.Hence, this writ petition.

4.The learned counsel for the petitioner has brought to the attention of this Court to the Judgment of the Division Bench of this Court reported in 2016 (7) MLJ 155 (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.

5.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 called "RTE Act") with the object of providing free education, which came into force from 01.04.2010.

5.1. 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.

5.2. 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.

5.3. 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.

6. 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 the impugned orders passed are liable to be set aside in view of the legal position enunciated in W.A. (MD) No.213 and 572 of 2016.



7. Accordingly, the impugned orders are set aside and the 4th respondent is directed to approve the appointment of the petitioner as B.T. Assistant (Tamil Pandit) in the 5th respondent school and disburse the grant-in-aid towards her salary allowance with effect from the date of her appointment, viz., 3.6.2016 and to pay the arrears of salary within a period of two months from the date of receipt of a copy of this order.

8. In the result, this Writ Petition stands allowed. No costs. Consequently, Miscellaneous Petitions are closed.

sd/
Assistant Registrar (c.s-II)

/True copy/

Sub Assistant Registrar

To

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

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

3. The Chief Educational Officer,
Office of the Chief Educational Officer,
Madurai District.

4. The District Educational Officer,
Office of the District Educational Officer,
Madurai, Madurai District.

+1CC TO M/S.V. JOHN KENNEDY, Advocate, SR.NO.11661
+1CC TO SPECIAL GOVERNMENT PLEADER, SR.NO.11957

W.P (MD) No.3568 of 2017
and
W.M.P (MD) Nos.2886 to 2888 of 2017
01.03.2017

JM/SV MMS/14.03.2017/4P/7C