



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.03.2017
CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

WEB COPY

W.P(MD)No.3616 of 2017

Jansi Rani

... Petitioner

vs.

1)The Secretary,
Department of School Education,
State of Tamil Nadu,
Secretariat, Fort St.George,
Chennai-9.

2)The Director of School Education
DPI Campus, Chennai-6.

3)The District Educational Officer
Dindigul.

4)The Correspondent
Our Lady of Lourdes' Girls Higher Secondary School,
Dindigul-2.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to approve the petitioner's appointment as B.T.Assistant (Science) in 4th respondent school from the date of joining on 29.8.2016 without insisting pass in Teachers Eligibility Test and to pay the service and monetary benefits by sanctioning grant on the proposal sent by the 4th respondent dated 7.11.2016 within stipulated time.

For Petitioner : Mr.T.A.Ebenezer
For R1 to R3 : Mr.A.K.Baskarapandian
Special Government Pleader

ORDER

The prayer in this writ petition is for issuance of a Writ of Mandamus, directing the respondents to approve the petitioner's appointment as B.T. Assistant (Science) in 4th respondent school from the date of joining on 29.8.2016 without insisting pass in Teachers Eligibility Test and to pay the service and monetary benefits by sanctioning grant on the proposal sent by the 4th respondent dated 7.11.2016 within stipulated time.



respondents 1 to 3. By consent, the writ petition itself is taken up for final disposal at the admission stage.

3.The 4th respondent is a Christian aided minority school. The petitioner was appointed as B.T Assistant(Science) in a sanctioned post in the 4th respondent school. The 4th respondent forwarded proposal on 07.11.2006 for approval of the petitioner's appointment and the same has not been considered. Hence, this writ petition.

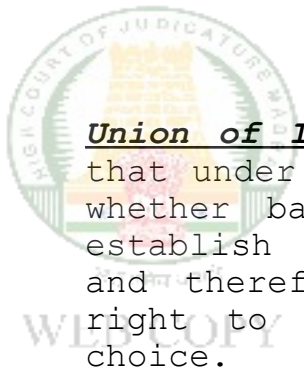
4.The learned counsel for the petitioner has brought to the attention of this Court to the Judgment of the Division Bench of this Court reported in 2016 (7) MLJ 155 (W.A.Nos.213 and 572 of 2016 etc. batch, dated 24.08.2016), wherein, a direction was issued to the Government to release the salary of the 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 respondents 1 to 3 are directed to approve the appointment of the petitioner as B.T. Assistant (Science) in 4th respondent school and disburse the grant-in-aid towards her salary allowance with effect from the date of her appointment, viz., 07.11.2016 and to pay the arrears of salary within a period of two months from the date of receipt of a copy of this order.

In the result, this Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

- 1)The Secretary,
Department of School Education,
State of Tamil Nadu,
Secretariat, Fort St.George,
Chennai-9.
- 2)The Director of School Education
DPI Campus, Chennai-6.
- 3)The District Educational Officer,
Dindigul.

+ 1 CC TO Mr.T.A.EBENEZER, ADVOCATE IN SR No. 11724
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 11958