



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2017

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN**W.P(MD) No.15687 of 2016**

Geetha

... Petitioner

-vs-

1. The Secretary,
Department of School Education,
State of Tamil Nadu,
Secretariat,
Fort St.George,
Chennai-9.
2. The Director of Elementary Education,
DPI Campus, Chennai-6.
3. The District Elementary Educational Officer,
Thoothukudi District,
Thoothukudi.
4. The Additional Assistant Elementary Educational Officer,
Thoothukudi Union at Pudukottai.
Thoothukudi District.
5. The Correspondent,
TDTA Perinbam Ammal Middle School,
Korampallam, Thoothukudi.

... 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 pertaining to the orders passed in G.O.Ms.No.181, School Education (C2) Department dated 15.11.2011 on the file of the 1st respondent and the consequent order by the 4th respondent in his proceedings in O.Mu.No.73/A1/2013 dated 05.02.2013 and quash the same as illegal and consequently direction may be issued to respondents to give salary to the petitioner in the course of her employment within the stipulated time and consequently direction may be issued to the respondents not to take any steps to remove her from service, subject to the final outcome of the case pending before the Hon'ble Supreme Court in Aswini Thanappan vs. Director of Education and another, (2014) 8 SCC 272 and pass any other order or orders as this Hon'ble Court may deem fit and proper as to the circumstances of this case.



For Petitioner : M/s.T.A.Ebenezer

For R1 to R4 : Mr.A.K.Baskara Pandian,
Spl. Govt. Pleader

For R5 : Mr.V.Karuna

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O R D E R

This writ petition has been filed, seeking to quash the impugned order dated 15.11.2011 passed by the 1st respondent in G.O.Ms.No.181, School Education (C2) Department and the consequent order of the 4th respondent dated 05.02.2013 passed vide proceedings in O.Mu.No.73/A1/2013, by which, the proposal sent by the 5th respondent for approval of appointment of the petitioner was rejected, on the ground that she was not in possession of TET certificate. The petitioner also sought a direction to the respondents not to take any steps to remove her from service till the outcome of the result in the pending case in *Aswini Thanappan vs. Director of Education* and another reported in (2014) 8 SCC 272 before the Hon'ble Supreme Court.

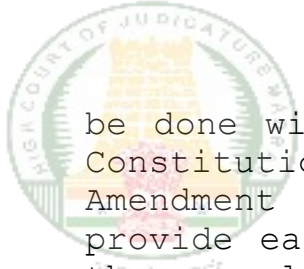
2. Heard the learned counsel appearing for the petitioner, the learned Special Government Pleader, appearing for the respondents 1 to 4 and the learned counsel for R5.

3. The 5th respondent school (hereinafter referred to as "the school") is an aided minority school of CSI Diocese of Thoothukudi Nazereth. One post of BT Assistant (Zoology) in the school fell vacant on account of promotion and transfer of one R.Arulkumar. In that vacancy, the school appointed the petitioner as B.T.Assistant (Zoology) and she joined duty on 14.06.2012.

4.The school submitted a proposal to the 4th respondent requesting to approve her appointment as BT Assistant (Zoology) from 14.06.2012 and disburse grant-in-aid towards her salary. But the fourth respondent returned the proposal by his proceedings dated 05.02.2013, on the ground that the petitioner has not passed TET in terms of G.O.Ms.No.181, School Education (C2) Department dated 15.11.2011. 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.

<https://hcservices.ecourts.gov.in/Acservices/> Article 45 of the Constitution of India directed the States to endeavor 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. 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 that the impugned order dated 05.02.2013 is liable to be set aside in view of the legal position enunciated in W.A.(MD) No.213 and 572 of 2016.

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8. Accordingly, this writ petition is allowed and the impugned order dated 05.02.2013 is set aside. The 4th respondent is directed to approve the appointment of the petitioner as B.T.Assistant (Zoology) with effect from 14.06.2012 and release the salary grant to her from the date of her appointment, viz., 14.06.2012 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(AS)

/True Copy/

Sub Assistant Registrar

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To:

1. The Secretary,
Department of School Education,
State of Tamil Nadu, Secretariat, Fort St. George,
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2. The Director of Elementary Education,
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TDTA Perinbam Ammal Middle School,
Korampallam, Thoothukudi.

+1cc to Mr.T.A.Ebenezer, Advocate Sr.No. 1223

+1cc to Spl.Government Pleader Sr.No. 1133

JAM/09.02.17/CM-MSA/ 4p-8c

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