



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.16114 of 2016 and
WMP(MD) Nos.11783 & 117784 of 2016**

The Correspondent,
Little Flower Primary School
Palani-624 601
Dindigul District.

... 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 Elementary Educational Officer,
College Road, Chennai-600 006.

3. The District Elementary Educational Officer,
Dindigul-624 001, Dindigul District.

4. The Assistant Elementary Educational Officer,
Palani Nagar-624 601,
Palani, Dindigul 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 4th respondent Assistant Elementary Educational Officer in A.Thi.Mu.No.251/A/2016 dated 00.07.2016, quash the same and further direct the 3rd respondent District Elementary Educational Officer to approve forthwith the appointment of Sr.Mariya Anthony Sophiya as Secondary Grade Teacher in the petitioner's school w.e.f. the date of her appointment on 01.06.2016 with all attendant benefits, including the arrears of salary and allowance and pass such further or other suitable order/orders, as this Hon'ble Court may deem fit and proper.

For Petitioner : Mr.K.Prabhu

For Respondents : Mr.S.Sathish Kumar
Addl. Govt. Pleader

**O R D E R**

This writ petition has been filed, seeking to quash the impugned order dated 14.07.2016 passed by the 4th respondent in A.Thi.Mu.No.251/A/2016, by which, the petitioner school (in short "the school") was directed to enclose the TET pass certificate of the incumbent. The school also sought a direction to the 3rd respondent District Elementary Educational Officer to approve forthwith the appointment of Sr.Mariya Anthony Sophiya as Secondary Grade Teacher in the petitioner's school w.e.f. the date of her appointment on 01.06.2016 with all attendant benefits, including the arrears of salary and allowance.

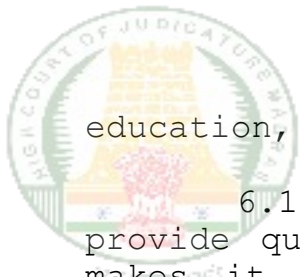
2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader, appearing for the respondents.

3. The school is administered by the Congregation of the Sisters of the Cross of Chavanod and is a recognized minority institution. One post of Secondary Grade Teacher in the school fell vacant on account of retirement of one A.Mochamary on 31.05.2016. In that vacancy, the school appointed one Sr.Mariya Anthony Sophiya with effect from 01.06.2016 and she joined duty on the same day.

4. The school submitted a proposal to the 3rd respondent through 4th respondent, requesting to approve her appointment as Secondary Grade Teacher from 01.06.2016 and disburse grant-in-aid towards her salary. But the fourth respondent, without forwarding the same to 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 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 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 14.07.2016 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 14.07.2016 is set aside. The 3rd respondent is directed to approve the appointment of the Sr.Mariya Anthony Sophiya as Secondary Grade Teacher in the petitioner's school with effect from 01.06.2016 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 (CS-III)

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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 Elementary Educational Officer,
College Road, Chennai-600 006.
 3. The District Elementary Educational Officer,
Dindigul-624 001, Dindigul District.
 4. The Assistant Elementary Educational Officer,
Palani Nagar-624 601,
Palani, Dindigul District.
- +1 CC to M/s.T.CIBI CHAKRABORTHY, Advocate, SR No. 11058

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W.P(MD) No.16114 of 2016
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