



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01.09.2016

Coram

THE HON'BLE MR.JUSTICE T.RAJA

Writ Petition (MD)No.16469 of 2016
and W.M.P. (MD) .No.12030 of 2016

Sr.Prema

. . . Petitioner

-Vs-

- 1.The Director of School Education,
DPI Campus, College Road,
Chennai-06.
 - 2.The Joint Director of School Education, (Secondary)
DPI Campus, College Road,
Chennai-06.
 - 3.The Chief Educational Officer,
Kanyakumari District,
at Nagercoil.
 - 4.The District Elementary Educational Officer,
Kuzhithurai,
Kanyakumari District-75.
 - 5.St.Antony's Higher Secondary School,
rep. By its Correspondent,
En.Puthendhurai-629 193,
Kanyakumari District.
- . . . Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to approve the appointment of the petitioner in the post of B.T.Assistant (English) from the date of appointment that is on 01.04.2014 based on the proposal forwarded by the 5th respondent by its proceedings Lr.No.53/2014 dated 18.06.2014 without insisting for pass in TET and consequently direct the respondents to disburse monetary and other attendant service benefits including payment of arrears of salary with interest within a time frame that may be fixed by this Hon'ble Court.

For petitioner
For respondents

:Mr.S.C.Herold Singh
:Mr.T.S.Mohamed Mohideen
Additional Govt. Pleader

ORDER

The petitioner herein seeks a writ of mandamus directing the respondents to approve her appointment as B.T.Assistant (English) in the fifth respondent School, without insisting TET and for a consequential direction, to disburse monetary and other attendant service benefits, including payment of arrears of salary with interest.

2.Mr.T.S.Mohamed Mohideen, learned Additional Government Pleader takes notice on behalf of the respondents.

3.The petitioner was appointed as B.T.Assistant (English) on 01.04.2014, in the fifth respondent School, which is a Religious Minority School, against the vacancy arising out of retirement of a teacher Sr.Rose Mary, on 31.03.2014. Subsequently, the fifth respondent school sent a proposal, dated 18.06.2014, to the 4th respondent, to approve the appointment of the petitioner as B.T Assistant (English) in their school from 01.04.2014. But, the fourth respondent, refused to approve the proposal stating that, from 23.08.2010 onwards, a person, who passed the Teachers Eligibility Test alone can be appointed as Teacher and that, since the petitioner has not passed the said Test, there is no possibility to forward the proposal for approval. Challenging the same, the petitioner is before this Court.

4.While considering a similar issue, a Division Bench at the Principal Seat of this Court, in a batch of writ petitions in W.P.Nos.11983 of 2016, etc., and W.A.(MD).No.921 of 2013, etc. vide order dated 24.08.2016, has held that G.O.Ms.No.181, dated 15.11.2011, cannot be made applicable to Minority Educational Institutions. It is pertinent to extract Paragraph Nos.59 to 61 and 63 of the said Judgment, which runs as follows:

"59. Insofar as minority institutions are concerned, the contention of the learned senior counsel appearing for the minority Schools is that when Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 received the assent of the President of India and it is still in force, it cannot be supplanted by an Executive Order, namely by G.O.Ms.No.181, dated 15.11.2011. Further, the Apex Court has clearly held in **Pramati Educational & Cultural Trust** that RTE Act, 2009 is not applicable to the minority institutions. Therefore, we have no hesitation to hold that right conferred under Article 30(1) of the Constitution cannot be abrogated.

Consequently, G.O.Ms.No.181 dated 15.11.2011, which was issued pursuant to the directions of



NCTE, cannot be made applicable to the minority institutions.

60. In the light of the above, we are of the view that the Government cannot insist upon the minority institution, both aided or unaided, to abide by any Regulation framed under the provisions of the RTE Act. Therefore, we hold that G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011, issued by the Government of Tamil Nadu, is not applicable to the minority institutions. Similarly, G.O.Ms.No.76, dated 18.03.2015, issued by the Government of Puducherry, is also not applicable to the minority institutions.

61. Though the intention of the Government is that there should not be any discrimination among the Teachers working in non-minority Schools and minority Schools with respect to qualification and that there should be uniformity in the teaching imparted to the children, in view of the decision of the Apex Court in **Pramati Educational & Cultural Trust**, the Government cannot take shelter under the guise of discrimination to impose restrictions on minority institutions.

63. In the result, the writ petitions are allowed and the writ appeals are dismissed with a direction to the Government to release the salary of the Teachers 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. There shall be no order as to costs. Consequently, connected M.Ps are closed."

5. Even though the petitioner has not passed the Teachers Eligibility Test, in view of the above judgment holding that G.O.Ms.No.181, dated 15.11.2011, cannot be made applicable to Minority Educational Institutions, the case of the petitioner deserves acceptance. Hence, the fifth respondent is directed to once again send the proposal for approval of appointment of the petitioner to the fourth respondent within a period of one week from the date of receipt of copy of this order. Thereafter, the fourth respondent/District Elementary Educational Officer, Kanyakumari District, is directed to approve the appointment of the petitioner as B.T Assistant (English) in the fifth respondent school, within a period of 4 weeks therefrom and also to pay the salary to the petitioner from the date of her appointment.

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6. With the above direction, the writ petition is disposed of. There shall be no order as to costs. Consequently, connected

miscellaneous petition in W.M.P.(MD).Nos.12030 of 2016 is closed.

7.It is also represented that against the order passed by a Division Bench of this Court reported in **2015 (2) CWC 195 (S.Vincent Vs State of Tamil Nadu and two others)** in W.P.(MD). Nos.2677 and 4558 of 2014, dated 25.09.2014, challenging its validity and correctness, a Special Leave Petition is filed and the same is pending. Hence, liberty is granted to the Education Department to pass orders, subject to the result of the SLP filed against judgment of the Division Bench passed in W.P.(MD). Nos.2677 and 4558 of 2014, dated 25.09.2014, holding the validity of G.O.Ms.No.25, dated 06.02.2014. If for any reason, the order passed by the Honourable Division Bench is reversed, the question of approval can be taken up and an order may be passed. Till then, salary of the petitioner shall be released.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

- 1.The Director of School Education,
DPI Campus, College Road, Chennai-06.
- 2.The Joint Director of School Education, (Secondary)
DPI Campus, College Road, Chennai-06.
- 3.The Chief Educational Officer,
Kanyakumari District, at Nagercoil.
- 4.The District Elementary Educational Officer,
Kuzhithurai,
Kanyakumari District-75.
- 5.Correspondent,
St.Antony's Higher Secondary School,
En.Puthendhurai-629 193,
Kanyakumari District.

+1 cc to M/S.S.C.HEROLD SINGH, Advocate SR.No.50147

+1 cc to Special Government Pleader Sr.No.50023

W.P. (md) .NO.16469 of 2016
01.09.2016

SMA/CK/4.11.2016:4P/8C