

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 09.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

WEB COPY

W.P. (MD) .No.6774 of 2017**and****W.M.P. (MD)No.5339 of 2017**

Amala Convent Girls Higher Secondary School,
Rep by its Correspondent,
Thuckalay-629 175,
Kanyakumari District.

...Petitioner

Vs.

1. The Secretary to Government,
School Education Department,
St.Fort George,
Chennai.
2. The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.
3. The Chief Educational Officer,
Kanyakumari District,
At Nagercoil.
4. The District Educational Officer,
Thukalay,
Kanyakumari District-629 175.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 4th respondent pertaining to its order bearing Oo.mu.No.6244/A3/2016 dated 05.04.2017 and to quash the same and consequently directing the respondents to approve the appointment of Joice Mary in the post of B.T.Assistant (Tamil) from the date of appointment that is on 01.06.2015 by considering the proposal resubmitted by the petitioner dated 06.04.2017 without insisting a pass in TET and consequently direct the respondents to disburse monetary and other attendant service benefits, including payment of arrears of salary from the date of appointment that is 01.06.2015 with interest within a time frame that may be fixed by this Court.

For Petitioner

: Mr.S.C.Herold Singh

<https://hcservices.ecourts.gov.in/hcservices/>

For Respondents

: Mr.T.Gunaseelan Muthiah
Government Advocate.

**ORDER**

This Writ petition has been filed by the petitioner, directing the respondents / Department to quash the proceedings of the 4th respondent in Oo.mu.No.6244/A3/2016, dated 05.04.2017 and consequently, direct the respondents to approve the appointment of one Joice Mary in the post of B.T. Assistant (Tamil) from the date of appointment by considering the proposal submitted by the petitioner / school on 06.04.2017 without insisting a pass in TET and also 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 Court.

2.Mr.T.Gunaseelan Muthiah, Government Advocate takes notice for the respondents. By consent, the Writ petition itself is taken up for final disposal. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

3.This petition is filled by the petitioner/school, namely, Amala Convent Girls Higher Secondary School. It is not in dispute that the petitioner is a private aided minority school. The petitioner/school has appointed a qualified and eligible teacher in the post of B.T. Assistant (Tamil) and also sought for approval from the date of appointment. However, the 4th respondent passed the impugned order, rejecting the proposal on the ground that the proposal should be accompanied by a pass certificate in Teacher Eligibility Test (TET) to confirm the qualification of the teacher and that the petitioner/school should also obtain no objection certificate from the 3rd respondent / Chief Educational Officer.

4.This Court in many number of cases has held that while appointing teachers in minority institutions, TET qualification should not be insisted. Hence, the said reason assigned by the 4th respondent in returning the proposal is not sustainable. Similarly, the Division Bench of this Court in W.P.(MD)Nos.213 and 572 of 2016 has categorically held that G.O.Ms.No.181 dated 15.11.2011 insisting TET as a qualification to all the Teachers, who are appointed after the issuance of the said G.O., cannot be made applicable to minority institutions.

5.The Hon'ble Supreme Court in the case of Paramati Educational and Cultural Trust Vs. Union of India reported in 2014 (4) MLJ 486 held that the minority institutions have the right to establish and administer educational institutions of their choice and that the notification prescribing recruitment of TET qualification is not applicable to minority institutions. In yet another case of Society form for Unaided Private Schools of Rajasthan Vs. Union of India reported in 2012(6) SCC 1, the Hon'ble Apex Court has categorically held that the Right to Children to Free and Compulsory Education Act is not applicable to minority schools.

6.In view of the above, this Court is of view that the <https://hccservicescourtsmv.in/hccservices> the proposal for appointment of the said Joice Mary as B.T. Assistant (Tamil) on the ground of non-possession of TET certificate, is not valid.



7. The second objection pointed out by the 4th respondent is that the petitioner / school should obtain "No Objection Certificate" from the Chief Educational Officer. The 4th respondent has not even referred to any Government Order or provisions for insisting such "No Objection Certificate", while considering the application for approval of appointment of Teachers in the aided minority schools.

8. In the present case, the petitioner / school has sufficient student strength for appointing the Teacher and the appointment is in a sanctioned post and therefore, insisting "No Objection Certificate" from the authority concerned, is also not required.

9. In such circumstances, the impugned order of the 4th respondent is hereby set aside and the 4th respondent is directed to approve the appointment of the said Joice Mary as B.T. Assistant (Tamil) in the petitioner's school with effect from the date of appointment and grant all service and monetary benefits and also pay arrears of salary. The said exercise shall be completed within a period of two months from the date of receipt of a copy of this order. The Writ petition is disposed of accordingly. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
School Education Department,
St. Fort George,
Chennai.
2. The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.
3. The Chief Educational Officer,
Kanyakumari District, At Nagercoil.
4. The District Educational Officer,
Thukalay,
Kanyakumari District-629 175.

+1cc to M/S. S.C. HEROLD SINGH, Advocate, SR.No.59587.

ORDER MADE IN
W.P. (MD) .No.6774 of 2017
09.06.2017