



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2017

CORAM:

THE HON'BLE Mr. JUSTICE **S. VAIDYANATHAN**

W.P. (MD) No.19480 of 2016

and W.M.P. (MD) No.14060 of 2016

J.Rasmi Billa

... 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 School Education,
College Road, Chennai 600 006.

3.The Chief Educational Officer,
Kanyakumari at Nagercoil,
Kanyakumari District.

4.The District Educational Officer,
Thuckalay, Kanyakumari District.

5.The Correspondent,
St.Joseph's High School,
Saral 629 203,
Kanyakumari District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 4th respondent to approve the appointment of the petitioner as B.T. Assistant (English) in the 5th respondent / School w.e.f.02.06.2014 with all attendant benefits including the arrears of salary and allowances.

For Petitioner	: Mr.T.Cibi Chakraborty
For Respondents	: Mr.K.P.Krishnadoss, G.A. for R1 to 4

O R D E R

This writ petition has been filed, seeking for a direction to direct the 4th respondent to approve the appointment of the petitioner as B.T. Assistant (English) in the 5th respondent / School w.e.f. 02.06.2014 with all attendant benefits including the arrears of salary and allowances.



3. In the respondent / school (hereinafter referred to as "the school") the above said post fell vacant. In that vacancy, the respondent / school appointed the petitioner for the above said post.

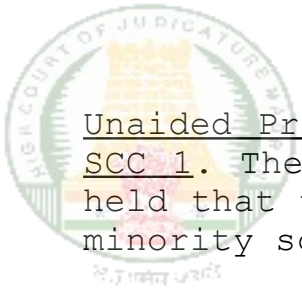
4. The school submitted a proposal to the respondent concerned requesting to approve the said appointment and disburse grant-in-aid towards his salary. But the respondent concerned has not passed any order so far. Hence, the petitioner is before this Court with the relief stated supra.

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.

6. Article 45 of the Constitution of India directed the States to endeavour 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 Science 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 candidates for the Teacher Eligibility Test were prescribed. 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 respondent concerned shall be directed to consider the case of the petitioner and pass orders.

8. Accordingly, this writ petition is allowed and the 4th respondent is directed to approve the appointment of the petitioner as B.T. Assistant (English) with effect from 02.06.2014 and release the salary grant to her from the date of appointment 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 petition is closed.

Sd/-

Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Department of School Education,
Fort St. George, Chennai 600 009.



2.The Director of School Education,
College Road, Chennai 600 006.

3.The Chief Educational Officer,
Kanyakumari at Nagercoil,
Kanyakumari District.

4.The District Educational Officer,
Thuckalay, Kanyakumari District.

+1cc to Special Government Pleader, SR.No.10505

+1cc to M/S.T.CIBI CHAKRABORTHY, Advocate SR.No. 10309

W.P. (MD) No.19480 of 2016
23.02.2017

JM/JC/09.05.2017/4P/7C