



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2017

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN**W.P(MD) No.909 of 2017 and****W.M.P. (MD) Nos.752 to 754 of 2017**

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Bro.A.Sebasti Vijay

... Petitioner

-vs-

1. THE GOVT. OF TAMIL NADU
REP. BY THE ADDITIONAL CHIEF SECRETARY,
DEPARTMENT OF SCHOOL EDUCATION,
FORT ST.GEORGE, CHENNAI-600 009.
2. THE DIRECTOR OF SCHOOL EDUCATION,
DPI CAMPUS, COLLEGE ROAD,
CHENNAI-600 006.
3. THE CHIEF EDUCATIONAL OFFICER,
THE OFFICE OF THE CHIEF EDUCATIONAL OFFICER,
TRICHY DISTRICT.
4. THE DISTRICT EDUCATIONAL OFFICER,
THE OFFICE OF THE DISTRICT EDUCATIONAL OFFICER,
TRICHY DISTRICT-639 007.
5. THE CORRESPONDENT
ST.JAMES HIGHER SECONDARY SCHOOL,
PALAKURICHI-621 308,
TRICHY 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 pertaining to the impugned G.O.Ms.No.181 School Education(C2) Department dated 15.11.2011 on the file of the 1st respondent and the consequential proceedings dated 14.03.2016 in O.Mu.No.419-AA2-2016 on the file of the 4th respondent and quash the same in respect of the petitioner, directing the respondents to approve the appointment of the petitioner Bro.A.Sebasti Vijay as B.T.Assistant (Science) in St.James Higher Secondary School, Palakurichi-621 308, Trichy District with effect from 12.06.2015 with all service benefits.

For Petitioner

: Mr.V.John Kennedy

For R1 to R4

: Mr.A.K.Baskara Pandian

Spl. Govt. Pleader

**ORDER**

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 consequential proceedings of the 4th respondent dated 14.03.2016 in O.Mu.No.419-AA2-2016, by which, the proposal sent by the 5th respondent for approval of appointment of the petitioner was rejected, on the ground of non enclosure of TET Certificate. The petitioner also sought a direction to the respondents to approve the appointment of the petitioner with effect from 12.06.2015 with all service benefits.

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

3. The 5th respondent school (hereinafter referred to as "the school") is administered by the Catholic Religious Congregation of the "Brothers of St.Gabriel" and is registered as a Society, bearing Reg.No.293 of 1993 in the name and style of "The Society of the Brothers of St.Gebriel, Tamil Nadu". One post of BT Assistant (Science) in the school fell vacant on account of transfer of one Bro.Y.Issac. In that vacancy, the school appointed the petitioner as B.T.Assistant (Science) and she joined duty on 12.06.2015.

4. The school submitted a proposal to the 4th respondent requesting to approve his appointment as BT Assistant (Science) from 12.06.2015 and disburse grant-in-aid towards his salary. But the fourth respondent returned the proposal vide proceedings dated 14.03.2016, 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.

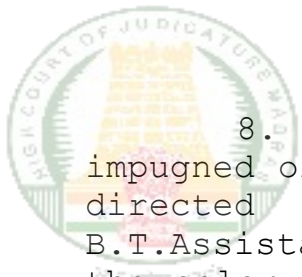
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6.1. With the view to improve the quality of education and to provide quality education to children, Section 23 of the RTE Act makes it mandatory for a person, who seeks appointment in the schools covered under RTE Act to possess minimum qualification 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 14.11.2016 is not sustainable 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 14.03.2016 is set aside. The 4th respondent is directed to approve the appointment of the petitioner as B.T.Assistant (Science) with effect from 12.06.2015 and release the salary granted to him from the date of his appointment, viz., 12.06.2015 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 (CS-III)

/True copy/

Sub Assistant Registrar

To:

1. THE ADDITIONAL CHIEF SECRETARY,
GOVT. OF TAMIL NADU
DEPARTMENT OF SCHOOL EDUCATION,
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THE OFFICE OF THE DISTRICT EDUCATIONAL OFFICER,
TRICHY DISTRICT-639 007.

+1 CC to M/s.V.JOHN JENNEDY, Advocate, SR No.6439/17.

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PSM/CM-MSA/17.03.2017/4P/6C

W.P(MD) No.909 of 2017
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