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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2017

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD) No.917 of 2017 and

W.M.P.(MD) Nos.765 to 767 of 2017

Sr.A.Shanthi Mary

... 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,
TIRUCHIRAPPALLI.
 4. THE DISTRICT EDUCATIONAL OFFICER,
THE OFFICE OF THE DISTRICT EDUCATIONAL OFFICER,
TIRUCHIRAPPALLI.
 5. THE CORRESPONDENT
HOLY REDEEMER'S GIRLS HR.SEC.SCHOOL,
PALAKARAI,
TIRUCHIRAPPALLI-620 008.
- ... 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 09.09.2016 in O.Mu.No.4358/AA5/2015 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 Sr.A.Shanthi Mary as B.T.Assistant (Tamil) in Holy Redeemer's Girl's Higher Secondary School, Palakarai, Tiruchirappalli-620 008 with effect from 01.06.2013 with all service benefits.

For Petitioner

: Mr.V.John Kennedy

For R1 to R4

: Mr.S.Sathish Kumar

Addl. 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 09.09.2016 in O.Mu.No.4358/AA5/2015, by which, the proposal sent by the 5th respondent for approval of appointment of the petitioner was rejected, on the ground that the petitioner has not passed TET and that decision would be taken after the orders passed in the pending appeal. The petitioner also sought a direction to the respondents to approve the appointment of the petitioner with effect from 01.06.2013 with all service benefits.

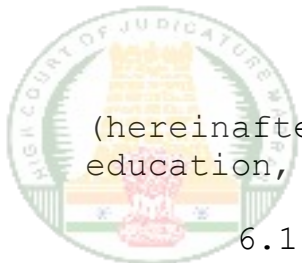
2. Heard the learned counsel appearing for the petitioner and learned Additional Government Pleader, appearing for respondents 1 to 4.

3. The 5th respondent school (hereinafter referred to as "the school") is administered by the Catholic Religious Congregation called "Congregation of Mother of Sorrows Servants of Mary" and is registered as a Society, bearing Reg.No.4 of 1954 in the name and style of "The Society of the Congregation of Mother of Sorrows Servants of Mary". One post of BT Assistant (Tamil) in the school fell vacant on account of resignation of one R.Boniface Sagaya Rajakumari. In that vacancy, the school appointed the petitioner as B.T.Assistant (Tamil) and she joined duty on 01.06.2013.

4. The school submitted a proposal to the 4th respondent requesting to approve her appointment as BT Assistant (Tamil) from 01.06.2013 and disburse grant-in-aid towards her salary. But the fourth respondent returned the proposal vide proceedings dated 09.09.2016, 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 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 endeavor 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 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 09.09.2016 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 09.09.2016 is set aside. The 4th respondent is directed to approve the appointment of the petitioner as B.T.Assistant (Tamil) with effect from 01.06.2013 and release the salary grant to her from the date of her appointment, viz.,



01.06.2013 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.

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SD/-
ASSISTANT REGISTRAR (CS-I)

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SUB ASSISTANT REGISTRAR

To:

1. THE ADDITIONAL CHIEF SECRETARY,
GOVT. OF TAMIL NADU
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THE OFFICE OF THE DISTRICT EDUCATIONAL OFFICER,
TIRUCHIRAPPALLI.

+1 CC TO MR. V.JOHN KENNEDY, ADVOCATE, SR NO.6441

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MAS/RR:13.03.2017:4P-6C

W.P (MD) No.917 of 2017
06.02.2017