



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

Writ Petition (MD) No.22229 of 2016
and
W.M.P. (MD) No.15918 of 2016

V.Birla Minimezh Ezhil,
W/o.Jeen Britto,
BT Assistant (Science),
St.Michael's High School,
Kodimunai, Colachel - 629 251,
Kanyakumari District.

... Petitioner

Vs.

1.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

2.The Chief Educational Officer,
Panagal Building, Saidapet,
Chennai - 600 015.

3.The District Educational Officer,
Thalakalai, Kanyakumari District.

4.The Correspondent,
St.Michael's High School,
Kodimunai, Colachel - 629 251.
Kanyakumari District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to approve the appointment of the petitioner as B.T. Assistant (Science) in the 4th respondent school from the date of appointment on 01.02.2016 based on the proposal forwarded by 4th respondent school in Letter No.4/C/2016-17, dated 07.09.2016 within the time frame to be fixed by this Court.

For Petitioner

: Mr.F.Deepak

for M/s.G.Sankaran

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

For Respondents

: Mr.N.S.Karthikeyan

Additional Government Pleader.

**ORDER**

This Writ Petition is filed seeking issuance of a Writ of Mandamus, directing the respondents 1 to 3 to approve the appointment of the petitioner as B.T. Assistant (Science) in the fourth respondent school from the date of appointment on 01.02.2016 based on the proposal forwarded by the fourth respondent school in Letter No.4/C/2016-17, dated 07.09.2016 within the time frame to be fixed by this Court.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 to 3.

3. The brief facts that are necessary for the disposal of this Writ Petition are as follows:-

3.1. The third respondent school is a Government aided school upto middle school section and it is a religious minority school under the management of R.C. Diocese. In the vacancy arose to the post of B.T. Assistant (Science), the petitioner was selected and appointed as B.T. Assistant (Science) on 08.07.2013. The third respondent sought for approval for the petitioner's appointment. By the impugned proceedings, the approval was returned on the following three grounds:

(a) As per G.O.Ms.No.181, School Education Department, dated 15.11.2011, the petitioner should have passed Teacher Eligibility Test;

(b) The petitioner has joined duty on 01.02.2016 which is a holiday, why and how the petitioner was permitted to join duty on a holiday;

(c) The petitioner has not attended work from 02.02.2016 to 28.07.2016 and for what reason she joined duty on 01.02.2016.

4. The learned counsel appearing for the petitioner submits that the petitioner being a minority institution, the teacher need not have passed TET. Regarding the second reason for the return, the petitioner has stated that on 01.02.2016, there was a function in the Diocese schools for the retired persons and therefore, it was declared as a holiday. Since the order of appointment was issued in favour of the petitioner on that day i.e., on 01.02.2016, the petitioner was allowed to join the post of B.T. Assistant by submitting the joining report on the same day. Due to the illness of the petitioner, the petitioner could not attend the school for some time after joining duty on 01.02.2016.

5. The reasons stated by the petitioner in the affidavit filed in support of this Writ Petition are not seriously denied. ~~Further, in the case of the respondents that the pass certificate in TET is required as per G.O.Ms.181, School Education Department, dated 15.11.2011. With regard to reporting of the~~



petitioner for duty on 01.02.2016, the explanation of the petitioner is not disputed. It has been held by this Court that the requirement of pass in TET need not be insisted in respect of appointment of teachers made in minority institutions. Hence, I find merit in this writ petition. Hence, the respondents 1 to 3 are directed to approve the appointment of the petitioner as B.T. Assistant (Science) in fourth respondent school from the date of appointment on 01.02.2016. Since the petitioner joined only on 28.07.2016 and started working regularly thereafter, the petitioner is entitled to salary only from 28.07.2016. The writ petition is therefore disposed of with the above direction.

6.The learned Additional Government Pleader appearing for the respondents brings it to the notice of this Court that the requirement of pass in TET is held to be not mandatory in respect of minority institutions by virtue of decision of the Hon'ble Supreme Court in the case of Pramati Educational and Cultural Trust Vs. Union of India reported in 2014 (4) MLJ 486 and that the matter is referred to and pending before Larger Bench of the Hon'ble Supreme Court. Hence, the learned Additional Government Pleader would submit that the approval that may be given to the petitioner pursuant to the direction of this Court should be subject to the outcome of final decision that may be taken by the Hon'ble Supreme Court in this issue. The said submission is recorded and it is made clear that the respondent may take appropriate action depends upon the outcome of any decision that may be taken by the Larger Bench of the Hon'ble Supreme Court on this issue. However, if for any reason, there is a long delay in the disposal of the case by the Hon'ble Supreme Court, that would be a factor which should be weighed in favour of the petitioner.

7.With the above direction, this Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To

1.The Director of School Education,
DEI Campus, College Road,
Chennai - 600 006.



2.The Chief Educational Officer,
Panagal Building,Saidapet,
Chennai - 600 015.

3.The District Educational Officer,
Thalakalai,Kanyakumari District.

+1cc to M/S.G.SANKARAN, Advocate SR.No.15294
+1cc to Special Government Pleader, SR.No.15095

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and
W.M.P. (MD) No.15918 of 2016
15.03.2017

JM/SKN RSK/28.03.2017/4P/6C