



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2017

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD) No.24157 of 2016

Zubaida Higher Secondary School,
Kayalpatnam-628 204,
Tuticorin District,
Rep. by its Correspondent.

... Petitioner

-vs-

1. The District Educational Officer
Tuticorin, Tuticorin District.

2. C.Jeyanthi
B.T.Assistant
Zubaida Higher Secondary School,
Kayalpatnam-628 204,
Tuticorin District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to approve the appointment of the 2nd respondent as BT Assistant with effect from 02.01.2014 in pursuance of the proposals dated 20.01.2015, 20.07.2015 and 13.10.2016 without reference to Teacher Eligibility Test in conformity with the judgment rendered by the Hon'ble Supreme Court in the case of Pramati Educational and Cultural Trust and Others vs. Union of India and others, reported in (2014) 4 MLJ 486 (SC) within the period that may be stipulated by this Court and consequently release salary grant to the 2nd respondent with effect from 02.01.2014.

For Petitioner : Mr.M.E.Ilango

For R1 : Mr.A.K.Baskara Pandian,
Spl. Govt. Pleader

O R D E R

This writ petition has been filed for the issuance of a writ of mandamus, directing the 1st respondent to approve the appointment of the 2nd respondent as BT Assistant with effect from 02.01.2014 in pursuance of the proposals dated 20.01.2015, 20.07.2015 and 13.10.2016, sent by the petitioner School (hereinafter referred to as "the school"). without reference to



the Teacher Eligibility Test (TET) in conformity with the judgment rendered by the Hon'ble Supreme Court in the case of Pramati Educational and Cultural Trust and Others vs. Union of India and others, reported in (2014) 4 MLJ 486 (SC), with further direction to release the salary grant to the 2nd respondent with effect from 02.01.2014.

2. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader, appearing for the 1st respondent.

3. The petitioner is an aided minority educational institution. One post of BT Assistant in the school fell vacant on 08.10.2012 due to the demise of an incumbent B.T.Assistant, namely, M.Shanawas Jabinara Begum. In that vacancy, the school appointed the 2nd respondent as BT Assistant, who is stated to have been fully qualified to be appointed in the said post.

4.The petitioner school submitted a proposal to the first respondent requesting to approve her appointment as BT Assistant from 02.01.2014 and disburse grant-in-aid towards her salary. But the first respondent returned the proposal by his proceedings dated 03.02.2015, on the ground that the 2nd respondent did not possess TET certificate. Despite re-submission of the proposal by the school on 13.10.2016 for approval on the basis of the judgment of the Hon'ble Division Bench of this Court dated 24.08.2016, no decision has been taken thereon and the same is being kept pending without granting approval. Hence, the present Writ Petition has been filed.

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 endure 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 referred to as "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 TET is not applicable to the minority institutions in view of the legal position enunciated in W.A.(MD) No.213 and 572 of 2016.

8. Accordingly, the 1st respondent is directed to approve the appointment of the 2nd respondent as BT Assistant with effect from 02.01.2014 and release the salary grant to the 2nd respondent from the date of her appointment, viz., 02.01.2014 and to pay the arrears of salary within a period of two months from the date of receipt of a copy of this order.



With the above observation and direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions is closed.

Sd/-

Assistant Registrar (P&A)

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/True Copy/

Sub Assistant Registrar

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To:

The District Educational Officer
Tuticorin,
Tuticorin District.

+1CC to Mr.M.E.Elango, Advocate Sr.No.922

+1CC to Spl.Government Pleader Sr.No.1135

GJM/MR/9.2.17-4p-4C

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