



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2017

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

**W.P(MD) No.24444 of 2016 and
W.M.P. (MD) No.17639 of 2016**

E.P.Antony Sahaya Daisy Rani

... Petitioner

-vs-

1. THE STATE OF TAMIL NADU
REP. BY ITS SECRETARY TO GOVERNMENT,
SCHOOL EDUCATION DEPARTMENT,
ST. GEORGE FORT, CHENNAI-9.
2. THE DIRECTOR OF ELEMENTARY EDUCATION,
CHENNAI-6.
3. THE CHIEF EDUCATIONAL OFFICER,
O/O.THE CHIEF EDUCATIONAL OFFICE,
PALANI ROAD, DINDIGUL.
4. THE DISTRICT EDUCATIONAL OFFICER,
O/O.THE DISTRICT EDUCATIONAL OFFICE,
PALANI ROAD, DINDIGUL.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the 4th respondent to disburse all the monetary benefits of the petitioner including the annual increment for the year 2015-16 and monetary benefits of surrender leave and to continue to pay the same without any arrears without insisting the petitioner to pass Teacher Eligibility Test in conformity with the judgement rendered by the honble 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).

For Petitioner

: Mr.C.Venkatesh Kumar

For Respondents

: Mr.A.K.Baskara Pandian
Spl. Govt. Pleader

**O R D E R**

This writ petition has been filed, seeking to direct the 4th respondent to disburse all the monetary benefits of the petitioner including the annual increment for the year 2015-16 and monetary benefits of surrender leave and to continue to pay the same without any arrears without insisting the petitioner to pass Teacher Eligibility Test in conformity with the judgement rendered by the honble 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).

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

3. The school in which the petitioner was employed is a private aided minority school. One post of BT Assistant (Science) in the school fell vacant on account of transfer of the erstwhile incumbent. In that vacancy, the school appointed the petitioner as B.T.Assistant (Science) and she joined duty on 16.06.2012.

4. The school submitted a proposal to the 4th respondent requesting to approve his appointment as BT Assistant (Science) from 16.06.2012 and disburse grant-in-aid towards his salary, which was also duly approved without any condition. However, the 2nd respondent had issued instructions to all DEOs to terminate the services of the teachers appointed on or after 15.11.2011 in the private schools for want of TET. Challenging the same, the petitioner filed W.P.(MD) No.18816 of 2013, in which, this Court granted an order of interim stay, but however, the 4th respondent has not sanctioned her monetary benefits, reiterating the same stand.

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. He submitted that since the school is a minority institution, the condition of passing TET does not arise at all.

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.

WEB COPY

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.

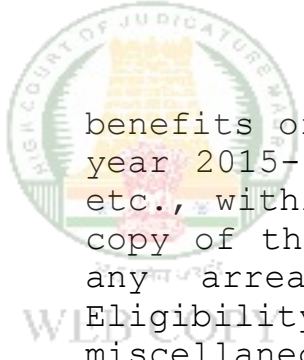
6.2. Accepting this recommendation, the Government of Tamil Nadu issued G.O.Ms.No.181 School Education Department dated 15.11.2011. The Government also passed G.O.Ms.25 dated 06.02.2014, under which, the minimum marks to be obtained by various categories were prescribed was also quashed by the Hon'ble 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.

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

8. Hence, this writ petition is disposed of with a direction to the 4th respondent to disburse all the monetary



benefits of the petitioner, including the annual increment for the year 2015-16 and other monetary benefits, such as surrender leave etc., within a period of two months from the date of receipt of a copy of this order and continue to pay the same in future without any arrears and also without insisting upon the Teacher Eligibility Test certificate. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To:

1. THE SECRETARY TO GOVERNMENT,
STATE OF TAMIL NADU,
SCHOOL EDUCATION DEPARTMENT,
ST. GEORGE FORT, CHENNAI-9.
2. THE DIRECTOR OF ELEMENTARY EDUCATION,
CHENNAI-6.
3. THE CHIEF EDUCATIONAL OFFICER,
O/O.THE CHIEF EDUCATIONAL OFFICE,
PALANI ROAD, DINDIGUL.
4. THE DISTRICT EDUCATIONAL OFFICER,
O/O.THE DISTRICT EDUCATIONAL OFFICE,
PALANI ROAD, DINDIGUL.

+1 cc to MR.Ajmal Associates , Advocate in SR.No. 11078

+1 cc to Special Government Pleader in SR.No:11151

ar

AE/SV MMS/SAR3/18.04.2017/4P/7C

W.P (MD) No.24444 of 2016
27.02.2017