



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2017

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHANW.P(MD) No.8213 of 2016 andW.M.P.(MD) Nos.6678 & 6679 of 2016

WEB COPY

F.Arockia Basilika

... Petitioner

-vs-

1. The Director of Elementary Education,
Chennai-6.2. The District Elementary Educational Officer,
Sivagangai, Sivagangai District.3. The Additional Assistant Elementary Educational Officer,
Devakottai, Sivagangai District.4. The Secretary,
Srinivasa Middle School,
Devakottai, Sivagangai 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 order passed by the 2nd respondent in his proceedings in A.THI.Mu.No. 3954/ A3/2014 dated 01.12.2015 and quash the same and direct the respondents to approve the appointment of the petitioner as a B.T Assistant from the date of appointment and confer all the consequential benefits and pass such further or other orders as may deem fit and thus render justice.

For Petitioner : Mr.V.Panneer Selvam

For Respondents : Mr.A.K.Baskara Pandian
Spl. Govt. PleaderO R D E R

This writ petition has been filed, seeking to quash the impugned order dated 01.12.2015 passed by the 2nd respondent in A.THI.Mu.No. 3954/ A3/2014, by which, the proposal was returned by the 2nd respondent on the ground that the petitioner had not obtained 90 marks in the TET. The petitioner also sought a direction to the respondents to approve the appointment of the petitioner as a B.T Assistant from the date of appointment and confer all the consequential benefits.



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

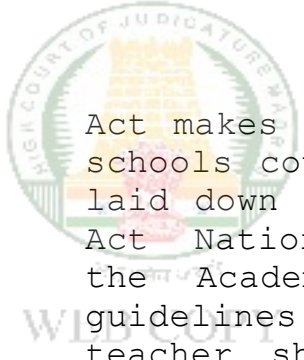
3. The 4th respondent's school (hereinafter referred to as "the school") is run and administered by a Private Management governed by the Tamil Nadu Recognized Private Schools (Regulation) Act and the Rules framed thereunder. One post of B.T.Assistant in the School fell vacant on account of resignation of one Tmt.M.Karpagavalli on 17.12.2012 and in that vacancy, the school appointed the petitioner after conducting due selection process and getting prior permission on 15.10.2014 from the 2nd respondent.

4. The school submitted a proposal to the 2nd respondent requesting to approve the appointment of petitioner as BT Assistant from 03.11.2014. But the 2nd respondent returned the proposal vide proceedings dated 01.12.2015, on the ground stated supra. It is seen that though the Government Order granting 5% relaxation of marks in passing TET has been upheld by this Court in W.A.No.707 of 2014 etc. cases, subsequently, this Court, in W.P.(MD) No.2677 of 2014 etc cases quashed the said Government Order, granting relaxation of marks on 25.09.2014; that the State Government in this regard has preferred an appeal before the Hon'ble Supreme Court, in which notice has been ordered. Therefore, the petitioner is before this Court with the above prayer.

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 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 contention of the petitioner is that as far as the qualification is concerned, there is no discrimination in the Tamil Nadu Recognized Private Schools (Regulation) Act and Rules for minority and non-minority schools and the orders issued in favour of the teachers working in the minority institutions are always applicable to the teachers working in the non-minority institutions. Learned counsel for the petitioner also relied on a judgment of the Hon'ble Supreme Court in the case of V.Lavanya and Others vs. State of Tamil Nadu and others, reported in (2016) 8 MLJ 198 (SC) and also a judgment of this Court in the case of The State of Tamil Nadu and others vs. D.Arul Singh Gnana Selvaraj and another [W.A.(MD) No.258 of 2016] decided on 05.02.2016 in the midst of his argument.

8. In view of the above discussions, this Court is of the view that the impugned order of return passed cannot be approved and the same is liable to be set aside.

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

9. Accordingly, this writ petition is allowed and the impugned order dated 01.12.2015 is set aside. The 2nd respondent



is directed to approve the appointment of the petitioner as B.T Assistant from the date of her appointment, release the salary and also to pay the arrears of salary within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To:

1. The Director of Elementary Education,
Chennai-6.
2. The District Elementary Educational Officer,
Sivagangai, Sivagangai District.
3. The Additional Assistant Elementary Educational Officer,
Devakottai, Sivagangai District.

+1cc to M/S.V.Panneer Selvam , Advocate SR.No.11318
+1cc to Special Government Pleader, SR.No.11154

W.P(MD) No.8213 of 2016
27.02.2017

JM/JC/SAR 2/24.04.2017/4P/6C