

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.7063 to 7065 of 2018

Sr.A.Rani .. Petitioner in W.P.No.7063 of 2018
Mrs.A.Annai Velankanni .. Petitioner in W.P.No.7064 of 2018
Sr.W.Vasanthapriya .. Petitioner in W.P.No.7065 of 2018

-vs-

1. The Government of Tamil Nadu
rep.by the Additional Chief Secretary
Department of School Education
Fort St.George
Chennai 600 009 .. 1st Respondent in all the Petitions
2. The Director of Elementary Education
DPI Campus, College Road
Chennai 600 006 .. 2nd Respondent in WP 7063 & 7064/18
3. The District Elementary Educational Officer
The office of the District Elementary
Educational Officer
Vellore
Vellore District
4. The Additional Elementary Educational Officer
The office of the Additional Elementary Educational Officer
Anaikattu
Vellore District
5. The Correspondent
Little Flower Aided Elementary School
Pallikonda
Vellore 635 809 ..Respondent 3 to 5 in all the
Petitions
6. Director of Primary Education,
DPI Campus, College Road,
Chennai 6. .. 2nd Respondent in WP.7065 of 2018

Petitions under Article 226 of the Constitution of India,
praying for the issue of a Writ of Mandamus, directing the
respondents 1 to 4 to act on the proposals submitted by the
fifth respondent and recommended by the fourth respondent by

according approval to the petitioners, working as Secondary Grade Teachers in Little Flower Aided Elementary School, Pallikonda, Vellore 635 809 w.e.f. 11.07.2017, 04.08.2017, 08.06.2017 respectively, in consonance with orders of the Hon'ble Division Bench of this Hon'ble Court in the batch of cases reported in (2016) 7 MLJ 155.

For Petitioners:: Dr.Fr.A.Xavier Arul Raj
Senior Counsel for Ms.A.Arul Mary

For Respondents:: Mr.C.Munusamy
Special Government Pleader
for R1 to 4

ORDER

Three Secondary Grade Teachers working in the Little Flower Aided Elementary School, Pallikonda, Vellore have come to this Court with separate writ petitions seeking a mandamus to the respondents 1 to 4 to act on the proposals submitted by the fifth respondent school, as recommended by the fourth respondent, for according approval of their appointments as Secondary Grade Teachers with effect from 11.7.2017, 4.8.2017 & 8.6.2017 respectively.

2. Dr.Fr.A.Xavier Arul Raj, learned senior counsel for the petitioners submitted that the fifth respondent school is a minority educational institution established about 100 years ago and administered by the Catholic Congregation of the Sisters of the Daughters of Mary Help of Christians. The said Congregation is administering number of educational institutions for the welfare of the Catholic Christian minority community in India and all over the world. It is also governed under Article 30(1) of the Constitution of India. It is also stated that when the District Elementary Educational Officer in-charge, Vellore has already issued the staff fixation order for 2015-16 and 2016-17 sanctioning nine posts of Secondary Grade Teachers to the fifth respondent school, out of which three posts remained vacant due to resignation/resignation/promotion and only in the said three vacancies, these three petitioners were appointed on the respective date. Accordingly, the fifth respondent school also submitted detailed proposals on 22.12.2017 & 22.10.2017 seeking approval of their appointments and the said proposals were also recommended by the Assistant Elementary Educational Officer, Anaikattu on 19.3.2018. Although the Assistant Elementary Educational Officer, Anaikattu, the fourth respondent has accepted the case of the petitioners that their appointments have been made in the sanctioned posts as per the staff fixation order dated 16.2.2017, the District Elementary Educational Officer, Vellore has to pass orders according approval of their

appointments. But till date, the proposals submitted by the fifth respondent school along with the recommendation made by the fourth respondent have not been considered by the third respondent, as a result the three teachers are not able to receive the salary and have been put to great hardship. Since the payment of salary to the petitioners is a sine qua non to enable them to lead a decent life, a direction be issued. The learned senior counsel also submitted that since there has been a recommendation made by the fourth respondent to the third respondent for according approval of the appointments of the petitioners and that the teachers working in the minority educational institutions are not required to pass the Teacher Eligibility Test has already been settled by the Apex Court in the case of *Pramati Educational and Cultural Trust and others v. Union of India and others*, (2014) 4 MLJ 486 (SC) holding that the Right of Children to Free and Compulsory Education Act, 2009 (for short, "the 2009 Act") insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution and also by the Division Bench of this Court in *Secretary to Government, Education Department, Chennai and others v. S.Jeyalakshmi and another*, 2016 (7) MLJ 155 holding that the Government cannot insist upon the minority educational institutions, both aided and unaided, to abide by any regulation framed under the RTE Act, therefore, the G.O.Ms.No.181, School Education (C2) Department dated 15.11.2011 issued by the Government of Tamil Nadu is not applicable to the minority educational institutions. In fact, the relevant paragraphs of the Division Bench order read as follows:-

"59. Insofar as minority institutions are concerned, the contention of the learned senior counsel appearing for the minority Schools is that when Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 received the assent of the President of India and it is still in force, it cannot be supplanted by an Executive Order, namely by G.O.Ms.No.181 dated 15.11.2011. Further, the Apex Court has clearly held in *Pramati Educational & Cultural Trust* that RTE Act, 2009 is not applicable to the minority institutions. Therefore, we have no hesitation to hold that the right conferred under Article 30(1) of the Constitution cannot be abrogated. Consequently, G.O.Ms.No.181 dated 15.11.2011, which was issued pursuant to the directions of NCTE, cannot be made applicable to the minority institutions.

60. In the light of the above, we are of the view that the Government cannot insist upon the minority institution, both aided or unaided, to abide by any Regulation framed under the provisions of the RTE Act. Therefore, we hold that G.O.Ms.No.181, School Education (C2) Department dated 15.11.2011 issued by the Government of Tamil Nadu, is not applicable to the minority institutions. Similarly, G.O.Ms.No.76 dated 18.3.2015 issued by the Government of Puducherry, is also not applicable to the minority institutions.

63. In the result, the writ petitions are allowed and the writ appeals are dismissed with a direction to the Government to release the salary of the Teachers and also to pay the arrears of salary within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected M.Ps are closed."

3. I also find merits in the said contentions. When the issue has already been settled by the Apex Court as well as by the Division Bench of this Court in the judgments referred supra, this Court, taking note of the fact that the fifth respondent school is a minority educational institution and the District Elementary Educational Officer in-charge, Vellore has also issued the staff fixation order on 16.2.17 sanctioning the post of Secondary Grade Teacher for the year 2016-17 and that the fourth respondent has also recommended the appointments of the petitioners as Secondary Grade Teachers in the sanctioned vacancies, the third respondent is hereby directed to pass orders of approval of the appointment of the petitioners in the post of Secondary Grade Teacher in the fifth respondent school with effect from the date of their appointment, on the basis of the proposals sent by the fifth respondent, and release the salary including arrears within a period of three weeks from the date of receipt of a copy of this order. The writ petitions are disposed of accordingly. Consequently, W.M.P.Nos.8753 to 8755 of 2018 are closed. No costs.

Sd/-

Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

SS

To

1. The Additional Chief Secretary to Government
Department of School Education
Fort St.George
Chennai 600 009
2. The Director of Elementary Education
DPI Campus, College Road
Chennai 600 006
3. The District Elementary Educational Officer
The office of the District Elementary
Educational Officer
Vellore
Vellore District
4. The Assistant Elementary Educational Officer
The office of the Assistant Elementary Educational Officer
Anaikattu
Vellore District
5. The Correspondent
Little Flower Aided Elementary School
Pallikonda
Vellore 635 809
6. Director of Primary Education,
DPI Campus, College Road,
Chennai 6.

+4cc to Mr.FATHER XAVIER ASSO. Advocate, S.R.No. 23225,
23227, 23226

+1cc to the Government Pleader, S.R.No. 23932

W.P.Nos.7063 to 7065 of 2018

NRL(CO)
TR(11/04/2018)