

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 23.03.2018
CORAM

THE HONOURABLE Mr.JUSTICE T.RAJA

W.P.No.6500 of 2018
and W.M.P.No.8046 & 8047 of 2018

Rev.Sr.Lourdu Mary

... Petitioner

Vs

1.The State of Tamil Nadu
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai-9.

2.The Director of Elementary Education,
College Road, Chennai-6.

3.The District Elementary Educational Officer,
Coimbatore, Coimbatore District 640 001.

4.The Additional Assistant Elementary
Educational Officer,
Valparai Union,
Coimbatore District 642 127.

5.The Correspondent,
Aided Sacred Heart Elementary School,
Valparai 642 127.
Coimbatore District.

... Respondents

Writ Petition filed under Article 226 of The Constitution of India seeking for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order issued by the 3rd respondent District Elementary Educational Officer in O.Mu.No.4224/A4/2017 dated 10.07.2017, quash the same and further direct the 3rd respondent District Elementary Educational Officer to approve forthwith the appointment of the petitioner as Secondary Grade Teacher in 5th respondent school namely Aided Sacred Heart Elementary School, Valparai, w.e.f. the date of petitioner's appointment on 06.04.2017 with all attendant benefits including the arrears of salary and allowance.

For Petitioner : Mr.S.Amala Irudhaya Mary

For Respondents : Mrs.P.Rajalakshmi, AGP

O R D E R

This Writ Petition has been directed against the impugned order dated 10.07.2017, rejecting the request of the 5th respondent School, to approve the appointment of the petitioner, in the post of Secondary Grade Teacher.

2.The impugned order assigned two reasons. Firstly, the petitioner has failed to pass Teacher Eligibility Test on the date of appointment to the post of Secondary Grade Teacher in the 5th respondent School, which is a minority educational institution. The said reasoning is wholly misconceived and therefore, it is liable to be set aside.

3.The requirement to pass Teacher Eligibility Test by a Teacher before appointment in a minority educational institution, has been settled by the Apex Court in the case of Pramati Educational & Cultural Trust Vs.Union of India reported in [2014] 8 SCC 1, which has been followed by the Division Bench of this Court in the case of Secretary to Government, Government of Tamil Nadu Vs S.Jeyalakshmi and another reported in 2016 [7] MLJ 155. Further, making it clear that G.O.Ms.No.181 School Education [C2] Department dated 15.11.2011 requiring pass in Teacher Eligibility Test by a Teacher before getting appointment in the minority educational institution, cannot be made applicable in the minority educational institution. Relevant portion is given as under :

"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 and Cultural Trust Vs. Union of India 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 18.03.2015 issued by the Government of Puducherry, is also not applicable to the minority institutions.

61.Though the intention of the Government is that there should not be any discrimination among the Teachers working in the non-minority Schools and minority Schools with respect of qualification and that there should be uniformity in the teaching

imparted to the children, in view of the decision of the Apex Court in Pramati Educational and Cultural Trust Vs. Union of India, the Government cannot take shelter under the guise of discrimination to impose restrictions on minority institutions."

4. Coming to the second question, whether the 4th respondent/ Additional Assistant Elementary Educational Officer, Valparai Union can refuse granting approval of appointment, for the reason that the order of appointing Correspondent in the 5th respondent School has not been approved, both counsel appearing for the petitioner and Additional Government Pleader jointly stated that now the appointment of Correspondent in the 5th respondent minority educational institution has also been approved.

5. Even if the post of Correspondent is not approved also, the 3rd respondent/District Elementary Educational Officer, Coimbatore, ought not to have rejected the case of the petitioner on a trivial reason, when the issue has been settled once for all and in a reported judgment of this Court 2016 [7] MLJ 155 - Secretary to Government, Government of Tamil Nadu Vs S. Jeyalakshmi and another holding that the G.O. Ms. No. 181 requiring pass in Teacher Eligibility Test by a Teacher before his/her appointment in the educational institution is inapplicable to the minority educational institution. Therefore, this Court is inclined to quash the impugned order. Accordingly, the same is quashed and the 5th respondent is directed to resend a proposal within a week's time and on receipt of the same, the 3rd respondent/District Elementary Educational Officer, Coimbatore is directed to approve the appointment and release the salary of the petitioner from the date of appointment. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/--

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Department of School Education,
Fort St. George, Chennai-9.

2. The Director of Elementary Education,
College Road, Chennai-6.

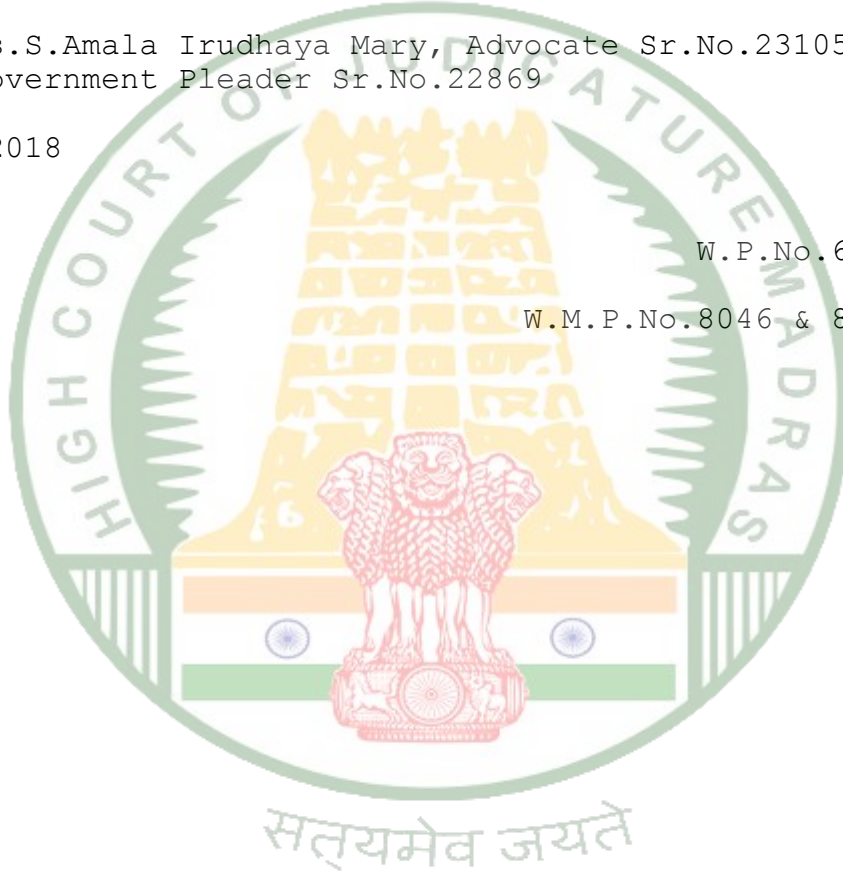
3.The District Elementary Educational Officer,
Coimbatore, Coimbatore District 640 001.

4.The Additional Assistant Elementary
Educational Officer,
Valparai Union,
Coimbatore District 642 127.

5.The Correspondent,
Aided Sacred Heart Elementary School,
Valparai 642 127.
Coimbatore District.

+1cc to Ms.S.Amala Irudhaya Mary, Advocate Sr.No.23105
+1cc to Government Pleader Sr.No.22869

sm:10.04.2018



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