

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2018

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.2248 of 2018

Rev.Sr.S.Lilly Pushpa Mary,
Secondary Grade Assistant,
St. Patricks Girls Aided Primary School,
Shevapet, Salem.

.. Petitioner

Vs

- 1.The Government of Tamil Nadu,
Rep. By the Addl. Chief Secretary,
Department of School Education,
Fort St. George, Chennai - 9.
- 2.The Director of Elementary Education,
DPI Campus,
College Road, Chennai - 6.
- 3.The District Elementary Educational officer,
The Office of the District Elementary Education,
Salem District.
- 4.The Assistant Elementary Educational Officer,
Salem Urban, Salem District.
- 5.The Correspondent,
St. Patrick's Girls Aided Primary School,
Shevapet, Salem - 636 002.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records pertaining to the letter of the fourth respondent dated 08.11.2016 in Na.Ka.No.3546/A1/2016 and the consequential letter of the third respondent dated 22.11.2016 in A.D.Mu.No.5098/A1/16 and quash them in view of the orders of this Court as reported in (2016) 1 MLJ 155 and the order dated 24.11.2016 made in W.A.No.1019 of 2013 and other and consequently direct the respondents 1 to 4 and to accord approval to the appointment of the petitioner as Secondary Grade Assistant in St. Patrick Girls Aided Primary School, Shevapet, Salem-636 002, w.e.f. 03.11.2015 with all monetary and other attendant benefits.

For petitioner : Mr.S.M.Edward Stanley

For R1 to R4 : Ms.P.Rajalakshmi, AGP

O R D E R

This writ petition is directed against the impugned proceedings dated 08.11.2016 and 22.11.2016 of the fourth respondent / the Assistant Elementary Educational Officer, Salem, returning the proposal sent by the fifth respondent School seeking approval of the appointment of the petitioner.

2. For the sake of brevity, earlier order dated 02.02.2018 passed by this Court is extracted below:-

"..... 6.The fifth respondent school was established and being administered by the Roman Catholic Religious Congregation of Immaculate Heart of Mary and the schools run by the said congregation are declared as Minority Educational Institutions by this Court as governed under Article 30 (1) of the Constitution of India and further the fifth respondent school was declared as Minority Educational Institution by the National Commission of Minority Educational Institutions (by short NCMEI) on 20.09.2016 as per the NCMEI Act, 2005. The petitioner was appointed as Secondary Grade Assistant on 02.11.2015 in the fifth respondent School by the management of Immaculate Heart of Mary Congregation, in the vacancy that arose out of the retirement of one Mrs.B.Uma Maheswari, a Secondary Grade Assistant. The said post is a regular sanctioned post with grant-in-aid from the Government i.e the first respondent. The petitioner joined duty in the fifth respondent school on 03.11.2015. Subsequent to the said appointment, the fifth respondent had sent the proposal of the appointment of the petitioner to the fourth respondent to recommend the same for the approval of the third respondent on 25.11.2015. But, without recommending the same to the third respondent, the fourth respondent has returned the sad proposal vide his letter dated 01.12.2015 stating that the new appointments should be made only with the person, who have passed in the Teacher Eligibility Test (TET) as per G.O.Ms.No.181 School Education (C2) Department, dated 15.11.2011 and further stating that the proposal of the above said

appointment can be recommended to the Superior Officer for his approval only after appointing the TET qualified person in the said vacancy. The fifth respondent once again forwarded the proposals of the petitioner's appointment to the fourth respondent. The fourth respondent against returned the same by an order dated 08.11.2016. Left with no other option, the fifth respondent again submitted the proposal with regard to the appointment of petitioner to the third respondent on 18.11.2016. The third respondent also returned the same by an order dated 22.11.2016 stating the very same reason quoted by the fourth respondent.

7. The learned counsel appearing for the petitioner in W.P.No.2248 of 2018 has submitted that the issue has been well settled in a Judgment of this Court in Secretary to Government, Government of Tamil Nadu and others Vs. S.Jeyalakshmi and another reported in 2016 7 MLJ 155, wherein it is clearly held that the G.O.Ms.No.181 dated 15.11.2011 issued pursuant to the directions of NCTE, cannot be made applicable to the minority institutions.

8. The relevant portion of the Judgment is extracted hereunder:

"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 v. Union of India (supra) 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.

61. Though the intention of the Government is that there should not be any discrimination among the Teachers working in non-minority Schools and minority Schools with respect to 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 v. Union of India* (supra) the Government cannot take shelter under the guise of discrimination to impose restrictions on minority institutions.

62. However, keeping in mind the larger interest in which the Government has issued the above G.Os., this Court feels that the minority institutions may also consider conducting a refresher course and also some interactive sessions to all the Teachers during annual vacation, in order to ensure and improve the quality of Teachers.

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."

9. In view of the above both the third respondent (in W.P.No.2246 of 2018) and the third and the fourth respondents (in W.P.No.2248 of 2018) who are bound to know the settled legal position in respect of grant of approval of both the teaching and non teaching staffs ought not to have refused to grant approval to the post of Office Assistant and Secondary Grade Assistant respectively. In number of orders of this Court, the aforesaid issue has been concluded and the concerned respondents are also aware of the said fact. The said respondents only to drag on the matter are driving the petitioners to this Court to get usual orders.

10. The learned Additional Government Pleader appearing for the respondents 1 to 3 in W.P.No.2246 of 2018 and respondents 1 to 4 in W.P.No.2248 of 2018 also knowing pretty well that the said legal position has been settled long time ago is unable to support the impugned orders.

11. This Court is not able to find any justification on the part of the third and fourth respondents for returning the proposal made by the fourth and fifth respondent schools. Therefore, the District Educational Officer, The Officer of the District Education, Dharmapuri-5, Dharmapuri District the third respondent in W.P.No.2246 of 2018 and the Assistant Elementary Educational Officer, The Office of the District Elementary Education, Salem District, Salem the third respondent in W.P.No.2248 of 2018 is directed to appear before this Court on 19.2.2018 to show cause as to why the Departmental action cannot be initiated against them for their deliberate action in dragging the matter and to show cause as to why they should not be imposed with exemplary costs. Call on 19.2.2018 at 2.15 p.m."

3. Pursuant to the order passed by this Court, Mr.A.Ashokkumar, DEEO (Incharge), Salem, appeared today and

pleaded that the impugned proceeding was passed only by his predecessor, who has also retired from the service.

4. Learned Additional Government Pleader appearing for the respondents 1 to 4 submitted that as the present incumbent is not the one who has passed the impugned proceedings, she has pleaded before this Court not to take any action against the above said Officer. Learned Additional Government Pleader, by producing a copy of the proceeding dated 16.02.2018 passed by the said Officer, further submitted that the petitioner has been granted with the benefits as sought for by her and the arrears of salary also will be paid to her within a period of one week.

5. Recording the said submission and also taking note of the fact that the present Officer, who has appeared today, has not passed the impugned proceeding, the writ petition is closed. As per his undertaking, the above said Officer, who has appeared today, will have to ensure the payment of arrears of salary to the petitioner within a period of one week from the date of receipt of a copy of this order. No Costs. WMP.No.2742 of 2018 is closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

- 1.The Addl. Chief Secretary,
Department of School Education,
Fort St. George, Chennai - 9.
- 2.The Director of Elementary Education,
DPI Campus,
College Road, Chennai - 6.
- 3.The District Elementary Educational officer,
The Office of the District Elementary Education,
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gj (co)
nr 20/02/2018



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