

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2018

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.1949 & 1950 of 2018

Sr.J.Suganthi Pavitha ..Petitioner in W.P.No.1949 of 2018

Sr.V.Sahaya Rani ..Petitioner in W.P.No.1950 of 2018

-vs-

1. The Government of Tamil Nadu
rep.by its Additional Chief Secretary
Department of School Education (C2)
Fort St.George
Chennai 600 009
2. The Director of Elementary Education
DPI Campus, College Road
Chennai 600 006
3. District Elementary Educational Officer
Villupuram 605 602
Villupuram District
4. Assistant Elementary Educational Officer
Olakkur 604 307
Villupuram District
5. The Correspondent
St.Philomina's Primary School
Tindivanam 604 002
Villupuram District

.. Respondents

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 proposal submitted by the fifth respondent in respect of the petitioners, working as Secondary Grade Teachers in St.Philomina's Primary School, Tindivanam, Villupuram District w.e.f. 01.06.2016, 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.Xavier Arul Raj
Senior Counsel for Ms.A.Arul Mary

For Respondents :: Mrs.P.Rajalakshmi
Additional Government Pleader
for R1 to 4

ORDER

These two writ petitions have been filed by Sister J.Suganthi Pavitha and Sister V.Sahaya Rani, who are working as Secondary Grade Teachers in the St.Philomina's Primary School, Tindivanam, Villupuram District, seeking a mandamus to the respondents 1 to 4 to act on the proposal submitted by the fifth respondent school for approval of their appointment with effect from 1.6.2016, in consonance with the orders passed by the Hon'ble Division Bench of this Court in the batch of cases reported in (2016) 7 MLJ 155.

2. Learned senior counsel for the petitioners submitted that it is an admitted case of both parties that the fifth respondent-St.Philomina's Primary School situated at Tindivanam is a minority educational institution receiving grant-in-aid from the first respondent, in whose favour a staff fixation order has already been passed on 9.2.2017 by the District Elementary Educational Officer, Villupuram according sanction for appointment of teaching staff. Serial No.8 of such staff fixation order enclosed in the typedset of papers clearly shows that the fifth respondent school is entitled to have 33 Secondary Grade Teachers and on the date of passing the staff fixation order on 9.2.2017, it has been indicated therein that two posts of Secondary Grade Teachers are found vacant. Only to fill up the said vacant posts that were already sanctioned by the third respondent, the fifth respondent school has appointed both the petitioners-Sister J.Suganthi Pavitha and Sister V.Sahaya Rani as Secondary Grade Teachers on 1.6.2016 and thereupon, after their appointment, a proposal was also sent to the third respondent through the fourth respondent on 21.12.2016 seeking approval of their appointment and for payment of salary. For the reasons best known to them, without application of mind that the two posts of Secondary Grade Teachers were already sanctioned, as per the staff fixation order dated 9.2.2017 which was also enclosed along with the proposal, wrongly returned the proposal stating that the proposal should be sent to the third respondent through the fourth respondent along with the sanction order passed by the Director of Elementary Education. When the fifth respondent school has already enclosed the copy of the staff fixation order, no more document is required to be enclosed. Therefore, the reasons assigned by the fourth respondent for returning the proposal clearly indicate the non-

application of mind, he pleaded.

3. Mrs.P.Rajalakshmi, learned Additional Government Pleader for the respondents 1 to 4 submitted that the third clarification of the fourth respondent shows that the proposal sent by the fifth respondent school has not been routed through proper channel. Therefore, the fifth respondent school was directed to send the proposal in the manner known to law and the same cannot be found fault with.

4. In reply, the learned senior counsel for the petitioners submitted that immediately thereafter, the fifth respondent school has routed the proposal through proper channel. Yet again there is no response. Moreover, when the fourth respondent is the sanctioning authority, instead of granting approval, he has wrongly indicated that the proposal sent by the fifth respondent school rightly through the fourth respondent should be sent through proper channel, when the fourth respondent is the only proper channel.

5. Be that as it may. The issue raised in the present writ petitions whether the teachers working in the minority educational institutions receiving grant-in-aid are exempted from passing the Teacher Eligibility Test, has been settled by the Hon'ble 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. 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."

6. In the light of the above, when the fifth respondent school is a minority educational institution and the District Elementary Educational Officer, Villupuram has also fixed the staff strength on 9.2.17 for filling up of the vacancies in the sanctioned posts, the appointment of the petitioners as Secondary Grade Teachers by the fifth respondent school cannot be found fault with. In fact, as per the ratio laid down by the Hon'ble Division Bench, I have also considered a similar issue in W.P.Nos.30667 & 30668 of 2017 and by order dated 22.12.2017, while allowing the writ petitions, directed the respondents to grant approval of the appointment of the petitioners therein. Therefore, these writ petitions are allowed and the respondents 1 to 4 are directed to approve 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 proposal sent by the fifth respondent, and release the salary including arrears within a

period of four weeks from the date of receipt of a copy of this order. Consequently, W.M.P.Nos.2444 & 2445 of 2018 are closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

SS

To

1. The Additional Chief Secretary to Government
Department of School Education (C2)
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
Villupuram 605 602
Villupuram District
4. The Assistant Elementary Educational Officer
Olakkur 604 307
Villupuram District

+3ccs to Ms.A.Arul Mary, Advocate, S.R.No.7224
+1cc to the Government Pleader, S.R.No.7942

सत्यमेव जयते

W.P.Nos.1949 & 1950 of 2018

NRK (CO)
CS/20/02/18

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