



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:21.02.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) .No.12223 of 2015

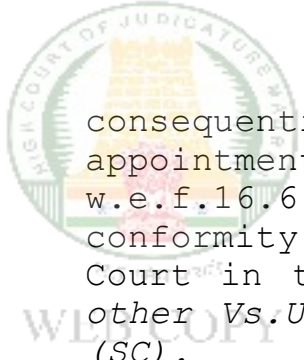
M.Chandra Prabha

... Petitioner

Vs

- 1.The State of Tamil Nadu,
rep.by its Secretary to Government,
School Education Department,
Secretariat, Chennai-600 009.
 - 2.The Director of Elementary Education,
O/o.the Director of Elementary Education Office,
College Road, Nungambakkam, Chennai.
 - 3.The District Elementary Educational Officer,
O/o.the District Elementary Educational Office,
Tirunelveli District, Tirunelveli.
 - 4.The Assistant Elementary Educational Officer,
O/o.Assistant Elementary Educational Office,
Vasudevanallur, Tirunelveli District.
 - 5.The Correspondent,
R.C.Middle School,
Duraisamiyapuram,
Sivakiri Taluk,
Tirunelveli-627 757.
- ... Respondents

This Writ Petition is filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 4th respondent in his proceedings in O.Mu.No.320/A-2/2015 dated 6.7.15 and quash the same as illegal and



consequentially to direct the 4th respondent to approve the appointment of the petitioner as B.T.Assistant (Mathematics) w.e.f.16.6.2011 without reference to Teacher Eligibility Test in conformity with the judgement rendered by the Honourable Supreme Court in the case of *Pramati Educational and Cultural Trust and others Vs. Union of India and others* reported in (2014) 4 MLJ 486 (SC).

For Petitioner :Mr.R.Karunanidhi
 For Respondents :Mr.VR.Shanmuganathan
 Special Government Pleader

ORDER

[Order of the Court was made by J.NISHA BANU,J.]

The above Writ Petition has been filed challenging the rejection of the approval of the appointment of the petitioner as B.T.Assistant (Mathematics) w.e.f.16.6.2011 by the fourth respondent school on the ground that she did not possess the teacher eligibility test (in short 'TET').

2. The case of the petitioner is that the fifth respondent school is an aided minority institution and it is governed by some of the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the rules framed thereunder. She passed B.Sc (mathematics) on 03.04.2005 from St.Mary's College, Tuticorin and completed B.Ed from St.Justin Teachers College for Women affiliated to Madurai Kamaraj University in April, 2006. She was initially appointed as B.T.Assistant on 16.06.2011 in the fifth respondent School in a vacancy caused on account of the transfer of one Alociyas Paulraj and has been working in that school. At the time of her appointment, she qualified B.Sc (mathematics) with B.Ed.

3. The official respondent would file a counter stating that the subject matter in issue was referred to before the Larger Bench of this Court and the same is kept pending and therefore, prayed for the dismissal of the Writ Petition.

4. However, when the matter came up for consideration, both the parties would contend that the Division Bench of this Court has considered the issue in question in the case of *The Secretary to Government, Government of Tamil Nadu and others v. S.Jeyalakshmi and another* reported in 2016 Writ L.R. 769, and has held 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.

61. *** **

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."

5. In the light of the afore-cited judgment and since the approval of the appointment has been rejected on the ground that the petitioner did not possess TET, this Court is of the considered view that the ratio laid down by the Division Bench of this Court would certainly apply to the case on hand. In other words, 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 and as per the observation made in the afore-said judgement, 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.



6. In the result, the order impugned in this writ petition stands set aside and this writ petition is allowed as prayed for. Consequently, the fourth respondent is directed to approve the appointment of the petitioner as B.T.Assistant (mathematics) with effect from 16.06.2011 within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CSII)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Secretary to Government,
The State of Tamil Nadu,
School Education Department,
Secretariat, Chennai-600 009.
- 2.The Director of Elementary Education,
O/o.the Director of Elementary Education Office,
College Road, Nungambakkam, Chennai.
- 3.The District Elementary Educational Officer,
O/o.the District Elementary Educational Office,
Tirunelveli District, Tirunelveli.
- 4.The Assistant Elementary Educational Officer,
O/o.Assistant Elementary Educational Office,
Vasudevanallur, Tirunelveli District.

+One cc to Mr.R.Karunanidhi, Advocate, SR.No.9369

+One cc to The Special Government Pleader, SR.No.9691

ssm

RL/7C/4P/RR/SAR3/9.3.2017