



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD)No.20754 of 2019

and

W.M.P(MD)No.17374 of 2019

WEB COPY

The Correspondent,
Sacred Heat Higher Secondary School,
Panagudi-627 109,
Tirunelveli District.

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.

2.The Director of School Education,
College Road,
Chennai-600 006.

3.The Chief Educational Officer,
Tirunelveli,
Tirunelveli District.

4.The District Educational Officer,
Valliyoor-627 007,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents herein to approve forthwith the appointment of C.Gnana Sekar as BT Assistant Science in the petitioner's School from the date of appointment i.e., 07.06.2017 and disburse the annual increments and other allowances towards his salary w.e.f., the said date,

For Petitioner : Mrs.A.Amala
For Respondents : Mr.A.Thiagarajan,
Government Advocate

ORDER

This writ petition is filed for a direction to the respondents to approve forthwith the appointment of C.Gnana Sekar as BT Assistant (Science) in the petitioner's School from the date of



appointment i.e., 07.06.2017 and disburse the annual increments and other allowances towards his salary w.e.f., the said date.

2.The petitioner's School is a minority institution. The petitioner's school appointed one C.Gnana Sekar as BT Assistant (Science) on 07.06.2017 in a vacancy arose due to the retirement of then incumbent Thiru.A.Rajaratnam, in a sanctioned post. The fourth respondent released the salary to the teacher by the proceedings in Na.Ka.No.2682/A3/2017, in September, 2017, but he refused to accept the proposal for approving the appointment of C.Gnana Sekar and to sanction the annual increments and other allowances on the ground that the Teacher appointed is not possessing the certificate of pass in Teachers Eligibility Test. The petitioner sent proposal and reminders for approval of appointment and claiming annual increments and other allowances. However, no order has been passed on the representation so far. Hence, the petitioner has come out with the present writ petition.

3. The learned counsel appearing for the petitioner contended that as per the judgment of the Hon'ble Apex Court in ***Pramati Educational and Cultural Trust and others Vs. Union of India reported in 2014(4) MLJ 486*** and the Division Bench Judgment in ***Secretary to Government v. S.Jeyalakshmi reported in 2016(5) CTC 639***, pass in Teachers Eligibility Test is not necessary to the Teachers appointed in the minority institutions. The fourth respondent is not correct in not sanctioning the annual increment and other benefits after approving the appointment and granting salary on the ground that the Teachers appointed are not passed in Teachers Eligibility Test and prayed for allowing the writ petition.

4. The learned Government Advocate appearing for the respondents contended that the petitioner appointed one C.Gnana Sekar as BT Assistant (Maths) on 07.06.2017 after issuing the Government Order in G.O.Ms.No.181 (School Education-D2), dated 15.11.2011. The qualification prescribed by NCTE and after G.O.Ms.No.181, dated 15.11.2011, unless the teachers passed in the Teachers Eligibility Test appointed cannot be approved and prayed for dismissal of the writ petition.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

6. It is not in dispute that the petitioner's Management is a minority institution. Whether teachers appointed in minority institution must possess a certificate of pass in Teachers Eligibility Test or not, is no longer res-integra. The Division Bench of this Court in ***Secretary to Government v. S.Jeyalakshmi reported in 2016(5) CTC 639***, in paragraphs 59 & 60 has held as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>



"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 NCTC, 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 Institutions, 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."

7. A reading of above two paragraphs makes it clear that the Government Orders in G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011, is not applicable to the Minority Institutions.

8. In view of the above, the writ petition is disposed of with a direction to the respondents to consider the proposal sent by the petitioner for approving the teacher appointed in the school and sanction the annual increment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

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

<https://hcservices.tn.gov.in/hcservices>



2. The Director of School Education,
College Road,
Chennai-600 006.

3. The Chief Educational Officer,
Tirunelveli,
Tirunelveli District.

4. The District Educational Officer,
Valliyoore-627 007,
Tirunelveli District.

+1 CC to M/s.A.AMALA, Advocate (SR-92786[F] dated 18/10/2019)

W.P. (MD) No.20754 of 2019

17.10.2019

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