



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.12.2019

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P. (MD) No.22943 of 2015

and

M.P.No.1 of 2015

The Manager & Correspondent
Carpenter Street Middle School
Gopalsamy Street
Tuticorin
Tuticorin - 628 001

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 Elementary Education
School Road
Chennai - 600 006
3. The District Elementary Educational Officer
T.R.Naidu Street
Tuticorin
Tuticorin District
4. The Assistant Elementary Educational Officer
Tuticorin (Urban), Tuticorin
Tuticorin District

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari Mandamus, calling for the records relating to the impugned proceedings issued by the fourth respondent Assistant Elementary Educational Officer in A.Thi.Mu.No.509/A1/2015 dated 16.12.2015, quash the same and further direct the third respondent District Elementary Educational Officer to approve forthwith the appointment of R.Yesudoss as BT Assistant in Science in the petitioner School w.e.f the date of his appointment on 13.08.2012 with all attendant benefits including the arrears of salary and allowance and pass such other orders as this Court may deem fit and proper.



For Petitioner : Mr.Cibi Chakraborty
for M/S. Issac Chambers
For Respondents : Mr.V.R.Shanmuganathan
Additional Government Pleader

WEB COPY

ORDER

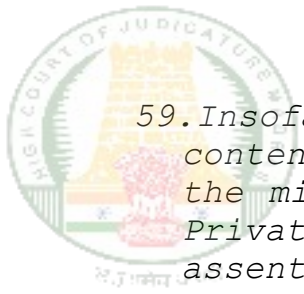
This Writ Petition is filed to call for the records relating to the impugned proceedings issued by the fourth respondent Assistant Elementary Educational Officer in A.Thi.Mu.No.509/A1/2015 dated 16.12.2015, quash the same and further direct the third respondent District Elementary Educational Officer to approve forthwith the appointment of R.Yesudoss as BT Assistant in Science in the petitioner School with effect from the date of his appointment on 13.08.2012 with all attendant benefits including the arrears of salary and allowance.

2. The learned counsel for the petitioner would submit that the petitioner's school is a recognized and aided minority Educational Institution, in which, one post of Secondary Grade Teacher fell vacant due to the retirement of the then incumbent on 31.05.2011. In that vacancy, the petitioner's school appointed one R.Yesudoss as B.T.Assistant in Science with effect from 13.08.2012 and thereafter the petitioner's school submitted a proposal to the third respondent for approval which was returned stating that the school is under direct payment and therefore, approval cannot be granted.

3. It is further submitted that direct payment imposed on the school was cancelled vide proceedings dated 22.06.2013 and therefore, the petitioner's school resubmitted proposal for approval which was returned by the fourth respondent by impugned order dated 16.12.2015 directing the school to resubmit the proposal enclosing the certificate of pass in Teachers' Eligibility Test. Challenging the said order, the petitioner has filed this Writ Petition.

4. No counter affidavit has been filed by the respondents. Mr.D.Muruganandam, learned Additional Government Pleader takes notice for the respondents.

5. The only issue to be decided in this matter is whether the teachers in the minority institution has to pass Teachers' Eligibility Test. The above issue has been settled by this Court in the judgment of the Division Bench reported in 2016-4-L.W 841, Government of Tamil Nadu Vs.S.Jeyalakshmi. The relevant portion of the judgment is extracted below:-



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 18.03.2015 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 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 & Cultural Trust, 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.

6. The above judgment is squarely applicable to the present case and therefore, the impugned order dated 16.12.2015 is set aside and the third respondent is directed to approve the appointment of R.Yesudoss as B.T Assistant (Science) in the petitioner's school from the date of his original appointment i.e., on 13.08.2012 with



monetary and service benefits and the said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

7. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

WEB COPY

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1. The State of Tamil Nadu
Rep by its Secretary
Department of School Education
Fort St.George
Chennai - 600 009
2. The Director of Elementary Education
School Road
Chennai - 600 006
3. The District Elementary Educational Officer
T.R.Naidu Street
Tuticorin
Tuticorin District
4. The Assistant Elementary Educational Officer
Tuticorin (Urban), Tuticorin
Tuticorin District.

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-104417[F] dated 11/12/2019)

W.P. (MD) No.22943 of 2015 and

M.P.No.1 of 2015

10.12.2019

vrn

SDS(20.01.2020) 4P-6C