



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) No.1301 of 2019

and

C.M.P. (MD) No.11063 of 2019

T.Pushpa Latha

... Appellant

Vs.

- 1.The State of Tamil Nadu,
Rep. By its Secretary,
Department of School Education,
Fort St. George, Chennai-600009.
- 2.The Director of Elementary Education,
College Road, Chennai-600 006.
- 3.The Chief Educational Officer,
Kanyakumari District.
- 4.The District Educational Officer,
Kuzhithalai, Kanyakumari District.
- 5.The Correspondent,
St.Mary's Higher Secondary School,
Melpalai-629 152,
Kanyakumari District.

.. Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent Act, to set aside the order dated 13.08.2019 in W.P.(MD)No.19425 of 2013 and allow the writ petition as prayed for.

Prayer in WP(MD). 19425 of 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records relating to the Impugned Proceedings issued by the 4th respondent District Educational Officer in Na.Ka. No.7623/A2/2013 dated 20.11.2013, quash the same.

For Appellant : Mr.E.V.N.Siva

For R1 to R4 : Mrs.S.Srimathy

Special Government Pleader



JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.E.V.N.Siva, learned counsel for the appellant and Mrs.S.Srimathy, learned Special Government Pleader for the official respondents. By consent on either side, this writ appeal is taken up for final disposal.

2. This appeal has been filed by the writ petitioner challenging the order passed in W.P.(MD)No.19425 of 2013 dated 13.08.2019, by which, the prayer sought for by the appellant to quash the proceedings of the fourth respondent, dated 20.11.2013 rejecting the permission to grant approval of the appointment of the appellant has been declined.

3. The learned Single Bench has held that if the Teacher has not completed the Teacher Eligibility Test, he / she is not eligible to be appointed in the private school and such appointment cannot be approved.

4. We find that the said decision is contrary to the judgment of the Hon'ble Division Bench in the case of **The Secretary to Government and others Vs.S.Jeyalakshmi** [2016 (5) CTC 639], **K.Solomon Jeyaraj Vs. The Secretary, Department of School Education and others** [W.A.(MD)No.1437 of 2016], **Helan Samraj Vs. The Secretary, Department of School Education and others** [W.A.(MD)No.1438 of 2016] and **K.Anita Vs. The State of Tamil Nadu, rep. by its Secretary and others** [W.A.(MD)No.1090 of 2017].

5. The operative portion of the judgment in the case of K.Anita is quoted herein below:-

"4.The question which arises for consideration is as to whether the appellant was appointed in a minority Institution can be compelled to pass Teacher Eligibility Test. The same issue was decided in the case of **K.Solomon Jeyaraj v. The Secretary, Department of School Education and four others** in **W.A.No.1437 of 2016, dated 25.11.2016**. The operative portion of the judgment reads as follows:

"7.It is relevant to extract the following paragraphs of the judgment of the Division Bench of this Court (cited supra):

52.However, the Government, before issuing G.O.Ms.No.181 dated 15.11.2011, lost sight of one important fact, namely imposition 39 of a condition on the Teachers, who were appointed prior to the issue of G.O., in non minority and minority Schools, both aided and unaided to qualify themselves with TET within a period of five years, in order to continue in service, would cause great hardship to them. Moreover, if the Teachers who have put in more



number of years of service, could not pass TET within five years, their continuation in service would be in jeopardy. Further, it is seen that the percentage of pass in the TET examination conducted in 2012 and 2013 was very minimal.

56. We are, therefore, of the considered view that the Government may seek a clarification from the NCTE, in the light of what is stated in the preceding paragraph, whether the prescription of minimum qualification of TET can be made applicable prospectively for the Teachers who were appointed subsequent to the date of the issue of G.O., in both non minority and minority institutions and not retrospectively as the same would cause undue hardship to the Teachers who have been serving for a quite a long time...."

5. The aforesaid decision is followed in the case of **Y.Kanagaraj v. The State of Tamil Nadu, Rep by its Secretary, Department of School Education, Fort St. George, Chennai and others**, in **W.A(MD).No.724 of 2017 dated 16.06.2017**, in respect of another teacher, who was working in another School under the same Management, as that of the 5th respondent.

6. Thus, for the above reasons, the writ appeal is allowed as prayed for and the respondents are directed to approve the appellant's appointment as Tamil Pandit with effect from 16.11.2010, without insisting pass in Teacher Eligibility Test, within a period of three months from the date of receipt of a copy of this order. No costs. "

6. Further, it is not disputed by the learned Special Government Pleader appearing for the respondents that an identical issue was decided against the Government by dismissing the appeal filed by the State in W.A(MD)No.859 of 2019 on 26.09.2019.

7. For the above reasons, the order passed in the writ petition is liable to be interfered. In the light of the same, this writ appeal is allowed and the order in the writ petition is set aside. Consequently, the approval of appointment granted to the appellant in proceedings dated 10.09.2012 has been revived. The salary and other benefits payable to the appellant shall be disbursed within a period of eight weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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To

- 1.The Secretary,
Department of School Education,
Fort St. George, Chennai-600009.
- 2.The Director of Elementary Education,
College Road, Chennai-600 006.
- 3.The Chief Educational Officer,
Kanyakumari District.
- 4.The District Educational Officer,
Kuzhithalai, Kanyakumari District.

+1CC TO MR.E.V.N.SIVA, Advocate Sr. No. 100712

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 100543

ORDER MADE IN
W.A. (MD) No.1301 of 2019
21.11.2019

PM(CO)

TR(06.12.2019) 4P 7C