



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.11.2019

Judgment Reserved on:
23.10.2019

Judgment delivered on:
04.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) No.914 of 2017

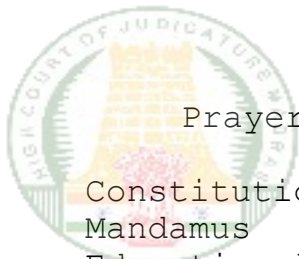
K.Gaspar

... Appellant/Writ petitioner

-vs-

- 1.The State of Tamilnadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai - 09.
- 2.The Director of Elementary Education,
College Road, Chennai - 06.
- 3.The District Elementary Educational Officer,
Tirunelveli, Tirunelveli District - 627 001.
- 4.The Additional Assistant Elementary
Educational Officer,
Vasuthevanaloor,
Tirunelveli District.
- 5.The Superintendent of Schools,
R.C. Diocese of Palayamkottai,
Thembavani Thottam,
Tirunelveli - 627 011.
- 6.The Correspondent,
RC Primary School,
Velayuthapuram, Goodalur Post,
Tirunelveli District - 627 760. ... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 14.07.2016, made in W.P.(MD) No.1960 of 2015, on the file of this Court.



Prayer in WP(MD). 1960/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus directing the 3rd respondent District Elementary Educational Officer to approve forthwith the appointment of the petitioner as Secondary Grade Teacher in the 6th respondent School Namely, RC Primary School, Velayuthapuram , Goodalor Post, Tirunelveli District w.e.f. the date of his appointment on 17.3.2011 with all attendant benefits including the arrears of salary and allowance in the light of the judgment rendered by the Honble supreme Court in Pramati Educational and Cultural Trust and others vs the Union of India and others reproted in (2014) 4 MLJ 486 (SC), and pass such further or other suitable order/orders.

For Appellant : Mr.S.Xavier Rajini

For Respondents 1 to 4 : Mrs.S.Srimathy
Special Government Pleader

For Respondents 5 and 6 : No appearance

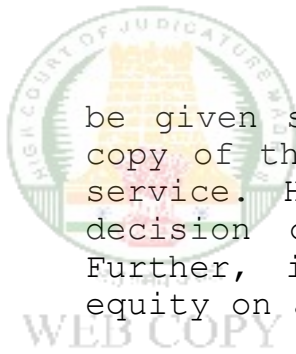
J U D G M E N T

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.S.Xavier Rajini, learned counsel appearing for the appellant and Mrs.S.Srimathy, learned Special Government Pleader appearing for the respondents 1 to 4.

2.This Writ Appeal has been filed challenging the order passed in W.P.(MD) No.1960 of 2015, which was disposed of by a common order dated 14.07.2016 in a batch of Writ Petitions.

3.The appellant filed the writ petition praying for a Writ of Mandamus, to direct the third respondent District Elementary Educational Officer to approve forthwith the appointment of the petitioner as a Secondary Grade Teacher in the 6th respondent School with effect from the date of appointment on 17.03.2011 with all attendant benefits including arrears of salary and allowance in the light of the decision rendered by the Hon'ble Supreme Court in ***Paramathi Educational and Cultural Trust and others v. The Union of India and others [(2014) MLJ 486 (SC)]***. The Writ Petition was disposed of by a common order pointing out that the appellant and other persons were appointed in sanctioned posts arising on account of retirement of the existing incumbents. However, as the issue as to whether the provisions of the Right of Children to Free and Compulsory Education Act, 2009, would be applicable to a minority institution is pending consideration before the Hon'ble Supreme Court in ***Aswinithanappan v. Director of Education and another [(2014) 8 SCC 272]***, the Writ Court directed that the appellant shall



be given salary within four weeks from the date of receipt of a copy of this order and no steps should be taken to remove him from service. However, such payment of salary will be subject to the decision of the Hon'ble Apex Court in **Aswinithanappan** (supra). Further, it was ordered that the appellant shall not claim any equity on account of the said order.

4.The case of the appellant is slightly different from the cases which were dealt with by the learned Writ Court since the appellant was appointed on 17.03.2011 in the 6th respondent school, whereas the State Government issued the Government Order in G.O.(Ms) No.181 School Education (C2) Department on 15.11.2011, directing the conduct of Teacher Eligibility Test (TET). The appellant's case is that his appointment is much prior to the order passed by the Government and the School in which he was appointed being a minority educational institution in terms of the **Paramathi** (supra), TET cannot be insisted for being appointed. Therefore, it is submitted that the case of the appellant ought to have been dealt with independently and not clubbed with other matters, which were dealt with on a different factual situation. The appellant in support of his case, places reliance on the decision of the Division Bench of this Court in **Secretary to Government v. S.Jeyalakshmi [(2016) 7 MLJ 155]**.

5.The respondent Department seeks to sustain the order passed in the Writ Petition by contending that the appellant is receiving the salary and he should await the outcome of the decision of Hon'ble Supreme Court.

6.There have been decisions of the Division Bench on identical issue, which were in favour of the teachers, who are similarly placed as that of the appellant. One such case is **S.Jeyalakshmi** (supra) and the judgment in **W.A.(MD) No.724 of 2017 dated 16.06.2017 [Y.Kanagaraj v. The State of Tamil Nadu, Rep. by its Secretary, Department of School Education and others]**, to which one of us (TSSJ) is a party. Recently, a learned Single Judge of this Court by order **dated 08.03.2019**, made in **W.P.(MD) No.5626 of 2017** etc., batch considered a similar issue and granted relief for such of those persons, who were appointed prior to the cut of date fixed by the Government, holding that they are entitled for exemption from possessing TET qualification. Therefore, the appellant's case is different from the other cases, which were disposed of by the learned Writ Court by a common order.

7.For the above reasons, the Writ Appeal is allowed and the order passed in the Writ Petition in W.P.(MD) No.1960 of 2015, which was disposed of by a common order dated 14.07.2016, is modified by directing the respondents to approve the appointment of the appellant from the date of his appointment and pay salary and other benefits. The salary paid to the appellant pursuant to the direction



issued by the Writ Court shall be reckoned for the period for which it is paid. This direction be complied with within 12 weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

sj

To

- 1.The Secretary,
Department of School Education,
State of Tamilnadu,
Fort St. George, Chennai - 09.
- 2.The Director of Elementary Education,
College Road, Chennai - 06.
- 3.The District Elementary Educational Officer,
Tirunelveli, Tirunelveli District - 627 001.
- 4.The Additional Assistant Elementary
Educational Officer,
Vasuthevanaloor,
Tirunelveli District.

+1 CC to M/s.S.XAVIER RAJINI, Advocate (SR-96400[F] dated
06/11/2019)

Pre-delivery judgment in
W.A. (MD) No.914 of 2017
Delivered on 04.11.2019

JMN(15.11.2019) 4P : 6C