



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD)No.1187 of 2020

and

W.M.P (MD)Nos.933 and 934 of 2020

WEB COPY

The Correspondent,
St.Ignatius Convent Higher Secondary School,
Palayamkottai-627 002,
Tirunelveli District. ... Petitioner

Vs.

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

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

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

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified mandamus, to call for the records relating to the impugned proceedings issued by the third respondent, District Educational Officer in Na.Ka.No.5751/A4/2018 dated 19.12.2018, quash the same, insofar as S.Sherine Stella is concerned and further direct the third respondent, District Educational Officer to release forthwith annual increment admissible to S.Sherine Stella in the post of BT Assistant (Tamil) w.e.f. 15.06.2011, with all attendant benefits including the arrears of salary thereon.

For Petitioner : Mr.K.Ragatheesh Kumar
for M/s.Isaac Chambers

For Respondents : Mr.A.Thiagarajan,
Government Advocate.

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the third respondent, District Educational Officer, Tirunelveli District, in Na.Ka.No.5751/A4/2018 dated 19.12.2018, quash the same, insofar as S.Sherine Stella is concerned and further direct the third respondent to release forthwith annual increment admissible to S.Sherine Stella in the post of BT Assistant (Tamil) w.e.f. 15.06.2011, with all attendant benefits including the arrears of salary thereon.



for the respondents. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3.The case of the petitioner is that the petitioner's School is a recognized aided minority educational institution. The school was initially established as primary school in the year 1921 and upgraded as middle school in the year 1923 and it was further upgraded as High School in the year 1929 and as Higher Secondary School in the year 1978. When the school was upgraded as High School, as per the norms of the Government, it got bifurcated as primary and high school. Now the petitioner school is offering education from Standard VI to XII. One post of BT Assistant (Tamil) in the petitioner's school fell vacant on 01.06.2011 due to retirement of one N.Juliet. In that vacancy, the petitioner school appointed one S.Sherine Stella as BT Assistant (Tamil) and she joined duty on the same day and till date she continues to work in the school. Her appointment was approved by the 3rd respondent with effect from 15.06.2011. Since, the annual increment admissible to her was not released, the school submitted a representation, dated 30.11.2018, to the 3rd respondent. However, the 3rd respondent denied to release annual increments to her, vide impugned order, dated 19.12.2018, on the ground that she has not passed the Teachers Eligibility Test.

4.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***, a pass in Teachers Eligibility Test is not necessary to the Teachers appointed in the minority institutions, which is also followed in the decision of this Court dated 17.10.2019 made in W.P(MD)Nos.19603 and 19659 of 2019 in the case of ***The Correspondent, Chiristhu Raja Higher Secondary School, Palayamkottai - 627 002, Tirunelveli District v. the State of Tamil Nadu rep. by its Secretary, Department of School Education, Fort St. George, Chennai - 600 009 and others*** and would pray that the issue in hand is already covered by the above Judgment.

5.The learned Government Advocate appearing for the respondents contended that the teacher is not possessing the certificate of pass in Teachers Eligibility Test.

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



7.It is not in dispute that the petitioner's Management is a minority institution. The issue involved in this writ petition is also covered by the order of this Court in W.P(MD)Nos.19603 and 19659 of 2019 in the case of ***The Correspondent, Chiristhu Raja Higher Secondary School, Palayamkottai - 627 002, Tirunelveli District v. the State of Tamil Nadu rep. by its Secretary, Department of School Education, Fort St. George, Chennai - 600 009 and others***, wherein it has been held as follows:

"7.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:-

"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."

The petitioner institution appointed two persons on 15.09.2010 and 01.02.2011 prior to the date of issuance of Government Order.

8.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.

9.In view of the ratio laid down by the Division Bench of this Court in the decision cited supra, both the writ petitions are allowed".

8.Following the same, this Court is inclined to pass the following order:

The impugned order of the 3rd respondent dated 19.12.2018, insofar as S.Sherine Stella is concerned, is quashed. The matter is remanded back to the 3rd respondent and the 3rd respondent is directed to pass orders on the representation submitted by the petitioner school, dated 30.11.2018, seeking to release the annual increment of S.Sherine Stella, in the light of the decision of the Division Bench of this Court in **Secretary to Government v. S.Jeyalakshmi** reported in **2016(5) CTC 639**, within a period of eight weeks from the date of receipt of a copy of this order.

9.The writ petition is allowed accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

smn

To

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

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

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

+1 CC to SPL.GP (SR-2579[F] dated 23/01/2020)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-2631[F] dated 23/01/2020)

ORDER MADE IN
W.P. (MD)No.1187 of 2020
22.01.2020

KM/(06.02.2020) 4P 6C

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