



WEB COPY

W.A(MD)No.598 of 2020:

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.08.2020**

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.A(MD)Nos.598, 602 and 604 of 2020

and

C.M.P(MD)Nos.3888, 3892 and 3895 of 2020

W.A(MD)No.598 of 2020:

Sheela

... Appellant / Petitioner

-Vs-

- 1.The Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai - 9.
- 2.The Director of School Education,
College Road, DPI Campus, Chennai.
- 3.The District Elementary Educational Officer,
Thoothukudi, Thoothukudi District.
- 4.The Assistant Elementary Educational Officer,
Kayathar, Thoothukudi District.
- 5.The Correspondent,
R.C.Primary School,
Vadakku Vandanam,
Thoothukudi District.

... Respondents/ Respondents

W.A(MD)Nos.602 & 604 of 2020:

Lusia

... Appellant in W.A(MD)No.602 of 2020 /
Petitioner

Mariammal

... Appellant in W.A(MD)No.604 of 2020 /
Petitioner

-Vs-

- 1.The Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai - 9.



2.The Director of School Education,
College Road, DPI Campus, Chennai.

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

4.The Assistant Elementary Educational Officer,
Tenkasi, Tenkasi District.

... Respondents 1 to 4 in
W.A(MD)Nos.602 & 604 of 2020/
Respondents

5.The Correspondent,
R.C.Primary School,
Vallam,
Tenkasi District.

... Fifth Respondents in
W.A(MD)No.602 of 2020/Respondent

6.The Correspondent,
R.C.Primary School,
Tenkasi,
Tenkasi District.

... Fifth respondent in
W.A(MD)No.604 of 2020/Respondent

COMMON PRAYER: Writ Appeals filed under Clause 15 of the Letters Patent Act, to set aside the order passed in W.P(MD)No.19257, 19259 and 19260 of 2015 dated 29.08.2019.

Prayer in WP(MD). 19257/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF MANDAMUS directing the respondents 1 to 4 to grant approval to the petitioner's appointment as B.T. Assistant in the 5th respondent minority aided school.

Prayer in WP(MD). 19259/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents 1 to 4 to grant approval to the petitioner's appointment as Secondary Grade Teacher in the 5th respondent minority aided School.



Prayer in WP(MD). 19260/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF MANDAMUS directing the respondents 1 to 4 to grant approval to the petitioner's appointment as Secondary Grade Teacher in the 5th respondent minority aided school.

(In All Writ Appeals)

For Appellant : Mr.D.Venkatesh

For R-1 to R-4 : Mrs.S.Srimathy,
Special Government Pleader

COMMON JUDGMENT

[Judgment of the Court was delivered by **M. SATHYANARAYANAN, J.,**]

All these writ appeals are taken up and disposed of by this common judgment - issue to be adjudicated is one and the same.

W.A(MD)No.598 of 2020 against W.P(MD)No.19257 of 2015:

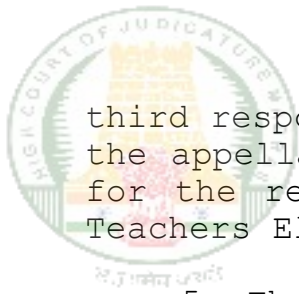
2. The appellant/writ petitioner after getting degree in Bachelor of Educational Course, was appointed as BT Assistant by the fifth respondent Minority Educational Institution in the place of one Mr.Bernadhat with effect from 03.01.2012 and thereafter, the fifth respondent submitted a proposal to the third respondent through the fourth respondent to approve the appointment of the appellant / writ petitioner and it was not considered primarily for the reason that the appellant / writ petitioner did not clear Teachers Eligibility Test.

W.A(MD)No.602 of 2020 against W.P(MD)No.19259 of 2015:

3. The appellant / writ petitioner after completing Diploma in Teacher Education Course was appointed as Secondary Grade Teacher by the fifth respondent Institution in the place of one Mrs.Forgia with effect from 15.02.2013 and submitted a proposal dated 10.08.2015 to the third respondent through the fourth respondent to approve the appointment of the appellant / writ petitioner and it was not considered primarily for the reason that the appellant / writ petitioner did not clear Teachers Eligibility Test.

W.A(MD)No.604 of 2020 against W.P(MD)No.19260 of 2015:

4. The petitioner after completing Diploma in Teacher Education Course was offered employment by the fifth respondent in the place of one Mr.Shanmugaiah, with effect from 15.06.2011 and the fifth respondent submitted a necessary proposal dated 29.07.2015 to the



third respondent via fourth respondent to approve the appointment of the appellant / writ petitioner and it was not considered primarily for the reason that the appellant / writ petitioner did not clear Teachers Eligibility Test.

5. The appellants / writ petitioners took a stand in the light of Constitutional Bench judgment reported in (2014) 8 SCC 1 : (2014) 4 MLJ 486 (SC) (*Pramati Educational and Cultural Trust and others vs. Union of India and Others*) that there is no mandate cast upon the teachers to clear the Teachers Eligibility Test for getting appointment in the Minority Institutions.

6. The learned single Judge disposed of the writ petitions holding that passing of Teachers Eligibility Test is mandatory and challenging the legality of the common order dated 29.08.2019 passed in W.P(MD)Nos.19257, 19259 and 19260 of 2015, the appellants / writ petitioners, came forward to file these writ appeals.

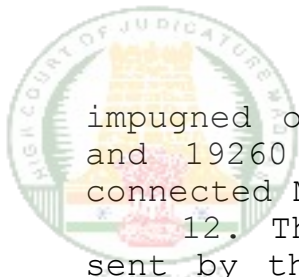
7. The learned counsel appearing for the appellants / writ petitioners has invited the attention of this Court to the judgment rendered by the Constitutional Bench reported in (2014) 8 SCC 1 : (2014) 4 MLJ 486 (SC) and would submit that a reference was made before the Constitutional Bench as to the validity of Clause (5) of Article 15 of the Constitution of India, inserted by the Constitution (Ninety-third Amendment) Act, 2005, with effect from 20.01.2006 as well as the validity of Article 21(A) of the Constitution of India, inserted by the Constitution (Eighty-Sixth Amendment) Act, 2002 with effect from 01.04.2010.

8. This Court has carefully considered the submissions and also perused the materials placed before it.

9. The Constitutional Bench incidentally also considered the scope and ambit of the Right to Education and held in Paragraph No.45 that the State has no power to interfere with the administration of the Minority Institutions and can make only regulatory measures and has no power to force the admissions of students from amongst non-minority communities, particularly in minority schools, so as to affect the minority character of the Institutions and in Paragraph No.46, further held that 2009 Act insofar it is made applicable to the minority schools referred to in Clause (1) of Article 30 of the Constitution, is *ultra vires* of the Constitution.

10. In the light of the said pronouncement, this Court is of the considered view that in respect of Teachers, who are joining Minority Institutions, eligibility of passing Teachers Eligibility Test cannot be insisted upon and hence, on the said sole ground, the impugned order passed in the writ petitions warrants interference.

11. In the result, these writ appeals are allowed and the



impugned order dated 29.08.2019 passed in W.P(MD)Nos.19257, 19259 and 19260 of 2015, is set aside. No Costs. Consequently, connected Miscellaneous Petitions are closed.

12. The third respondent is directed to process the proposals sent by the fifth respondent schools as expeditiously as possible and complete the exercise within a period of eight weeks from the date of receipt of a copy of the order and communicate the decision taken to the fifth respondent schools.

Sd/-

Assistant Registrar (LA&MC)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai - 9.
- 2.The Director of School Education,
College Road, DPI Campus, Chennai.
- 3.The District Elementary Educational Officer,
Thoothukudi, Thoothukudi District.
- 4.The Assistant Elementary Educational Officer,
Kayathar, Thoothukudi District.
- 5.The District Elementary Educational Officer,
Tirunelveli, Tirunelveli District.
- 6.The Assistant Elementary Educational Officer,
Tenkasi, Tenkasi District.

+1 CC to SGP (SR-14858,14859,14860[F] dated 25/08/2020)

Judgment in

W.A(MD)Nos.598, 602 & 604 of 2020

21.08.2020