



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2021

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

W.P. Nos.13043 & 13044 of 2021
and W.M.P. Nos.13849 & 13850 of 2021

Anderson Higher Secondary School,
Kanchipuram 631 501.

Rep. by its Correspondent

A.E.Sachidanandam, S/o.P.Adaikalam

.. Petitioner in both Writ Petitions

Versus

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

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

3.The District Educational Officer,
Kanchipuram Education District,
Kanchipuram.

.. Respondents in both Writ Petitions

PRAYER in W.P.No.13043 of 2021: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to pass orders for granting approval of appointment of Tmt.N.Jansy Rebekkal in the sanctioned post of B.T. Assistant (Science) in the petitioner School from the date of appointment on 09.03.2018, based on the proposal submitted by the petitioner School dated 27.07.2020 and resubmitted on 22.02.2021, with all consequential and other attendant benefits, including the arrears of salary to the petitioner from the date of initial appointment on 09.03.2018, along with interest within a time frame to be fixed by this Court.

PRAYER in W.P.No.13044 of 2021: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to pass orders for granting approval of appointment of Ms.I.Natasha Pamala Moses in the sanctioned post of B.T. Assistant (English) in the petitioner



School from the date of appointment on 06.03.2019, based on the proposal submitted by the petitioner School dated 22.02.2021, with all consequential and other attendant benefits, including the arrears of salary to the petitioner from the date of initial appointment on 06.03.2019, along with interest within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran
in both W.Ps

For Respondents : Mr.C.Kathiravan
in both W.Ps Government Advocate

C O M M O N O R D E R

The petitioner in both the cases is the Correspondent of the Minority Aided Institution viz., Anderson Higher Secondary School, Kanchipuram.

2. There is no dispute that the petitioner is the Minority Institution which comes under the Management of Church of South India, Madras Diocese. It is stated that the vacancies arose for the post of B.T. Assistant (Science and English) due to the promotion of incumbents on 09.03.2018 and 07.03.2019 respectively. In the vacancies, the petitioner appointed two individuals, viz., Tmt.N.Jansy Rebekkal as B.T. Assistant (Science) on 09.03.2018 and Tmt.I.Natasha Pamala Moses as B.T. Assistant (English) on 06.03.2019.

3. It is the case of the petitioner that the posts are sanctioned and the appointments were made against the vacancies in the respective posts. Even as per Staff Fixation Order issued by the 2nd respondent dated 09.10.2017 and 02.05.2019 respectively, it is evident that the posts are sanctioned. After the appointment of teachers, the petitioner School has forwarded the proposals to the 2nd respondent through proper channel, whereas, the 3rd respondent informed that the proposals for approval of Tmt.N.Jansy Rebekkal & Tmt.I.Natasha Pamala Moses can be forwarded only after approval of promotion of Tmt.S.Beaulah and Mr.G.Alpheus Ashokkumar respectively. Consequently, the petitioner school has forwarded proposals to the 2nd respondent through 3rd respondent.

4. The learned counsel for the petitioner submitted that the proposals submitted by the petitioner school are kept pending in the office of the 3rd respondent without forwarding the same to the 2nd respondent for a long time. Thereafter, the 3rd respondent has issued a communication dated 06.02.2021, returning the proposals on the premise that the approval of appointments made



in the petitioner school can be granted only after deployment of surplus teachers in Government Middle Schools and High Schools and therefore, the proposals cannot be forwarded to the 2nd respondent. It is further stated that the petitioner school has resubmitted the proposals on 22.02.2021 stating that there is no surplus teacher in the post of B.T. Assistants (Science and English) in the petitioner school and therefore G.O.Ms.No.165, dated 17.09.2019 cannot be applied and that the order of approval was granted in favour of similar appointments made in other schools and that the appointment of teachers was made prior to the date of Government Order and accordingly, requested to approve the appointment of teachers in the interest of students studying in the school and to forward the report to the 2nd respondent for granting approval of appointment of Tmt.N.Jansy Rebekkal & Tmt.I.Natasha Pamala.

5.The learned counsel further submitted that, the 3rd respondent once again returned the proposals in his proceedings dated 09.03.2021 by referring to G.O.Ms.No.165 dated 17.09.2019 by stating that there are cases pending before this Court and after getting final orders in the pending writ petitions, it will be considered to grant approval of appointment in the post of B.T. Assistant (Science and English) in the petitioner's school and G.O.Ms.No.165 dated 17.09.2019 states that the requirement of TET is also made compulsorily even to the minority institutions. The learned counsel for the petitioner states that TET is not required in the case of minority institutions. Therefore, he relied upon a judgement of the Hon'ble Supreme Court in the case of Paramati Educational and Cultural Trust vs. Union of India reported in 2014 (4) MLJ 486, wherein, it is held that the minority institutions have the right to establish and administer educational qualification of their choice and that the notification prescribing TET as an essential qualification for Teachers, is not applicable to minority schools. He also relied upon a judgement of a Division Bench of this Court in W.A.(MD) No.1413 & 1414 of 2019 in the case of The Chief Educational Officer, Tirunelveli and others vs. K.Solomon and others, wherein, this Court has reiterated 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. The Division Bench further held 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.

6.The learned counsel for the petitioners further relied upon another judgement of the Division Bench of this Court in W.A.(MD)No.76 of 2019 etc., cases in the case of The Secretary to Government, School Education Department and others vs. Iruthaya Amali and others wherein, G.O.Ms.No.165, School



Education Department, dated 17.09.2019, was held as inoperative.

7. In view of the position that TET cannot be insisted in the case of appointments in minority institutions and G.O.Ms.No.165, School Education Department, dated 17.09.2019, has been declared as inoperative, this Court has no other option except to allow these writ petitions.

8. Accordingly, these writ petitions are allowed and the petitioner is permitted to resubmit the proposals for approval of appointment of teachers in the post of B.T. Assistant (Science and English). When the applications are submitted for approval, the respondents are directed to consider the proposals in the light of this order that is now passed in these writ petitions and pass appropriate orders, within a period of six weeks from the date on which the proposals are submitted by the petitioner. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssr

To

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

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

3. The District Educational Officer,
Kanchipuram Education District,
Kanchipuram.

+2ccs to M/s.G.Sankaran, Advocate Sr No.37206

W.P. Nos.13043 & 13044 of 2021
and W.M.P. Nos.13849 & 13850 of 2021

CP (CO)
PR (03/09/2021)