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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.17887, 17888 & 17891 of 2021
and
W.M.P.Nos.19095 to 19100 of 2021

(Through Video Conferencing)

W.P.No.17887 of 2021:-

Mrs.Flora Motcha Rakini.B

...Petitioner

Vs

1. The Government of Tamilnadu,
Rep by its Additional Chief Secretary,
The Department of School Education (C2),
Fort St.George, Chennai - 600 009.
2. The Director of Elementary Education,
DPI Campus, College Road, Chennai - 600 006.
3. The Chief Educational Officer,
The Chief Educational Office,
Thiruvallur - 602 001. Thiruvallur District.
4. The District Educational Officer,
The District Educational Office,
Thiruvallur - 602 001. Thiruvallur District.
5. The Correspondent,
Sacred Heart Girls Higher Secondary School,
Kilachery, Perambakkam (Via),
Thiruvallur - 631 402.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order dated ..10.2019 in A.Thi.Mu.No.4662/A4/2019, on the file of the 4th respondent and quash the same, directing the respondents to approve the service and monetary benefits of the petitioner.



W.P.No.17888 of 2021:-

T.Selvarani

...Petitioner

Vs

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1. The Government of Tamilnadu,
Rep by its Additional Chief Secretary,
The Department of School Education (C2),
Fort St.George, Chennai - 600 009.
2. The Director of Elementary Education,
DPI Campus, College Road, Chennai - 600 006.
3. The Chief Educational Officer,
The Chief Educational Office,
Dharmapuri.
4. The District Educational Officer,
The District Educational Office,
Dharmapuri.
5. The Correspondent,
St.John's High School,
Koviloor, Nalampalli,
Dharmapuri - 636 807.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order dated .5.2019 in A.Thi.Mu.No.1132/A2/2019, on the file of the 4th respondent and quash the same, directing the respondents to approve the service and monetary benefits of the petitioner.

W.P.No.17891 of 2021:-

Sr.A.Celine Mary

...Petitioner

Vs

1. The Government of Tamilnadu,
Rep by its Additional Chief Secretary,
The Department of School Education (C2),
Fort St.George, Chennai - 600 009.
2. The Director of Elementary Education,
DPI Campus, College Road, Chennai - 600 006.
3. The Chief Educational Officer,
The Chief Educational Office,
Thiruvallur - 602 001. Thiruvallur District.



4. The District Educational Officer,
The District Educational Office,
Thiruvallur - 602 001. Thiruvallur District.

5. The Correspondent,
Sacred Heart Girls Higher Secondary School,
Kilachery, Perambakkam (Via),
Thiruvallur - 631 402.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order dated .10.2019 in A.Thi.Mu.No.4667/A4/2019, on the file of the 4th respondent and quash the same, directing the respondents to approve the service and monetary benefits of the petitioner.

For Petitioner : Mr.Father Xavier for Sr. Counsel
(in all W.Ps) Mr.Father Xavier Associates,
For Respondents : Mr.L.S.M.Hasan Fizal
(in all W.Ps) Government Advocate for R1 to R4

COMMON ORDER

By this common order, all these three writ petitions are being disposed of.

2.The learned counsel for the petitioner and the learned Government Advocate confirms that the issue is no longer res integra and is covered by the decision of this Court in the case of Secretary to Government Vs. S.Jeyalakshmi and another reported in (2016) 7 MLJ 155.

3.The Division Bench of this Court has come to a conclusion that the minority institutions are outside the purview of the RTE Act, 2009. Consequently, the question of a teacher qualifying in TET Examinations does not arise. The operative portion of the decision of the Hon'ble Division Bench of this Court in the case of Pramati Educational & Cultural Trust Vs. Union of India (2014) 8 SCC 1 held as under:-

58.In our opinion, non qualifying in TET by the Teachers already in service should not defeat the object of the Government to provide quality and standard education and therefore, the Government may, in the alternative, conduct a refresher course and also some interactive sessions during annual vacation, in order to ensure and enhance the quality of education.



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59. Insofar as minority institutions are concerned, the contention of the learned senior counsel appearing for the minority Schools in 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 NCTE, 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.

61. Though the intention of the Government is that there should not be any discrimination among the Teachers working in non-minority Schools and minority schools with respect to qualification and that there should be uniformity in the teaching imparted to the children, in view of the decision of the Apex Court in Pramati Educational & Cultural Trust, the Government cannot take shelter under the guise of discrimination to impose restrictions on minority institutions.

62. However, keeping in mind the larger interest in which the government has issued the above G.Os., this Court feels that the minority institutions may also consider conducting a refresher course and also some interactive sessions to all the Teachers during annual



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vacation, in order to ensure and improve the quality of teachers.

63. In the result, the writ petitions are allowed and the writ appeals are dismissed with a direction to the Government to release the salary of the Teachers and also to pay the arrears of salary within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected M.Ps. are closed.

4. In the light of the above these writ petitions are allowed. The 3rd respondent is directed to pass appropriate orders by approving the service of the petitioner together with monetary benefits within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Chief Secretary,
The Government of Tamilnadu,
The Department of School Education (C2),
Fort St.George, Chennai - 600 009.
2. The Director of Elementary Education,
DPI Campus, College Road, Chennai - 600 006.
3. The Chief Educational Officer,
The Chief Educational Office,
Thiruvallur - 602 001. Thiruvallur District.
4. The District Educational Officer,
The District Educational Office,
Thiruvallur - 602 001. Thiruvallur District.



5. The Chief Educational Officer,
The Chief Educational Office,
Dharmapuri.

6. The District Educational Officer,
The District Educational Office,
Dharmapuri.

+4CCs to M/s.Father Xavier Associates, Sr.No.43222

W.P.Nos.17887, 17888 & 17891 of 2021
and

W.M.P.Nos.19095 to 19100 of 2021

NRL (CO)

K.RK. (17.09.2021)