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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on 19.11.2021

Order Delivered on 02.12.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.23680 of 2021

and

W.M.P.No.24926 of 2021

V.Johni
Santhome Higher Secondary School,
No.143, Santhome High Road,
Chennai - 600 004.

... Petitioner

Vs

1. The Commissioner of School Education,
DPI campus,
College Road,
Chennai - 6.
2. The Chief Educational officer,
The Office of the Chief Educational Officer,
Adikesavarapuram,
Egmore,
Chennai - 600 008.
3. District Educational Officer,
The Office of the District Educational Officer,
Chennai Central,
Government Model Higher Secondary School Campus,
Saidapet, Chennai - 600 015.
4. The Correspondent,
Santhome Higher Secondary School,
No.143, Santhome High Road,
Chennai - 600 004.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying Writ of Mandamus to direct the 3rd respondent to act upon the order of this Hon'ble court as reported in (2016) 7 MLJ 155 Secretary to government v. S.Jeyalakshmi, in



the batch of writ petitions, to regularize the service of the petitioner with all service and monetary benefits from the date of the appointment of the petitioner.

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For Petitioner : Father Xavier Arulraj
Senior Counsel
for M/s. Father Xavier Associates

For Respondents : Mr.V.Manoharan
Addl.Govt.Pleader for R1 to R3

O R D E R

This writ petition has been filed to issue a Writ of Mandamus to direct the 3rd respondent to act upon the order of this Hon'ble Court as reported in (2016) 7 MLJ 155 Secretary to Government v. S.Jeyalakshmi, in the batch of writ petitions, to regularize the service of the petitioner with all service and monetary benefits from the date of the appointment of the petitioner.

2. The case of the petitioner is that he was appointed as B.T.Assistant (Social Science) in the 4th respondent School with effect from 01.12.2016. The post was a regular sanctioned post with Grant-in-Aid from the Government. The 4th respondent is a minority Institution and the minority character of educational agency was declared by this Court vide order dated 24.09.1976 in W.P.No.629 of 1975. After declaration by this Court, the 1st respondent had also issued proceedings dated 21.10.1976 certifying the minority character of the educational agency which run the 4th respondent School. The educational agency has established and has been administering number of educational Institutions and all of them are minority educational institutions governed under Article 30(1) of the Constitution of India.

3. The 4th respondent School, after the appointment of the petitioner herein on 01.09.2017, forwarded a proposal for approval of the authorities concerned on 02.01.2018. As there was no response from the authorities, the School had resubmitted the proposal on 16.03.2018. According to the School, the staff fixation for the academic year 2016-2017 revealed that the post was within the sanctioned cadre strength admissible.

4. While the matter stood thus, a G.O. was issued on



15.11.2011 (G.O.Ms.No.181) in terms of Section 23 r/w Rule 16 of the Right of Children to Free and Compulsory Education Act, 2009, which provide for acquiring Teachers Eligibility Test (TET) qualification within a period of 5 years from the date of commencement of the Act. Under the provisions of RTE Act, the Management of Private Schools have duty to insist on the teacher to acquire TET qualification within a period of 5 years from the date of coming into effect of the Act. As acquiring TET qualification was mandatory, over a period of time, there was several vacancies remained unfilled for want of eligible teachers for teaching primary and upper primary classes.

5. While so, this Court, vide order dated 24.08.2016 in W.A.Nos.213 and 572 of 2016 has held that G.O.Ms.181 is not applicable to the minority institution. The operative portion of the direction issued by this Court is extracted hereunder.

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 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 institution, 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 18.3.2015 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



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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 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.

The effect of the ruling of the Division Bench is that the TET qualification was not be made applicable to the minority Schools.

6. Pursuant to the ruling of this Court, the 1st respondent issued proceedings dated 31.01.2017 and 01.03.2017 to the Educational authorities to approve the appointments of teachers working in various minority schools without insisting on TET qualification. Based on the above directions of the 1st respondent, the appointments of several teachers including the writ petitioner have been approved and have received salary under the service benefits.

7. As far as the petitioner herein is concerned, his appointment was approved vide proceedings 14.04.2018 with monetary benefits from the date of appointment without annual increments. While approving the appointment, the 3rd respondent has denied increments and other allied benefits to the petitioner. In the said circumstances, the 4th respondent School submitted a proposal for annual increment of 3% on 20.07.2020 payable to the petitioner. However, the 3rd respondent returned the proposal on 21.10.2020 citing an error in the proposal. Thereafter, the 4th respondent resubmitted the proposal on



11.01.2021 complying with the returns. However, the proposal resubmitted has not been approved and the same is still pending final consideration before the 3rd respondent. In the circumstances, the petitioner is before this Court with a prayer for issue of Writ of Mandamus.

8. The learned Senior counsel, Father Xavier Arulraj, appearing for the petitioner, at the outset, would submit that the issue of grant of annual increment from the date of appointment of the petitioner is no more res integra as the same has been covered by various decisions of this Court and implemented by the educational authorities following the Division Bench order passed in the aforementioned Writ Appeals. The learned counsel would refer to the order passed by the learned judge of this Court in W.P.(MD) No.20203 of 2020 dated 05.02.2020. The learned Judge, after referring to the Division Bench judgement in 2016(5) CTC 639 has observed as under.

5. After the verdict of the Hon'ble Apex Court, the Division Bench of this Court in the case of Secretary to Government, Government of Tamil Nadu, Educational Department, Fort St.George, Chennai Vs., S.Jeyalakshmi reported in (2016) 5 CTC 639 has held that the provisions of the RTE Act, insofar as the minority Aided School are concerned, are inapplicable and therefore, the Teachers employed in such minority schools need not pass the TET qualifications for being eligible for service and monetary benefits. The said order of the Division Bench has become final.

6. It is also stated by the learned counsel for the petitioner that the respondents have implemented the requests made by similarly placed Teachers of the minority institutions in some of the cases. One such order passed by this Court, which came to be implemented by the respondents is in the case of Director of School Education and two others Vs., John Wesley and others dated 27.11.2019.

7. In view of the same, the impugned order dated 20.08.2018 in O.Mu.No.1091/M1/2018 stands quashed and consequently, the respondents are directed to disburse the service and monetary benefits and medical leave salary to one Lakshmi



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within a period of eight weeks from the date of receipt of a copy of this order.

8. Accordingly, this Writ Petition stands allowed. No costs.

9. Another learned Judge of this Court vide order dated 29.04.2021 in W.P.(MD) No.8807 of 2021 following the earlier orders has held as under.

8. In the present case, the petitioner's appointment was approved by the first respondent, vide proceedings, dated 06.08.2012 and passing in Teachers Eligibility Test is not mandatory for the Teacher appointed in the minority institution, as per the judgment in Pramati Educational Cltural Trust and others vs. Union of India reported in 2014 (4) MLJ 486 (SC).

9. For the above reasons, the impugned order, dated 25.03.2021 passed by the second respondent is quashed. The third respondent is directed to re-submit the proposal to the respondents 1 & 2 within a period of two (2) weeks from the date of receipt of a copy of this order. On receipt of such proposal, the respondents 1 & 2 are directed to consider the proposal of the third respondent, for disbursing the yearly increments and other monetary benefits to the petitioner with effect from the date of appointment in the year 2012 and pass orders on merits and in accordance with law, within a period of four weeks.

10. In the result, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Further reference has been made to a recent decision of this Court dated 26.08.2021 in W.P.Nos.17887, 17888 & 17891 of 2021 where yet another learned Judge of this Court following the ruling of the Supreme Court in Pramati Educational Cltural Trust and others vs. Union of India reported in 2014(8) SCC 1 has allowed the writ petition as under.

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.

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10. The learned Senior Counsel would therefore, submit that the issue is no more open to contest and in all the cases, the Government has accepted the decision and implemented the orders by grant of annual increment. Therefore, he would implore this Court to grant the prayer for issuance of Mandamus.

11. The learned Additional Government Pleader Mr.V.Manoharan, appearing for the respondents on instruction would submit that the matter is covered as contended by the learned Senior Counsel and he would have nothing further to add on behalf of the official respondents.

12. In view of the above factual narrative and also several orders passed by this Court subsequent to the ruling of the Division Bench of this Court reported in 2016(7) MLJ 155 (Secretary to Government, Government of Tamilnadu, Education Department vs. S.Jeyalakshmi), this Court has no hesitation in allowing the present writ petition as well. It is not in dispute that the issue is fully covered by the earlier rulings of this Court as aforementioned and extracted supra and therefore, this Court has to necessarily hold that the petitioner herein has made out a case for grant of relief.

13. In the above circumstances, the Writ Petition is allowed and the 3rd respondent is directed to implement the regularisation of service of the petitioner with all service and monetary benefits from the date of his appointment in terms of the legal principle laid down by the Hon'ble Division Bench of this Court reported in 2016(7) MLJ 155 (Secretary to Government, Government of Tamilnadu Education Department vs. Jeyalakshmi). The 3rd respondent is directed to pass appropriate orders in this regard within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vsi



To

1. The Commissioner of School Education,
DPI campus,
College Road,
Chennai - 6.
2. The Chief Educational officer,
The Office of the Chief Educational Officer,
Adikesavarapuram,
Egmore,
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Saidapet, Chennai - 600 015.
4. The Correspondent,
Santhome Higher Secondary School,
No.143, Santhome High Road,
Chennai - 600 004.

+2ccs to M/s.Father Xavier Associates, Advocate, S.R.No.63328

W.P.No.23680 of 2021

AJS (CO)
SU(13/12/2021)