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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD)No.16293 of 2020

and W.M.P. (MD) No.13619 of 2020

(Through Video Conference)

C.V.Sreeja

... Petitioner

Vs

1. The Chief Educational Officer,
O/o the Chief Educational Office,
Tirunelveli District.

2. The District Educational Officer,
O/o the District Educational Office,
Valliyoor,
Tirunelveli District.

3. The Block Educational Officer,
O/o Block Educational Office,
Kalakadu,
Tirunelveli District.

4. The Correspondent,
K.A.M.P.Meerania Middle School,
Kalakadu, Valliyoor,
Tirunelveli District.

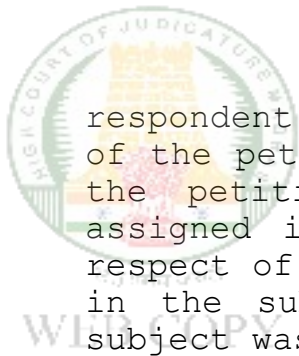
... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the 2nd respondent in his impugned proceedings in O.Mu.No.1130/Aa2/2020 dated 04.10.2020 and quash the same as illegal and consequential to direct the 2nd respondent to approve the appointment of the petitioner as B.T.Assistant (English) w.e.f. 23.01.2019 with all other consequential monetary and service benefits.

For Petitioner : Mr.M.Ajmal Khan,
Senior Counsel
for M/s. Ajmal Associates
For RR 1 to 3 : Mr.A.Thiyagarajan,
Government Advocate

ORDER

The petitioner is a B.T. Assistant in the fourth respondent Middle School, which is a Minority Institution. When the third



respondent School submitted the proposal for approval of appointment of the petitioner, it was rejected on 04.10.2020 on the ground that the petitioner had not cleared the T.E.T. The further reason assigned in the impugned order was that, the vacant post was in respect of the subject of Science, whereas, the appointment was made in the subject of English and therefore, the conversion of the subject was not obtained.

2. The reasons assigned in the impugned order dated 04.10.2020 cannot be sustained for the following reasons.

2.1. Insofar as the first reason is concerned, the qualification for the teachers in T.E.T. is not applicable to Minority Institutions, which proposition has been laid down by the Constitutional Bench of Five Judges of the Hon'ble Supreme Court in the case of ***Pramathi Educational and Cultural Trust and others vs. Union of India*** reported in (2014) 4 MLJ 486. This proposition has been consistently followed in various decisions of this Court also. As such, insisting that the petitioner ought to have cleared the T.E.T. examination for the purpose of approval of her appointment, it cannot be sustained.

2.2. Insofar as the second reason assigned in the impugned order that the approval for conversion of the subject was not obtained is concerned, the issue was already dealt with by the Hon'ble Division Bench of this Court in the case of ***State of Tamil Nadu vs. the Correspondent, St.Thomas Higher Secondary School*** in W.A.(MD) No.716 of 2014 and the relevant portion of the order reads thus:

"4. The learned Single Judge, while considering the matter referred to the decision of the Division Bench, in W.A.No.1198 of 2007 and allowed the writ petition. The legal question involved in this matter is as to whether the Minority Institution can be compelled to follow a subject roster without there being appropriate amendment to the relevant Rules. This issue was considered by the Division Bench and it was held in favour of the institution. It was pointed out by the learned counsels on either side that the case of the appellants / respondents itself is based on G.O.(Ms).No.144, Education (D1) Department, dated 04.07.2008. This Government Order was subject matter of challenge in *R.Emerson Udaisingh vs. The State of Tamil Nadu, Rep. by its Secretary, Department of School Education and others*, W.P.(MD).No. 2750 of 2012 and this Court by order, dated 22.08.2013, allowed the said writ petition and quashed the said Government Order. The operative portion of the said order, dated 22.03.2013, reads as follows:

" 3. Similar issue was considered by this Court

in the decision reported in 2006(5) CTC 504 - The



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Corporate Management, CSI Corporate Schools, CSI Diocese of Kanyakumari, Nagarcoil vs. The State of Tamil Nadu, rep by its Secretary, Chennai and others and this Court quashed the Circular, dated 26.10.2004 issued, restricting the number of teachers having degrees in the same subject in a school.

4.The said decision was considered by a Division Bench 4 of the Principal Seat in the Judgment dated 20.09.2007 made in W.A.No.1198 of 2007 wherein it is held thus:

'3. In fact the legal implication of the said proceedings dated 26.10.2004, was considered by this Court in the light of Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 (in short T.W. Act 29 of 1974) in the Correspondent, Britannia Higher Secondary School, Chennai vs. State of Tamil Nadu, rep. by its Secretary, Department of School Education, Chennai and others (2007 (2) MLJ 760) and held that the said Act 29/74 does not contemplate any subject roster to be followed regarding the appointment of Middle Grade Graduate teachers. That was also the decision taken earlier by the Madurai Bench of Madras High Court in the corporate Manager, CSI Corporate Schools Vs. State of Tamil Nadu (2006 (5) CTC 504). It was also considered in the above said cases that the executive instruction cannot supersede the statutory provision, by relying upon the decision of the Supreme Court in B.N. Nagarajan Vs. State of Karnataka (1979 II LLJ 209 (SC), which was subsequently reiterated by the Supreme Court in V.Sreenivasa Reddy Vs. Government of A.P. (AIR 1995 SC 586). Therefore, by virtue of the above said judgments, it is the categoric decision of this Court that the proceedings of the second appellant dated 5 26.10.2004 by imposing subject roster in making appointment is not Valid and is in violation of the provisions of the Act 29/74. In view of the same, there is absolutely no reason to interfere with the order of the learned Single Judge. Consequently, the writ appeal fails and the same is dismissed with direction to the appellants to approve the appointment of V.J. Titus Prabhakar (Mathematics) with effect from the date of his appointment with salary and other benefits within a period of four weeks from the date of receipt of copy of this order ".

The aforesaid order is self-explanatory. As such, the impugned order stating that the approval for conversion of the subject was not obtained, cannot be sustained.



3. The learned Government Advocate placed reliance on G.O.Ms.No.144 School Education(D1) Department dated 04.07.2008 and submitted that, once an approval for a particular subject has been granted, the conversion of the subject is impermissible. The Hon'ble Division Bench in **St.Thomas Higher Secondary School's case** (cited supra) had referred to the Government Order in G.O.Ms.No.144 and had extracted the decision rendered in **R.Emerson Udaisingh vs. State of Tamil Nadu, Education Department and others** in W.P.(MD) No.2750 of 2012, whereby the Government Order in G.O.Ms.No.144 dated 04.07.2008 was quashed. As such, the respondents are not justified in placing reliance on the aforesaid Government Order.

4. In the light of the above discussion, the impugned order passed by the 2nd respondent in O.Mu.No.1130/Aa2/2020 dated 04.10.2020 is quashed. Consequently, there will be a direction to the second respondent herein, to approve the petitioner's appointment as B.T.Assistant with effect from 23.01.2019 and also extend all the monetary and service benefits that may have accrued in view of her approval of appointment from the aforesaid date. The second respondent shall endeavour to complete the proceedings atleast within a period of six weeks from the date of receipt of a copy of this order.

5. The petition stands allowed accordingly. However, there shall be no order as to costs. Consequently, connected W.M.P.(MD) No.13619 of 2020 is closed.

Sd/-

Assistant Registrar (AS)

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/ /2021

Sub Assistant Registrar(CS)

Sts

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 Chief Educational Officer,
O/o the Chief Educational Office,
Tirunelveli District.

<https://hcservices.ecourts.gov.in/hcservices/>



2. The District Educational Officer,
O/o the District Educational Office,
Valliyoor, Tirunelveli District.

3. The Block Educational Officer,
O/o Block Educational Office,
Kalakadu, Tirunelveli District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-6115[F] dated
19/02/2021)

+1 CC to SPL GP (SR-6439[F] dated 22/02/2021)

Order made in
W.P. (MD) No.16293 of 2020
18.02.2021

VB (08.03.2021) 5P 6C