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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:19.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 1491 of 2016

and

W.M.P(MD)Nos. 1254, 1255 & 6580 of 2016

V.Birla Minimezh Ezhil

... Petitioner

Vs.

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

2. The Chief Educational Officer,
Panagal Building,
Saidapet, Chennai 600 015.

3. The District Educational Officer,
Thakalai, Kanyakumari District.

4. The Correspondent,
Saint Michaels High School,
Kodimunai, Colachel 629 251,
Kanyakumari District.

5. Judit Mahima

... Respondents

[5th respondent is added as per order of this Court, dated 19.06.2023]



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the Respondents 1 to 3 to approve the appointment of the Petitioner as BT Assistant (Science) in the 4th Respondent School from the date of appointment on 08.07.2013 with all consequential and other attendant benefits including payment of salary based on the staff fixation order for the year 2013-2014.

For Petitioner : Mr.F.Deepak

For R-1 to R-3 : Mr.V.Omprakash,
Government Advocate

For R-4 : Mr.K.Karthick

For R-5 : Mr.K.Ragaheesh Kumar, for
M/s.Isacc Chambers

ORDER

This writ petition is filed for *Writ of Mandamus*, directing the Respondents 1 to 3 to approve the appointment of the Petitioner as BT Assistant (Science) in the 4th Respondent School from the date of appointment on 08.07.2013 with all consequential and other attendant benefits including payment of salary based on the staff fixation order for the year 2013-2014.



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2. Heard Mr.F.Deepak, the Learned Counsel appearing for the petitioner, Mr.V.Omprakash, the Learned Government Advocate appearing for the respondents 1 to 3, Mr.K.Karthick, the Learned Counsel appearing for the 4th respondent and Mr.K.Ragaheesh Kumar, for M/s.Isacc Chambers, the Learned Counsel appearing for the 5th respondent and perused the material documents placed on record.

3. The petitioner was appointed in the retirement vacancy that became vacant due to the retirement of incumbent namely one Jerin on 08.07.2013. Earlier, the petitioner was working for a period of 8 years from 2008 onwards as Management staff. The respondents have failed to grant approval for the appointment of the petitioner since the petitioner was not possessing the qualification of Teacher Eligibility Test.

4. The contention of the petitioner is that the 4th respondent school is a Private Aided Minority School and the Teacher Eligibility Test is not applicable to the minority institution as per the Judgment of the case of *Pramati*



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Educational & Cultural Trust Vs. Union of India, reported in 2014(4) MLJ 486.

5. However, this Court is of the considered opinion that the Teacher Eligibility Test is applicable to the minority institution as well, since under T.M.A. Pai Foundation Vs. State of Karnataka [(2002) 8 SCC 481] the Hon'ble Supreme Court has held the government has authority to prescribe the qualification of the teachers and the same would be applicable to minority institutions also. The relevant portion is culled out hereunder:

“Q 5 (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition / withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like appointment of staff, teaching and non-teaching and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However a rational procedure for selection of teaching staff and for taking disciplinary action has to be evolved by the



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management itself. For redressing the grievances of such employees who are subjected to punishment or termination from service, a mechanism will have to be evolved and in our opinion, appropriate tribunals could be constituted and till then such tribunal could be presided over by a judicial officer of the rank of District Judge. **The State or other controlling authorities, however can always prescribe the minimum qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an educational institution.**

However, there is conflicting Judgment and hence the Education Department had filed SLP (Civil) Diary No.17702 / 2021 – Special Leave Petition to Appeal (C) No. 2691 of 2022 before the Hon'ble supreme Court in the case of *the Director of School Education Chennai and another Vs. B. Annie Packiarani Bai* and another in and the said SLP is pending.

6. Pending the present writ petition, the school has appointed the 5th respondent herein on 06.03.2015 and the respondents have also granted approval to the said appointment as well. Therefore, at this juncture, the petitioner cannot claim any approval for her appointment. However, the petitioner is entitled to salary for a period from 08.07.2013 till the appointment of the 5th respondent herein. Therefore, the respondents are directed to grant salary.



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7. The learned Additional Government Pleader appearing for the respondents submitted that based on the order of this Court in W.P(MD) No.22229 of 2016, the petitioner is already paid basic pay of salary Rs.13,900/-to the petitioner and the said submission is recorded. If any other benefits are not paid to the petitioner the same shall be disbursed, forthwith. After appointment of the 5th respondent, the petitioner is not entitled to any relief.

8. With the above observations and directions, this Writ Petition is disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
ksa

19.06.2023



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S.SRIMATHY, J

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**Order made in
W.P.(MD)No. 1491 of 2016**

19.06.2023