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W.A(MD)No.670 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2024

CORAM :

**THE HONOURABLE MR.JUSTICE R.SURESHKUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.670 of 2024
and
CMP(MD)No.4927 of 2024**

1. The District Educational Officer,
Sivagangai, Sivagangai District.

2. The Block Educational Officer,
Ilayankudi, Sivagangai District.

... Appellants

vs.

1. Y Joseph Mercy Rani

2. The Correspondent,
St.Mary's Middle School,
Salaigramam-630 710,
Sivagangai District-630 710.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent, against the order dated 20.12.2023 made in W.P(MD)No.30339 of 2023.

For Appellants : Mr.D.Sadiq Raja, Additional Government Pleader
For R1 : Ms.A.Amala

JUDGMENT

(Judgment of the Court was made by **R.SURESHKUMAR, J.**)

This writ appeal has been directed against the order passed by the

Writ Court, dated 20.12.2023, made in W.P(MD)No.30339 of 2023.

<https://www.mhc.tn.gov.in/judis>



2. That, the 1st respondent was appointed as B.T. Assistant (Tamil) on 14.06.2012, in the 2nd respondent school, which is a recognised minority aided school.

3. Since 1st respondent did not hold the qualification of TET i.e., Teachers Eligibility Test, the appointment made in respect of the 1st respondent since had not been approved by the appellant department, the Management had filed a writ petition before the Court in W.P(MD)No.7046 of 2013. This writ petition had been heard along with a batch of writ appeals and writ petitions, by a Division Bench and those cases were disposed by a common order passed by the Division Bench dated 24.08.2016, in the matter of Secretary to Government, Education Department and others vs. G.Sheela Sampath Rani and others, W.A.No.213 of 2016 etc batch.

4. The Division Bench in the said order, has made the following observations and ultimately allowed those cases. The relevant portion of the order reads thus:-

"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.

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 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."



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5. As against the said common order passed by the Division Bench, it is submitted by Mr.D.Sadiq Raja, learned Additional Government Pleader appearing for the appellants that, a Special Leave Petition has been filed before the Hon'ble Supreme Court, which is pending.

6. Pursuant to the said order passed by the Division Bench, insofar as the 1st respondent's case is concerned, a proceedings had been issued by the 1st appellant on 27.07.2017, where, the following orders have been passed:-

"எனவே, நீதிமன்ற அவமதிப்பை தவிர்க்கும்பொருட்டு, நீதிமன்ற பேராளையினை செயல்படுத்தும்பொருட்டு, அரசின் ஆணையை எதிர்நோக்கி சிறப்பு வழக்கறிஞரின் சட்டக்கருத்தின் அடிப்படையில் நீதிமன்ற பேராளை இடப்பட்ட நாளான 16.6.2013 - ன்படி 14.6.2012 முதல் திருமதி.ஓம்.ஜோசப்மெர்சிராணி என்பவருக்கு கீழ்க்கண்ட நிபந்தனைகளின்படி கண்டவாறு ஊதிய மான்யம் மட்டும் பெற்று அளிக்குமாறு இளையான்குடி கூடுதல் உதவித் தொடக்கக் கல்வி அலுவலருக்கு இதன் மூலம் ஆணையிடப்படுகிறது.

நிபந்தனைகள்

1. மனுதாரருக்கு மான்யத்தை மட்டும் விடுவித்து ஆணையிடப்படுகிறது.
2. வழக்கின் இறுதி முடிவு பெறும்வரை இந்நியமனத்திற்கு தற்காலிகமாகவோ/நிரந்தரமாகவோ ஒப்புதல் வழங்க இயலாது.
3. சென்னை உயர்நீதி மன்றம் மதுரை கிளை உயர்நீதிமன்ற

பேராளையிடப்பட்ட நாளான 14.6.2012 முதல் ஊதிய மான்யம்



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விடுவிக்கப்பட வேண்டும். இந்த மான்ய விடுவிப்பு ஆணை அரசால் பிறப்பிக்கப்படவுள்ள ஆணைக்கு உட்பட்டதாகும்.

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4. நிலுவையிலுள்ள வழக்கின் இறுதித் தீர்ப்பிற்கு முன்பு (வழக்கு எண்.WP

No.7046 / 2013 ஒப்புதல் சார்பாகவோ, நிலுவைமான்ய விடுவிப்பு சார்பாகவோ வேறு எந்த உரிமையும் சார்ந்த தனியரோ சார்ந்த பள்ளித் தாளாளர் மற்றும் வேறு எவரும் கோர இயலாது மற்றும் கோரக்கூடாது.

ஊதிய மான்யம் பெற்று அளித்த விபரத்தினை உடன் இவ்வலுவலகத்திற்கு பணித்தனுப்புமாறு இளையான்குடி கூடுதல் உதவித் தொடக்கக் கல்வி அலுவலர் கேட்டுக்கொள்ளப்படுகிறார்.

ஓம்/ -

மாவட்ட தொடக்கக் கல்வி அலுவலர்,
சிவகங்கை."

7. As per the said order, salary had been released for the 1st respondent and she is continuously getting the salary.

8. Apart from releasing the salary, no other compliance had been made according to the 1st respondent, as no service register had been opened, by virtue of that, the other monetary and service benefits, which are available for the 1st respondent, since have not been extended, the 1st respondent had



approached this Court, by filing the said writ petition in W.P(MD)No.30339 of 2023.

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9. The said writ petition was decided by the learned Judge, by the order impugned dated 20.12.2023, where, the learned Judge allowed the said writ petition. Aggrieved over the same, the present appeal has been directed.

10. In support of the writ appeal, learned Additional Government Pleader would contend that, insofar as the qualification of TET is concerned, though the Division Bench has held that, for minority institutions, such a insistment of TET qualification is not necessary, the very same Division Bench in the said order dated 24.08.2016, as has been extracted herein above, has recorded that, even the minority private institutions must conduct a refresher course, wherein, those teachers, without TET qualification, have been appointed, must be trained.

11. Without even having such a training of refresher course, as directed by the Division Bench, since these teachers are still employed continuously by the schools concerned, they are not entitled for any other service benefits, including the opening of service register.



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12. Learned Additional Government Pleader would also contend that, in the said order dated 27.07.2016, though pursuant to the order of the Division Bench, the salary was directed to be released, it was released only with conditions as stated therein. As per the said conditions, the releasing of the salary would be subject to the outcome of the final *lis* in this regard and merely because, such a salary is released, the appointment cannot be approved on permanent basis. When these kind of conditions have been imposed and conditional order has been passed releasing the salary, aggrieved over the same, if at all the petitioner i.e., the 1st respondent, could have challenged the same in the manner known to law, but no such challenge since been made, it is to be presumed that, those conditions imposed by the department had been accepted by the 1st respondent. If those conditions imposed by the department have not been challenged and the said order is still prevailing as against those conditions, the petitioner/1st respondent cannot seek indulgence of this Court by filing the said writ petition to open the service register and to release all other service benefits. Therefore, the allowing of the said writ petition by the learned Judge is against the said factual matrix and therefore, on that ground also, the learned Additional Government Pleader wants to assail the order impugned herein.



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13. We have heard Mr.D.Sadiq Raja, learned Additional Government Pleader appearing for the appellants and Ms.A.Amala, learned counsel appearing for the 1st respondent/writ petitioner.

14. Insofar as the said arguments advanced by the learned Additional Government Pleader, assailing the impugned judgment of the learned Judge passed in the writ petition, it is to be noted that the said writ petition which was originally filed by the teacher concerned, i.e., the 1st respondent, is for want of approval of the appointment. That writ petition along with other writ petitions in the batch of cases, by order dated 24.08.2016 of the Division Bench, was allowed. Paragraph 63 of the order makes it very clear with the following words that, *"In the result, the Writ Petitions are allowed and the Writ Appeals are dismissed."*

15. In addition, the Division Bench had also given a direction to the Government to release the salary of the teacher and also to pay the arrears of salary within a period of two months from the date of receipt of a copy of the said order. It has been interpreted by the appellant department that, the Division Bench has only directed to release the salary as well as the arrears of salary. All other issues including the entitlement of approval that has been



sought for by the writ petitioner/1st respondent since have not been directed and that is the reason why, while the appellant department passed an order on 27.07.2017, they made very clear that releasing of the salary would not confer any right on the teacher to seek for approval on permanent basis. Therefore, it is the contention of the appellant department that what has been directed by the Division Bench in the order dated 24.08.2016 to the extent to release the salary, has been complied with and all other aspects since the Division Bench has not ordered, it cannot be sought for as a matter of right.

16. It is the further contention of the appellant department through the learned Additional Government Pleader that, those issues including the approval of the appointment would be subject to the outcome of the final *lis*, that means, the *lis* pending before the Supreme Court. Therefore, at this juncture, the plea raised by the 1st respondent/writ petitioner to open a service register and to extend all other service and monetary benefits does not arise at all.

17. The said argument advanced by the learned Additional Government Pleader on behalf of the appellants, is without any basis. The reason being that, when a writ petition is filed before this Court with a particular prayer and ultimately, the Court allowed the writ petition in the



operative portion of the order, whatever be the observations or reasons given by the Court, the ultimatum would be that, in toto, the prayer sought for by the writ petitioner is allowed, that means, the appointment made in respect of the writ petitioner is to be approved.

18. Merely because an order has been passed on 27.07.2017, by complying part of the order passed by the Division Bench dated 24.08.2016, that would not *ipso facto* give any leverage to the appellant department, to make a plea before this Court that, what has been complied by the said order dated 27.07.2017 alone is to be complied with, as per the direction of the Division Bench, not beyond that.

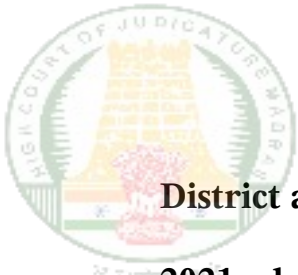
19. Insofar as the refresher course issue is concerned, no doubt, it has been observed by the Division Bench in the said order dated 24.08.2016. However, the learned Additional Government Pleader while arguing the case, has submitted that the appellant department does not accept the said observation made by the Division Bench to go for a refresher course to get trained the teacher without TET qualification, as the TET qualification cannot be equated with a short term training like, refresher course, as directed by the Division Bench.



20. When that being so, the Government i.e., the appellant department, cannot blow hot and cold. On the one side, they state that they did not accept the direction given by the Division Bench to go for a refresher course for these teachers working in minority institutions without TET qualification. On the other hand, without having undergone the refresher course, the teacher is not entitled to seek for the benefit of opening the service register as well as other service benefits.

21. Therefore, the very basis of the appeal that has been filed before this Court, against the order impugned, has absolutely no legs to stand.

22. Moreover, as far as the 1st respondent teacher is concerned, admittedly, she did not have the TET qualification. However, she has been appointed as a B.T Assistant (Tamil), as stated supra, in the 2nd respondent school, which is admittedly a minority institution. The Division Bench has made it very clear that, the requirement of TET cannot be insisted upon for a teacher to be appointed in minority institutions. The very same principle has been recently reiterated in another Division Bench judgment in **W.A.Nos.19, 31, 32 and 36 of 2023 dated 02.06.2023**. In the said judgment also, this position has been reiterated. This has been taken into account by a subsequent Division Bench in the matter of **Chief Educational Officer, Sivagangai**



District and another vs. R.Jhansi Rani and another in W.A(MD)No.1865 of

2021, dated 15.06.2023, where, one of us (R.SURESH KUMAR, J.) is a party.

23. Therefore, it is the consistent stand as of now taken by various Division Benches of this Court that, insofar as the minority institutions are concerned, the insistment or requirement of the TET qualification is not a must. When that being the position, the teacher concerned, who has been appointed in the 2nd respondent school, which is admittedly a minority institution, is holding the post without any demur. Therefore, such an appointment should be approved by the department which, in fact, was directed by the Division Bench in their order dated 24.08.2016.

24. The interpretation, therefore, sought to be given by the appellants that the Division Bench has only directed to release the salary, is without any basis, as the Division Bench in paragraph 63 of the order, as we recorded earlier, has made it very clear that the writ petitions were allowed including the writ petition filed by the 1st respondent in the first round.

25. When that being so, the reasoning given and the conclusion reached by the learned Judge in the order impugned, by allowing the said writ



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petition in the impugned order, is fully justified and fortified by the afore-stated reasons. Hence, we do not see any plausible reason to interfere with the order which is impugned herein, passed by the Writ Court.

26. Resultantly, this appeal has to be failed. Accordingly, this Writ Appeal is dismissed. The order passed by the Writ Court shall be complied with by the appellant department within a period of eight weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.)

(G.A.M., J.)

12.04.2024

Index : Yes / No

Neutral Citation : Yes / No

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To

1. The District Educational Officer,
Sivagangai, Sivagangai District.

2. The Block Educational Officer,
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