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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.1.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M.VENUGOPAL

W.A. No.56 of 2015
and
M.P. No.1 of 2015

1. The Director of Elementary Education,
D.P.I. Compound, College Road,
Nungambakkam, Chennai.6.
2. The District Educational Officer,
Thiruvallur District 602 001.
3. The Assistant Elementary Educational Officer,
Kodambattur 631 203. ...Appellants/Respondents 1 to 3

Vs.

1. A. Dennis Helan Mary
2. Superintendent of Roman Catholic Schools,
Arch Diocese of Madras - Mylapore,
Santhome High Road, Chennai.4.
3. The Principal/ Headmistress,
M/s. R.C.M. St. Ignatius Elementary School,
Keelacheri,
Thiruvallur District. ...Respondents/Petitioners &
Respondents 4 & 5

Writ Appeal filed under Clause 15 of the Letters Patent
challenging the order dated 09.07.2014 passed in W.P. No.33226 of
2012.



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Petition filed under Article 226 of Constitution of India praying for issuance of writ of mandamus directing the respondents 1 to 3 to approve the appointment of petitioner under the 5th respondent school and grant the consequential service benefits.

For appellants : Mr. D. Krishnakumar
Spl. Govt. Pleader (Education)

For Respondents : Mr. R. Gopinath
for
M/s. G. Thilagavathi

JUDGMENT

(Judgment of the Court was delivered by SATISH K. AGNIHOTRI, J.)

The instant intra-Court appeal arises from the order dated 9.7.2014 passed in W.P. No.33226 of 2012, which was preferred by the first respondent herein.

2. For the sake of brevity and clarity, the parties are referred to as per their rank in the instant appeal.

3. The question for consideration before the Writ Court was as to whether the first respondent was entitled to five years' time as prescribed in G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 to clear the Teacher Eligibility Test (for short "the TET").

4. Admittedly, the first respondent was appointed on 7.7.2011 as a Secondary Grade Teacher under the third respondent. The first respondent, at the time of appointment, had not passed the TET, which was a pre-condition for appointment. The State Government, by G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011, prescribed that a teacher, who had, at the time of commencement of the Right of Children to Free and Compulsory Education Act, 2009, (for short "the Act"), not possessed the minimum qualification as prescribed by the Academic Authority authorized by the Central Government, shall acquire such minimum qualification, within a period of five years. It was further mandated therein that the teachers, working in unaided private schools, are required to pass TET within five years.



5. Relying on the aforesaid Government Order, the Writ Court directed the State Government to grant temporary approval for appointment of the first respondent, subject to clearance of the TET by her, within a period of five years from the date of her appointment.

6. The State Government has come up with the instant intra-Court appeal questioning the legality of the order passed by the Writ Court on the ground that the first respondent was appointed prior to the date of the aforesaid Government Order. Thus, her appointment cannot be approved.

7. We have examined the pleadings and documents appended thereto.

8. The question of obtaining minimum qualification and rectifying other deficiencies, if any, has not been raised before us. The only deficiency seems to be that the first respondent has not acquired the TET before her appointment.

9. On a perusal of the said Government Order, it is crystal clear that any teacher working in an unaided private school, who, at the time of commencement of the Act, had not cleared the TET, may clear the same, within a period of five years. There is no dispute that the said Act came into force with effect from 1st April, 2010 and the first respondent was appointed subsequently on 7.7.2011. Thus, at this stage, the appellants - State Government cannot deny approval for appointment on the ground that the first respondent had not cleared the requisite test, prior to her appointment.

10. After considering the contention of the learned Special Government Pleader appearing for the appellants, we do not find any flaw in the order passed by the Writ Court, which is sought to be impugned herein. As pointed hereinabove, there is no other deficiency like lack of educational qualification, etc., in case of the first respondent. The only deficiency was that the first respondent, has not passed the TET before appointment.



11. Resultantly, we uphold the order dated 09.7.2014 passed by the Writ Court and dismiss the writ appeal. Connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Director of Elementary Education,
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2. The District Educational Officer,
Thiruvallur District 602 001.
3. The Assistant Elementary Educational Officer,
Kodambattur 631 203.

1 CC to M/s. G. Thilagavathi, Advocate SR.No. 4387

1 CC to the Government Pleader, SR.No. 4742

W.A. No.56 of 2015

VD(CO)
PSI (12.02.2015)