

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.13508 of 2015

S.Babiyola Mary

.. Petitioner

Vs

1. Government of Tamil Nadu,
Rep. By Secretary to Government,
Education Department,
Secretariat, Chennai - 9.
2. The Director of School Education,
College Road, Chennai - 6.
3. The Joint Director of School Education
(Secondary Education),
DPI Compound, Chennai - 6.
4. The Chief Educational Officer,
Tirunelveli District - 9.
5. The District Educational Officer,
Cheranmahadevi Educational District @ Tirunelveli - 1.
6. The Correspondent,
S.M.Cader Meera Saibo Hr. Sec. School,
Pettaikulam, Radhapuram Taluk,
Tirunelveli District.

.. Respondents

(R6 is impleaded as per order dated 02-06-2015 by D.H.P.J in M.P. 4 of 2015 in W.P.No.13508/15)

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records from fifth respondent proceedings in (i) O.Mu.No.5353 A2/2012 order dated 24.01.2013 (ii) O.Mu.No.099774/D2/E3/2013 order dated 06.11.2014 passed by the third respondent and (iii) Na.Ka.No.102046/D2/E3/2014 order dated 14.01.2015 passed by the third respondent is illegal, arbitrary and quash the same and to issue consequential direction directing the respondents to approve the appointment of the petitioner for the post of B.T. Assistant (History) and

to disburse the arrears of salary with all benefits to the petitioner with effect from 02.07.2012.

For petitioner : Mr.K.Raju
for Mr.S.Ramkumar

For R1 to R5 : Mrs.P.Rajalakshmi, AGP

For R6 : No Appearance

O R D E R

This writ petition has been filed challenging the impugned proceedings dated 14.01.2015 passed by the third respondent / the Joint Director of School Education (Secondary Education), Chennai, rejecting the proposal sent by the sixth respondent School refusing to grant approval of appointment of the petitioner in the post B.T. Assistant (History) on the ground that the petitioner has not passed Teacher Eligibility Test (TET) on the date of her appointment i.e. 02.07.2012, besides stating that she was holding the dual degree in B.A. (History).

2. Mr.K.Raju, learned counsel appearing for the petitioner submitted that the sixth respondent School is a minority institution receiving grant-in-aid from the first respondent Government. Whiles, one Mr.K.S.O.Abdul Razak, serving as B.T. Assistant (History), retired from the services on 30.06.2012 on reaching the age of superannuation. Thereafter, in the said sanctioned post, the petitioner was appointed as B.T. Assistant (History) on 02.07.2012. It is also stated that she has passed the Teacher Eligibility Test (TET) on 14.10.2012. Since Mr.K.S.O.Abdul Raza was relieved only on 07.12.2012 by the fifth respondent, the sixth respondent School sent a proposal on 21.12.2012 seeking approval of appointment of the petitioner. On receipt of the same, the fifth respondent has rejected the said proposal, vide his proceedings dated 24.01.2013, on the ground that the petitioner was holding the Double Degree in B.A. (History), which is, it is contended, wholly unacceptable and unjustified, in view of the fact that the petitioner had completed 10th standard in 1991, 12th standard in 1993, B.Sc. (Chemistry) in 1996 and B.Ed. in 1997, besides, she had also completed M.A. (Tamil) in 2008 and B.Lit. (Tamil) in 2009. Therefore, it is contended that the reason cited by the fifth respondent in the impugned proceeding that the petitioner was holding the dual degree in B.A. (History) cannot be sustained, as she had completed three years degree in B.Sc. (Chemistry) in the year 1996 itself.

3. Contending further that a pass in TET cannot be

insisted upon for appointing any teacher in minority educational institution, the learned counsel for the petitioner has relied on the judgment of the Hon'ble Apex Court in Pramati Educational and Cultural Trust and others Vs. Union of India and others [(2014) 4 MLJ 486 (SC)], wherein, the Hon'ble Apex Court held that the Right of Children to Free and Compulsory Education Act 2009 Act, insofar as it is made applicable to minority schools referred in Clause (1) of Article 30 of the Constitution, is ultra vires of the Constitution, therefore, it is contended, denying approval of appointment of the petitioner as proposed by the sixth respondent school citing a reason that the petitioner failed to pass TET on the date of her appointment is totally misconceived.

4. Continuing his arguments, the learned counsel for the petitioner submitted that the petitioner was appointed as B.T. Assistant (History) on 02.07.2012 and thereafter, within a period of three months, she had also passed the TET on 14.10.2012, hence, it is pleaded, refusing to approve the appointment of the petitioner on the ground that she did not pass TET, forgetting the ratio laid down by the Hon'ble Apex Court in Pramati Educational and Cultural Trust's case (cited supra) cannot be sustained. Besides, G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011, prescribing the minimum qualification of TET for appointment to the post of Teachers, also came to be quashed by this Court in Miss.F.Jayanthi Vs. Government of Tamil Nadu and others (W.P.Nos.43302 to 43305 of 2016), by holding that the said G.O. is not applicable insofar as the minority institutions are concerned. Therefore, the reason cited in the impugned order rejecting the proposal sent by the sixth respondent school (minority institution) seeking to approve the appointment of the petitioner is on the face of it liable to go.

5. Per contra, Mrs.P.Rajalakshmi, learned Additional Government Pleader appearing for the respondents 1 to 5 submitted that admittedly, the petitioner was appointed as B.T. Assistant (History) on 02.07.2012 and on the date of her appointment, she did not pass TET examination, which is a pre-requisite qualification for the said post as per the Government Order in G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011. Besides, it is contended, the petitioner had obtained dual degree in B.A. (History), which is just one year course, in the year 2011 from Manonmaniam Sundaranar University, therefore, taking note of the said dual degree obtained by the petitioner, the fifth respondent has rightly rejected her candidature for appointment to the said post, hence, she prayed for dismissal of the writ petition.

6. Heard the learned counsel appearing on either side

and perused the materials available before this Court.

7. It is not in dispute that the sixth respondent School in which the petitioner was appointed is a minority institution receiving grant-in-aid from the Government. One of the grounds refusing to approve the appointment of the petitioner in the post of B.T. Assistant (History) is that on the date of her appointment i.e. on 02.07.2012, she did not pass TET, which is a pre-requisite qualification for appointment to the said post. The said reason cited by the respondent in the impugned order is no longer res integra, as the Hon'ble Division Bench of this Court in Secretary to Government, Education Department, Chennai and others v. S.Jeyalakshmi and another, 2016 (5) CTC 639 : 2016 (7) MLJ 155, while considering the question as to whether the teachers working in minority institutions, both aided and unaided, should pass the Teacher Eligibility Test, has held as follows:-

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.

In the light of the above settled legal position that the teachers working in the minority institution are not required to pass the TET, the denial of the fifth respondent to approve the appointment of the appointment on the ground that she did not pass TET on the date of her appointment is wholly unsustainable.

8. Secondly, another reason stated in the impugned order is that on the date of her appointment, she was holding the dual degree in B.A. (History), which is an one year course. The said reason also cannot be sustained, as the petitioner, after completing 10th standard in 1991 and 12th standard in 1993, had also completed her degree in B.Sc. (Chemistry) and thereafter, she had also completed B.Ed. in the year 1997 from Manonmaniam Sundaranar University. Of course, as stated by the learned Additional Government Pleader for the respondents, she has obtained dual degree in B.A (History) in 2011, but, that does not preclude her in getting appointment, as she had passed three years degree course in B.Sc. (Chemistry) in the year 1996 itself.

9. At this juncture, it is stated by the learned Additional Government Pleader for the respondents 1 to 5 that

for the post of B.T. Assistant (History), one should have completed three years degree course in B.A. (History), but, in the case on hand, the petitioner had completed three years degree course in B.Sc.(Chemistry), which is not the prescribed qualification for the said post. In my view, the said contention also cannot stand to legal scrutiny, in view of Annexure V of the Tamil Nadu Recognized Private (Regulation) Rules, 1974. Relevant portion thereof dealing with the qualification for the post in question i.e. B.T. Assistant, is quoted below:-

ANNEXURE - V

I. QUALIFICATION FOR APPOINTMENT AS TEACHERS IN PRIVATE SCHOOLS
(REGULATION)

Name of the Post	Qualification
(1)	(2)
2. B.T. Assistant	B.A. or B.Sc. or its equivalent and B.T. or B.Ed. or L.T.

A mere reading of the above tabular column shows that for the post of B.T. Assistant, one should have obtained the degree either in B.A.-B.Ed. or B.Sc.-B.Ed. In the case on hand, as stated above, admittedly, the petitioner had completed 10th standard in the year 1991 and 12th standard in the year 1993. Thereafter, she had also obtained B.Sc. (Chemistry) in the year 1996 and also obtained B.Ed. from Manonmaniam Sundaranar University in the year 1997. Besides, she had also completed M.A. (Tamil) from Aligappa University in the year 2008. In addition thereto, she had also completed Bachelor of Literature in Tamil from Annamalai University in the year 2009. Again, she had completed B.A. (History) (Dual degree - one year) from Manonmaniam Sundaranar University in the year 2011. As this dual degree viz., one year Bachelor of Arts in History obtained from Manonmaniam Sundaranar University is objected, she has also obtained B.A. (History) from Manonmaniam Sundaranar University in the year 2017, which is a regular three years course, therefore, the objection of the respondent cannot legally be sustainable. Moreover, she had also completed TET (Supplementary) in the year 2012 and also again she had participated and passed the TET in the year 2017. The above qualifications obtained by the petitioner clearly indicate that she is fully qualified. Therefore, the apprehension of the learned Additional Government Pleader that since the petitioner had studied only B.Sc. (Chemistry), she is not eligible to be appointed for the post of B.T. Assistant (History) is also liable to be rejected.

10. Thus, for the reasons stated above, the impugned orders are quashed and the writ petition is allowed, with a direction to the respondents to approve the appointment of the

petitioner and release the salary from the date of her appointment. The said exercise shall be done within a period of four weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

rkm

To

- 1.The Secretary to Government,
Education Department,
Secretariat, Chennai - 9.
- 2.The Director of School Education,
College Road, Chennai - 6.
- 3.The Joint Director of School Education
(Secondary Education),
DPI Compound, Chennai - 6.
- 4.The Chief Educational Officer,
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Cheranmahadevi Educational District @ Tirunelveli - 1.
- 6.The Correspondent,
S.M.Cader Meera Saibo Hr. Sec. School,
Pettaikulam, Radhapuram Taluk,
Tirunelveli District.

+2cc to Mr.S.Ramkumar, Advocate SR.No.21698

W.P.No.13508 of 2015

SSD(CO)
TR(06/04/2018)