



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.13935 of 2018

and

W.M.P. (MD) Nos.12664 and 12665 of 2018

J.D.Christopher Asir

... Petitioner

-Vs-

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

2. The District Educational Officer,
District Educational Office,
Ramanathapuram District.

3. The Correspondent,
St.Andrews' Girls' Higher Secondary School,
Ramanathapuram-623 501.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in proceeding Oo.Mu.No.4476/A1/18 dated 04.06.2018 passed by the second respondent and quash the same and consequently directing the second respondent to approve the appointment of the petitioner as B.T. Assistant (English) in the third respondent school with effect from 04.08.2017, with all consequential benefits.

For Petitioner : Mr.C.Fernadas Rathinaraja

For Mr.S.Anwar Sameem

For R1 and R2

: Mr.K.Saravanan,

Government Advocate.

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in proceeding Oo.Mu.No.4476/A1/18 dated 04.06.2018 passed by the second respondent and quash the same and consequently, directing the second respondent to approve the appointment of the petitioner as B.T. Assistant (English) in the third respondent school with effect from 04.08.2017, with all consequential benefits.



2. Heard Mr.C.Fernadas Rathinaraja, learned counsel appearing for the petitioner and Mr.K.Saravanan, learned Government Advocate, who takes notice on behalf of the respondents 1 and 2. Since no adverse order is going to be passed against the third respondent, notice to the third respondent is hereby dispensed with.

3. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

4. The petitioner is qualified to be appointed as B.T. Assistant in English. As such, in an approved vacancy available at the third respondent School, the petitioner was appointed as B.T. Assistant (English) with effect from 04.08.2017. After such appointment, a proposal for approval of such appointment was sent by the third respondent to the second respondent on 19.09.2017. However, the second respondent, by the impugned order dated 04.06.2018, has rejected the proposal by citing the reasons that the petitioner did not have the Teacher Eligibility Test qualification (TET) and only for the said reason, the proposal was rejected through the impugned order of the second respondent. Challenging the same, the present Writ Petition has been filed.

5. Mr.C.Fernadas Rathinaraja, learned counsel appearing for the petitioner would submit that, since the third respondent school, where the petitioner was appointed as B.T. Assistant teacher, is a minority school and insofar as the minority school is concerned, the requirement of TET qualification for the teacher to be appointed or working, is not required. In other words, the teachers, who are appointed in a school run by minority management, are exempted from having the qualification of TET. In view of the said legal position, the said reason of requirement of TET qualification cannot be shown as a reason for rejecting the appointment of approval of the petitioner. Therefore, the said impugned order cannot be sustained.

6. I have heard the learned Government Advocate appearing for the respondents 1 and 2, who would submit that the TET is an essential qualification as per the relevant Government Order, which was issued pursuant to the provision of RTE Act, 2009, and therefore, the said qualification is insisted upon from the teacher, who wants appointment in any recognized school including private aided school.

7. When that being the position, based on the said requirement, the proposal for approval sent insofar as the appointment of the petitioner was rejected by the second respondent.

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

8. I have considered the said submissions made by both sides and perused the materials.



9. The issue of requirement of TET qualification for any teacher employed or appointed in a school run by the minority management can no longer be *res integra* as in a number of cases, the said requirement directed not to be insisted upon. In this regard, as has been pointed out by the learned counsel appearing for the petitioner, the issue has been decided in a judgment of Division Bench of the Principal Seat of this Court in the matter of **Secretary to Government, Government of Tamil Nadu, Education Department and others Vs. S. Jeyalakshmi and another** reported in (2016) 7 MLJ 155.

10. In the said judgment, the Hon'ble Division Bench has made it clear that the requirement of TET qualification cannot be insisted upon from the teacher working in minority institutions and in this regard a view expressed by the Division Bench and the law held thereon are extracted hereunder:-

"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 Recognized 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 and Cultural Trust V. Union of India* (Supra) 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 18.03.2015 issued by the Government of Puducherry, is also not applicable to the minority institutions."

11. Following the said judgment of the Division Bench, a number of orders have been passed in similar situations, where the teachers appointed in minority institutions / schools sent for approval to the authorities, where the said approval had been rejected on the ground that those teachers did not have the TET qualification.

12. In all these cases, orders were issued, directing the authorities to consider the proposal for approval submitted by the school concerned with regard to the teachers in minority schools without insisting TET qualification. Since the petitioner is also a teacher appointed in minority school i.e., the third respondent school, the said benefit given to the similarly placed persons, can be extended to the petitioner also, in the light of the Division Bench's Judgment cited supra.

13. In the result, this Court is inclined to pass the following order in this Writ Petition:-

(i) The impugned order of the second respondent is liable to be quashed, accordingly, it is quashed.

(ii) The matter is remitted back to the second respondent for reconsideration.

(iii) Since the proposal has already been rejected, the third respondent school shall resubmit the same, within a period of two weeks from the date of receipt of a copy of this order.

(iv) On receipt of such resubmitted proposal, the second respondent shall consider the same on merits and in accordance with law without insisting the TET qualification from the petitioner and pass necessary orders with regard to the approval of the petitioner's appointment.

(v) Such exercise shall be undertaken by the second respondent within a period of four weeks thereafter.

14. With these directions, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)



To

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

2. The District Educational Officer,
District Educational Office,
Ramanathapuram District.

+1cc to Mr.C.Fernadas Rathinaraja, Advocate SR.No.70594

+1cc to SPECIAL GOVERNMENT PLEADER, SR.No.70627

Myr

MK/RP/SAR 1/07.09.2018/5P/5C

W.P (MD) No.13935 of 2018
29.06.2018