



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.08.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]No.19425 of 2013

and

M.P.[MD]No.2 of 2013

WEB COPY

T.Pushpa Latha

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.

2.The Director of Elementary Education,
College Road, Chennai - 600 006.

3.The Chief Educational Officer,
Kanyakumari District.

4.District Educational Officer,
Kuzhithurai, Kanyakumari District.

5.The Correspondent,
St.Mary's Higher Secondary School,
Melapalai - 629 152,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the impugned proceedings issued by the fourth respondent District Educational Officer in Na.Ka.No.7623/A2/2013 dated 20.11.2013, quash the same.

For Petitioner : Mr.E.V.N.Siva
For Respondents 1 to 4 : Mrs.S.Srimathy
Special Government Pleader
For Respondent No.5 : No appearance

O R D E R

The instant writ petition is filed calling for the records relating to the impugned proceedings issued by the fourth respondent District Educational Officer in Na.Ka.No.7623/A2/2013 dated 20.11.2013, quash the same.

2.The writ petitioner was initially appointed as High School Assistant on 16.06.2009 and subsequently appointed as B.T.Assistant in the fifth respondent school on 01.02.2012. In respect of the appointment made after getting proper approval, now, the District



Educational Officer issued an order cancelling the conditional appointment made on the ground that the writ petitioner has not passed the Teachers Eligibility Test, which is a mandatory qualification for appointment to the post of Teachers.

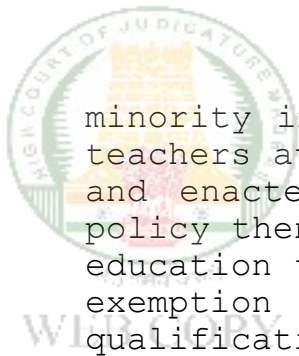
3. Challenging the said order, learned Counsel for the writ petitioner states that the State Government granted time for passing the Teachers Eligibility Test and thereafter, an exemption is to be granted to these Teachers from passing the Teachers Eligibility Test. It is further contended that the examinations were not conducted frequently by the State Government and the Teachers were not in a position to appear for the examinations. The grounds raised in the writ petition states that even as per the provisions of the Right of Children to Free and Compulsory Education Act, 2009, a period of five years is granted. The period expired initially on 31.03.2015. The State Government has further extended the time limit. Even that extension is under challenge.

4. This Court is of the considered opinion that the issues regarding the minimum educational qualification prescribed for appointment to the post of Teachers are now settled by the Courts across the country. The special education is in the concurrent list of the Constitution of India. Thus, the Central Act will prevail over the State regulations. As per the provisions of the Right of Children to Free and Compulsory Education, 2009, the National Council for Teachers Education was constituted and regulations were issued fixing the minimum educational qualification for appointment to the Teachers' post across the country. The regulations issued by the National Council for Teachers Education are binding on all the authorities and the State of Tamil Nadu also had adopted the minimum educational qualification prescribed by the National Council of Teachers Education.

5. Thus, now it becomes compulsory for all the Teachers including the Teachers appointed in Aided schools / minority schools availing grant-in-aid and all other Government Schools. Thus, the uniformity in the matter of minimum educational qualification for appointment to the Teaching posts are now being followed consistently by the Government of Tamil Nadu. This being the factum, this Court is of the considered opinion that Teachers who have not passed the Teachers Eligibility Test are not eligible to secure appointment as Teachers.

6. This apart, once the minimum educational qualification is prescribed by the National Council for Teachers Education, such minimum educational qualification must be made applicable to all the Teachers who all are appointed in Government institutions, private aided schools and minority schools receiving grant-in-aid from the Government.

7. Consistency in the matter of minimum educational qualification is a constitutional requirement. It is not as if



minority institutions and Government aided institutions can appoint teachers at their whims and fancies. When the Parliament thought fit and enacted a law in the matter of uniform national educational policy then, the same must be scrupulously followed in the matter of education to the Children of our great nation. Thus, no one can seek exemption from the regulations fixing minimum educational qualification for appointment to the teaching posts.

8. The learned Special Government Pleader contended that the fifth respondent school is also an aided school receiving the Government aid. The appointments of the management are to be approved by the Competent educational authorities. When certain conditions appointments were made that the teachers must pass the teachers eligibility test and in the event of not passing within the stipulated time granted by the Government, the authorities are bound to institute action for cancellation of appointment. Thus, there is no infirmity in the impugned order passed. To defend the grounds raised by the writ petitioner, learned Special Government Pleader contended as follows:

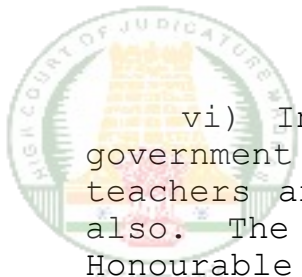
i) A teacher is eligible to be appointed only if the teacher has passed in "Teachers Eligibility Test" i.e., TET. This is the qualification prescribed in the Right of Children to Free and Compulsory Act, 2009 (RTE).

ii) However, several judgments had held that TET is not applicable to minority institution, since it has been held in Paramati case that RTE Act is not applicable to minority institution.

iii) However in Paramati Case, the reference is made to see the validity of clause (5) of Article 15 of the Constitution inserted by the Constitution (Ninety-third Amendment) Act, 2005 with effect from 20.01.2006 and on the validity of Article 21A of the Constitution inserted by the Constitution (Eighty - Sixth Amendment) Act, 2002 with effect from 01.04.2010.

iv) The issue was that whether the inserting clause (5) in Article 15 and 21A is applicable to minority institutions. This amendment read with RTE Act has directed the school to admit 25% children belonging to weaker sections and disadvantaged groups in the neighbourhood and whether such direction shall be given to minority institutions. The Honourable Court has held that such directions cannot be issued since it alters basic structure of constitution.

v) The Honourable Supreme Court has not considered the issue whether the TET is applicable for minority institutions. In such circumstances, the Honourable Court ought to have held that TET is applicable to minority institutions. Under RTE Act there is no specific section for exemption from TET for minority institution.

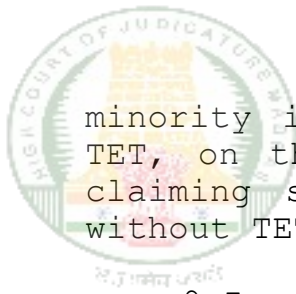


vi) In TMA Pai case the Honourable Court has held that the government has authority to prescribe the qualification of the teachers and the same would be applicable to minority institutions also. The relevant portion is in Q.5(c) of the judgment. The Honourable Supreme Court has held that the State or 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. Therefore, the argument that TET is not applicable to minority institution is against the judgment of Constitution Bench rendered in TMA Pai case. The relevant portion is culled out hereunder:

"Q5(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 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."

vii) If the argument of TET is not applicable to minority institutions is accepted, then there would be clear discrimination between the teachers. On one hand the teachers in non-



minority institutions are facing a situation to lose job without TET, on the other hand the teachers in minority institutions are claiming salary, incentive increments and other service benefits without TET. The same is against Article 14 of the Constitution.

9. In view of the fact that the writ petitioner against whom the impugned order dated 20.11.2013 was passed had not passed the Teachers Eligibility Test, she is not entitled to continue as a Teacher in the fifth respondent school.

10. With the above observations, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD I)

// True Copy //

Sub Assistant Registrar (CS)

MR

To

1. The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai - 600 009.
2. The Director of Elementary Education,
College Road, Chennai - 600 006.
3. The Chief Educational Officer,
Kanyakumari District.
4. The District Educational Officer,
Kuzhithurai, Kanyakumari District.

+1 CC to M/s.E.V.N SIVA, Advocate (SR-81642[F] dated 14/08/2019)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-81844[F] dated 16/08/2019)

+1 CC to M/s.SPL GP (SR-81791[F] dated 14/08/2019)

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