



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2019

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)No.19491 of 2013

and

M.P (MD)Nos.1 & 2 of 2013

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A.Amal Raj

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
St. George Fort,
Chennai-9.
- 2.The Director of Elementary Education,
Chennai-6.
- 3.The Chief Educational officer,
O/o.the Chief Educational Office,
Panagal Building,
Thanjavur.
- 4.The District Educational Officer,
Kamatchi Josia Street,
Kumbakonam,
Thanjavur District.
- 5.The Correspondent,
Little Flower Higher Secondary School,
Kumbakonam,
Thanjavur District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings issued by the second respondent in his proceedings in Na.Ka.No.34116/D1/E4/2013 dated 07.11.2013 and the consequential order passed by the fourth respondent in his proceeding in Na.Ka.No.5250/A4/2013 dated 18.11.2013 and quash the same as illegal.

For Petitioner : Mr.H.Mohammed Imran for Ajmal
Associates

For R1 to R4 : Mrs.S.Srimathy,
Special Government Pleade



For R5 : No appearance

ORDER

The cancellation of the order of appointment, issued by the District Educational Officer in proceeding dated 18.11.2013, is under challenge in the present writ petition.

2.The writ petitioner states that he passed B.A(Tamil) and B.Ed., and he was considered for appointment to the post of B.T.Assistant (Tamil) in the fifth respondent School, which is a minority institution and governed by the Tamil Nadu recognized Private Schools Regulations Act, 1973. The petitioner was appointed in the vacant post in proceedings, dated 13.06.2012, however, the petitioner was issued with an order impugned stating that the conditional approval granted is cancelled. The approval of appointment was issued in favour of the writ petitioner on condition that he must passed the Teachers Eligibility Test as per the minimum educational qualification prescribed by the State Government based on the National Educational Policy as well as the regulations issued by the National Council for Teachers Education.

3.The learned counsel appearing on behalf of the writ petitioner states that the Division Bench of this Court has considered the case in respect of the Minority Institutions for granting exemption from passing of the Teachers Eligibility Test. The said position was disputed by the learned Special Government Pleader by stating that the Supreme Court of India even in a recent case of **V.Lavanya & Ors Vs. The State of Tamil Nadu & Ors**, reported in **2017(1) SCC 322** reiterated that the Teachers Eligibility Test is a requisite mandatory qualification for appointment to the post of Teachers across the Country. This apart, the State Government also implemented the regulations issued by the National Councils for Teachers Education and accordingly, time was extended for the appointed persons to pass the Teachers Eligibility Test. Several opportunities were provided to these Teachers, who all are appointed on condition that they should clear the Teachers Eligibility Test, even the time was extended till 19.03.2019. The said outline fixed enabling these teachers to clear the Teachers Eligibility Test. The Central Government is conducting two examinations in one year and the State Government also time to time to conduct the Teachers Eligibility Test. In spite of that, the writ petitioner has not passed the Teachers Eligibility Test for the past many years.

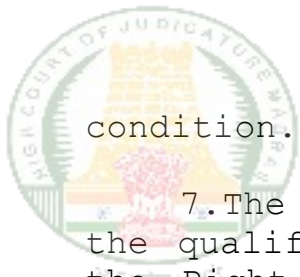
4. A Teacher, who is unable to clear the Teachers Eligibility Test, cannot seek any exemption nor the High Court can show any leniency for the purpose of continuing the appointment of such Teachers, who have failed to clear the Teachers Eligibility Test.



The minimum educational qualification prescribed under the Act and the Statute as well as by National Councils for Teachers Education, which is implemented by the State Government must be scrupulously followed by all the Institutions including the Minority Institutions. Undoubtedly, the right of Minority Institutions to administer the Institution is protected and the right of the Minority Institution to appoint the candidates of their choice is also protected, however adherence of the minimum educational qualification is mandatory and if that is diluted then the equality class enunciated in the Constitution is violated.

5. Take a case, where the Teachers are appointed in Minority Institutions are not possessing the minimum requisite educational qualifications and the Teachers appointed in non-minority schools are possessing the requisite minimum educational qualification, undoubtedly, it is a patent unconstitutionality and such an inequality can never be allowed, especially, to prevail in educational institutions.

6. The learned counsel for the writ petitioner is contending that as far as the Minority Institutions are concerned, the Teachers Eligibility Test cannot be insisted upon and such Teachers appointed in Minority Educational Institutions are exempted from passing the Teachers Eligibility Test. When the Government has implemented the National Educational Policy and prescribed the minimum educational qualifications based on the regulations issued by the National Councils for Teachers Education, undoubtedly, such a policy must be applicable to all the appointments made both in the Minority Institutions as well as in the non-Minority Institutions. If the Teachers, who all are imparting in non-minority institutions are not possessing the requisite minimum educational qualifications, then the same will result in unconstitutionality and the students, who all are studying in Minority Institutions are deprived of getting the benefit of qualification of Teachers Eligibility Test in respect of the Teachers, who all are taking classes in Minority Institutions. Such a situations can never be justified. Such a situation will create not only discrimination but result in unconstitutionality. Under these circumstances, this Court is of the considered opinion that the Teachers Eligibility Test once became mandatory and when it is approved by the Supreme Court of India that a pass in Teachers Eligibility Test is the minimum educational qualification for appointment of Teachers, then all the institutions whether minority or non-minority is bound to follow the same and in respect of the appointments made in the institutions without following the minimum educational qualification prescribed in the statute, the competent educational authorities are bound to reject the approval or cancel such appointments by withdrawing the approvals, if any, made on



condition.

7.The learned Special Government Pleader also contended that the qualifications of Teachers Eligibility Test is prescribed in the Right of Children to Free and Compulsory Act, 2009 (RTE). 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.

8.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.

2.Clause (5) of Article 15 of the Constitution reads as follows:

"Nothing in this article or in sub-clause (g) of clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30." clause (5) of Article 15 of the Constitution, therefore, enables the State to make a special provision, by law, for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes insofar as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30 of the Constitution. The constitutional validity of clause (5) of Article 15 of the constitution insofar as it enables the State to make special provisions relating to admission to educational institutions of the State and educational institutions aided by the State was considered by a Constitution Bench of this Court in Ashoka Kumar Thakur v. Union of India & Ors. [(2008) 6 SCC 1] and the Constitution Bench held in the aforesaid case that clause (5) of Article 15 is valid and does not violate the "basic structure" of the Constitution so far as it relates to the State-maintained institutions and aided educational institutions. In the aforesaid case, however, the Constitution Bench left open the question whether clause (5) of Article 15 was constitutionally valid or not so far as "private unaided" educational institutions are concerned, as such "private unaided" educational institutions were not before the Court. This batch of writ petitions has been filed



by private unaided educational institutions and we are called upon to decide whether clause(5) of Article 15 of the Constitution so far as it relates to "Private unaided" educational institutions is valid and does not violate the basic structure of the Constitution.

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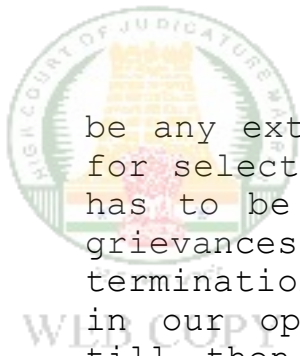
9.The issue was that whether the inserting clause (5) in Article 15 and 21A is applicable to minority institutions. This amendment read with RTE Act has directed the school to admit 25% children belonging to weaker sections and disadvantaged groups in the neighbourhood and whether such direction shall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

10.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.

11.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 (3) 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



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.

12.If the argument of TET is not applicable to minority institutions is accepted, then there would be clear discrimination arises amongst 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.

13.In view of the facts and circumstances that the writ petitioner has not passed the Teachers Eligibility Test. The order of cancellation of appointment is in accordance with the statutes as well as the regulations and the orders issued by the Government. Thus, there is no infirmity as such and accordingly, the writ petition is devoid of merit and stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Secretary to Government,
School Education Department,
St. George Fort,
Chennai-9.

2.The Director of Elementary Education,
Chennai-6.



3.The Chief Educational officer,
Panagal Building,
Thanjavur.

4.The District Educational Officer,
Kamatchi Josia Street,
Kumbakonam,
Thanjavur District.

+1 CC to M/s.SPL GP (SR-83536[F] dated 27/08/2019)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-83641[F] dated
27/08/2019)

AM

W.P. (MD) No.19491 of 2013
26.08.2019

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