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W.A. (MD) Nos.1416 to 1419 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) Nos.1416 to 1419 of 2019
and

C.M.P. (MD) No.11570, 11574, 11580 and 11581 of 2019
against WP(MD) Nos.10950 TO 10953 of 2019

1.The Director of School Education,
DPI Compound, College Road,
Chennai.

2.The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.

3.The District Educational Officer,
Cheranmahadevi,
Tirunelveli District.

... Appellants in all appeals

Vs.

1.John Wesley ..1st respondent in W.A. (MD) No.1416 / 2019

1.John Augustin ..1st respondent in W.A. (MD) No.1417 / 2019

1.J.Belciya Femina ..1st respondent in W.A. (MD) No.1418 / 2019

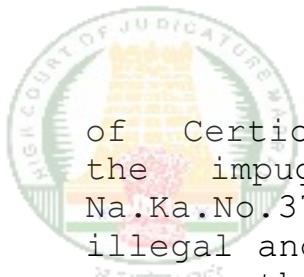
1.Jancirani Sheela ..1st respondent in W.A. (MD) No.1419 / 2019

2.The Correspondent,
West Tirunelveli Higher Secondary School,
Nallur, Tirunelveli District. ..2nd Respondent
in all appeals

COMMON PRAYER: Writ Appeals are filed under Clause 15 of the Letter Patent Act, to set aside the order dated 29.04.2019 passed in W.P. (MD) Nos.10950 to 10953 of 2019 on the file of this Court and allow this writ appeal and dismiss the writ petition.

PRAYER IN WP (MD) No.10950 OF 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ

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of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the third respondent in Na.Ka.No.3788/2/2018, dated 24.04.2019 and quash the same as illegal and consequently direct the second and third respondent to approve the petitioner's appointment proposal dated 22.04.2019 and confer all other service benefits such as yearly increments, incentives, earn leave, arrears of salary from the date of appointment (ie. 22.10.2010).

PRAYER IN WP(MD)No.10951 OF 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the third respondent in Na.Ka.No.3788/2/2018, dated 24.04.2019 and quash the same as illegal and consequently direct the second and third respondent to approve the petitioner's appointment proposal dated 22.04.2019 and confer all other service benefits such as yearly increments, incentives, earn leave, arrears of salary from the date of appointment (ie. 24.07.2017).

PRAYER IN WP(MD)No.10952 OF 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the third respondent in Na.Ka.No.3788/2/2018, dated 24.04.2019 and quash the same as illegal and consequently direct the second and third respondent to approve the petitioner's appointment proposal dated 22.04.2019 and confer all other service benefits such as yearly increments, incentives, earn leave, arrears of salary from the date of appointment (ie. 24.07.2017).

PRAYER IN WP(MD)No.10953 OF 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the third respondent in Na.Ka.No.3788/2/2018, dated 24.04.2019 and quash the same as illegal and consequently direct the second and third respondent to approve the petitioner's appointment proposal dated 22.04.2019 and confer all other service benefits such as yearly increments, incentives, earn leave, arrears of salary from the date of appointment (ie.18.03.2011).

For Appellants

: Mrs.S.Srimathy
Special Government Pleader
in all appeals

For R1

: Mr.S.Chellapandian
Government Advocate in all appeals



COMMON JUDGMENT

WEB COPY [Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mrs.S.Srimathy, learned Special Government Pleader for the appellants and Mr.T.A.Ebenezer, learned counsel for the first respondent in all appeals. By consent on either side, these writ appeals are taken up for final disposal.

2. These appeals have been filed against the common order dated 29.04.2019 made in W.P.(MD)Nos.10950 to 10953 of 2019. By the said order, the writ petitions were allowed and the matter was remitted back to the Department to pass necessary orders to grant approval of the writ petitioners' appointment. It is not disputed by the learned Special Government Pleader appearing for the respondents that an identical issue was decided against the Government by allowing the appeal in W.A(MD)No.859 of 2019 on 26.09.2019. The operative portion of the order is quoted as follows:-

5.This issue came up for consideration before several Division Benches of this Court and it has been held that the department cannot mandatorily insists the teachers working in minority institution to have TET qualification. One of the recent decision of the Division Bench is in P.Savarimuthu Maria George v. The District Elementary Educational Officer, Virudhunagar District & Others [2018 0 Supreme (Mad) 4017] (W.A.(MD) No.948 of 2018), wherein the Division Bench noted all the decisions on this issue and allowed the appeal filed by the Teacher. It will be beneficial to refer to the following portions of the order.

"4.Shortly after the disposal of the Writ Petition which is the subject matter of this appeal, a Division Bench of this Court in Secretary to Government, Government of Tamil Nadu, Chennai -vs- S. Jeyalakshmi [(2016) 5 CTC 639], held in paragraph nos. 39 and 40, as follows:-

"39.In the decision relied upon by the Learned Senior Counsel for the Petitioners in Ashwini Thanappan -vs- Director of Education [(2014) 8 SCC 272], the issue that arose for consideration related to the interpretation of Article 27. The matter was referred to the Bench of appropriate strength for further examination. Since the Learned Counsel submitted that the



Judgment in Pramati Educational and Cultural Trust is inconsistent with the Judgment of the Constitution Bench in P.A. Inamdar -vs- State of Maharashtra [(2005) 6 SCC 537]. The matter is pending consideration.

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40. In view of the above, the contention of the Learned Additional Advocate General that the order of the Learned Single Judge directing the release of salary is not sustainable, in view of the reference of Ashwini Thanappan case to the Bench of appropriate strength, cannot be accepted, since the issue in P.A. Inamdar is with respect quota of admission of students in the unaided professional institutions, entrance test and fee structure. Therefore, the outcome of Ashwini Thanappan has nothing to do with the case on hand."

It would also be relevant to refer the following paragraphs in that Judgment of the Division Bench of this Court:-

"52. However, the Government, before issuing G.O. Ms.No. 181 dated 15.11.2011, lost sight of one important fact, namely imposition of a condition on the Teachers, who were appointed prior to the issue of G.O., in non minority Schools, both aided and unaided, to qualify themselves with TET within a period of five years, in order to continue in service, would cause great hardship to them. Moreover, if the Teachers who have put in more number of years of service, could not pass TET within five years, their contribution in service would be in jeopardy. Further, it is seen that the percentage of pass in the TET examination conducted in 2012 and 2013 was very minimal.

56. We are, therefore, of the considered view that the Government may seek a clarification from the NCTE, in the light of what is stated in the preceding paragraph, whether the prescription of minimum qualification of TET can be made applicable prospectively for the Teachers who were appointed subsequent to the date of issue of G.O., in both non minority and minority institutions and not retrospectively as the same would cause undue hardship to the Teachers who have been serving for a quite a long time.

58. In our opinion, non qualifying in TET by the Teachers already in service should not be 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.

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.

62. However, keeping in mind the larger interest in which the Government has issued the above G.O.s, 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."

The resultant effect of that decision is that it is not necessary for teachers in schools run by aided minority institutions to secure a pass in Teacher Eligibility Test for approving their appointment. The said view has been reiterated by the subsequent decisions of the Division Benches of this Court in K. Solomon Jeyaraj -vs- Secretary, Department of School Education (Judgment dated 25.11.2016 in W.A. (MD) No. 1437 of 2016), Y. Kanagaraj -vs- State of Tamil Nadu (Judgment dated 16.06.2017 in W.A. (MD) No. 724 of 2017) and K. Anita -vs- State of Tamil Nadu (Judgment dated 26.02.2018 in W.A. (MD) No. 1090 of 2017)"

6. The learned Special Government Pleader appearing for the respondents 1 and 2 placing reliance on the decision of the Hon'ble Supreme Court in TMA Pai Foundation v. State of Karnataka [2005 (5) CTC 201 (SC)] would submit that the respondent State being the controlling authority sanctioning aid for the minority institutions can always prescribe qualifications, salaries as well as experience and other conditions bearing on the merits of an individual for being appointed as a teacher of an educational institution. Further, it is submitted by the learned Special Government Pleader that if the contention advanced by the learned counsel appearing for the appellant is accepted and TET is not made applicable to the minority institutions, then it is a clear



discrimination among the teachers because one set of teachers, who are working in the non-minority institutions, are under the threat of losing their jobs for not possessing TET and the other set of teachers, who do not have TET, who are working at aided minority institutions, are safe and the same would be in violation of Article 14 of Constitution of India.

7. In our considered view, various Division Benches have taken consistent stand as regards the legal position and in doing so reference has been made to the decision of the Constitutional Bench of the Hon'ble Supreme Court in *Paramati Educational & Cultural Trust v. Union of India* [2014(8) SCC 1], and a decision has been rendered. This Court does not find any ground to take a different view.

8. It is submitted by the learned counsel appearing for the appellant that the learned Writ Court was of the view that the appellant was not working after the impugned order dated 14.11.2013. However, the fact remains that since an order of stay was granted on 29.11.2013, the appellant is continuing to serve in the institution and as on date the appellant is working in another school of the same Educational Agency at Surandai. This submission is placed on record.

9. Thus, for the above reasons, the Writ Appeal is allowed and order of the Writ Court in W.P. (MD) No.19467 of 2013 dated 25.07.2019 is set aside. Consequently, the Writ Petition is allowed as prayed for. Consequently, connected Civil Miscellaneous Petition is closed. No costs."

3. There is no distinguishing feature pointed out before us by the appellant as to why the above such decision should not be applied in the instant case. In the light of the above, these writ appeals are dismissed. No costs. Consequently, connected miscellaneous petition are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar (CS)



W.A. (MD) Nos.1416 to 1419 of 2019

TO

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

2.The Chief Educational Officer,
Tirunelveli District, Tirunelveli

3.The District Educational Officer
Cheranmahadevi,
Tirunelveli District

ORDER MADE IN

W.A. (MD) Nos.1416 to 1419 of 2019

27.11.2019

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