



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2020

CORAM:

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.2299 of 2020

and

W.M.P. (MD) .Nos.1944 and 1945 of 2020

S.Ayers Mary

.. Petitioner

Vs.

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

2. The Director of Elementary Education,
Directorate of Elementary Education,
Chennai - 06.

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

4. The Chairman,
Teachers Recruitment Board,
EVK Sampath Maligai,
DPI Campus, College Road,
Chennai - 06.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the third respondent in O.Mu.No.6035/A5/2018, dated 17.12.2019 and quash the same as illegal, invalid and against the law laid down by this Court and also violated the principles of natural justice and contrary to the law and direct the respondents to dispose the petitioner's salary increments pending from April 2013 without insisting the pass on TET examination.

For Petitioner : Mr.R.Murugan

For Respondent Nos.1 to 3 : Mr.M.Karuppasamy
Government Advocate

For Respondent No.4 : Mr.VR.Shanmuganathan
Special Government Pleader



ORDER

The reason assigned in the impugned order passed by the respondents herein to deny the petitioner's salary increments is that the petitioner had not passed the Teacher's Eligibility Test.

2. The petitioner herein is working as a Teacher in a Minority Aided School. The Government in G.O.Ms.No.181 dated 15.11.2011, had issued notification that the teachers should possess the TET qualification for the purpose of appointment. When the validity of the Government Order came up for consideration, the legal position came to be clarified that the Teachers employed in minority schools need not possess TET qualification. In one such order passed by the Division Bench of this Court in W.A.(MD)Nos.522 and 523 of 2018, dated 27.03.2018, in the case of ***The State of Tamilnadu, rep., by its Principal Secretary and others vs. N.Taj and another***, this position was reiterated in the following manner:

"2.The issue is clearly covered by the decision of the Division Bench in W.P. (MD) No.898 of 2017 dated 30.06.2017 (T.Susila Vs. State of Tamil Nadu and others), to which one of us (T.S.SIVAGNANAM, J.) was a party. The said writ appeal was allowed following an earlier decision of the W.A.(MD) No.1438 of 2016 (Helen Samraj Vs. The Secretary to Government, Department of School Education), by judgment dated 25.11.2016. The operative portion of the said Judgment reads as follows:

7.It is relevant to extract the following paragraphs of the judgment of the Division Bench of this Court (cited supra):

52. However, the Government, before issuing G.O.Ms.No.181 dated 15.11.2011, lost sight of one important fact, namely imposition 39 of a condition on the Teachers, who were appointed prior to the issue of G.O., in non minority and 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 continuation 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 the 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 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 43 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. Similarly, G.O.Ms.No.76 dated 18.3.2015 issued by the Government of Puducherry, is also not applicable to the 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.?

8. In the light of the above said judgment, the Writ Appeal is allowed and the impugned order, which was subject matter of challenge in W.P.(MD) No.15958 of 2015 as well as the impugned order passed in W.P.(MD) No.15958 of 2015 dated 14.07.2016 are set aside. However, in the circumstances of the case, there shall be no order as to cost."

4. Thus, following the above referred decision, these writ appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed."

3. The above said order of the Division Bench is self explanatory. As such the claim of the petitioner for yearly increments cannot be denied by the third respondent on the ground that the petitioner does not possess TET qualification.

4. In the light of the above said decision, the impugned order



dated dated 17.12.2019, in O.Mu.No.6035/A5/2018 by the third respondent stands quashed. Consequently, there shall be a direction to the third respondent herein to dispose the petitioner's salary increments, within a period of six weeks, without insisting the petitioner to possess the TET qualification.

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5. This writ petition stands allowed accordingly. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1. The Principal Secretary,
The State of Tamil Nadu,
Department of School Education,
Fort St.George,
Chennai-600 009.
2. The Director of Elementary Education,
Directorate of Elementary Education,
Chennai - 06.
3. The District Educational Officer,
Tirunelveli, Tirunelveli District.
4. The Chairman,
Teachers Recruitment Board,
EVK Sampath Maligai,
DPI Campus, College Road,
Chennai - 06.

+1 CC to M/s.D.VIJAYAKUMAR, Advocate (SR-8913[F] dated 27/02/2020)
+1 CC to M/s.SPL.GP (SR-9111[F] dated 28/02/2020)

PJL

TE : 17/03/2020 : 4P/7C

W.P. (MD) No.2299 of 2020
27.02.2020