



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD) No.6108 of 2016

and

W.M.P. (MD) .Nos.5399 and 5400 of 2016

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D.Dharmaraja

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
rep. by its Principal Secretary to Government,
School Education Department,
St. George Fort,
Chennai -9.
- 2.The Director of School Education,
O/o, the School Education Department,
College Road,
Chennai -6.
- 3.The District Elementary Educational Officer,
O/o. the District Elementary Educational Office,
Madurai,
Madurai District.
- 4.The Additional Assistant Elementary Educational
Office, Madurai South Region,
Madurai,
Madurai District.
- 5.The Correspondent,
Meenatchipuram Middle School,
Madurai South Region,
Madurai,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 3rd respondent in his proceedings in Mu.Mu.No.5083/Aa1/2012, dated 24.08.2012 and quash the same as illegal insofar as it relates to prescribing TET qualification is concerned and consequently to direct the 3rd respondent to sanction all other attendant and other monetary benefits including annual increment and pay the arrears of the same within a stipulated time.



For petitioner

: Mr.H.Mohammed Imran
for M/s.Ajmal Associates

For respondents 1 to 4

: Mr.A.Thiyagarajan,
Government Advocate

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ORDER

This writ petition has been filed by the petitioner praying to set aside the condition prescribing TET qualification within a period of five years in the order of approval of appointment of the petitioner as B.T. Assistant teacher in the 5th respondent school.

2. The learned counsel for the petitioner submitted that the 5th respondent school is a minority institution and it appointed the petitioner as B.T. Assistant on 01.04.2011 in the vacancy arose in a sanctioned post. The appointment of the petitioner has been approved by the 3rd respondent, by the impugned order dated 24.08.2012, subject to a condition that the petitioner should pass TET within a period of five years. It is now well settled that the qualification of TET is not applicable to the minority institutions. But, the official respondents, based on the impugned order dated 24.08.2012, has been insisting the petitioner to go out of the school. Hence, the petitioner has filed this writ petition. He would further submit that the petitioner has been still working in the school, but the 3rd respondent has not sanctioned all other attendant and monetary benefits, including annual increments. Thus, he prayed to allow this writ petition.

3. Heard the learned counsel for the respondents 1 to 4 on the submission made by the learned counsel for the petitioner.

4. In view of the order to be passed in this petition, this Court is of the view that notice need not be sent to the fifth respondent.

5. The issue involved in this case already came up for consideration before several Division Benches of this Court and it has been consistently held that G.O.Ms.No.181 is not applicable to the minority institutions and therefore, the respondents cannot insist the teachers working in minority institution to have TET qualification. In a recent decision in ***P.Savarimuthu Maria George v. The District Elementary Educational Officer, Virudhunagar District & Others, (W.A. (MD) No.948 of 2018)***, a Division Bench of this Court has noted all the decisions on this issue and allowed the appeal filed by a Teacher. For better appreciation, the relevant portion is extracted hereunder:

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

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



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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 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.

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. In the light of the above, the condition imposed by the 3rd respondent to the effect that the petitioner should pass TET within a period of five years, in the impugned order dated 24.08.2012, for approving the appointment of the petitioner alone is set aside and consequently, the respondents are directed to grant all the service and monetary benefits to the petitioner and to continue to disburse the grant-in-laid towards salary to the petitioner, in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

7. This Writ Petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

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Sub Assistant Registrar(CS)

gcg

To

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

2.The Director of School Education,
O/o, the School Education Department,
College Road,
Chennai -6.

3.The District Elementary Educational Officer,
O/o. the District Elementary Educational Office,
Madurai,
Madurai District.

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



4.The Additional Assistant Elementary Educational
Office, Madurai South Region,
Madurai,
Madurai District.

+1 CC to M/S.AJMAL ASSOCIATES, Advocate (SR-12135[F] dated
17/03/2020)

Order made in
W.P.(MD) No.6108 of 2016
17.03.2020

KM (26.05.2020) 6P 6C