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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

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THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.25965 of 2017
and W.M.P.Nos.27546 & 27547 of 2017

I.Naresh

...Petitioner

Vs

1. Director of Elementary Education,
Chennai-600 006.
2. District Elementary Educational Officer,
Vellore, Vellore District.
3. Assistant Elementary Educational Officer,
Pernambut Range, Vellore District.
4. Correspondent,
IELC Schools,
Perambut & Gudiyatham Range,
Vellore District.
5. Secretary,
Education Committee,
Ambur Synod, IELC,
Ambur, Vellore District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus, or any other appropriate Writ or Order or Direction, in the nature of Writ, calling for the records pertaining to the order passed by the 3rd Respondent in his Proceedings Na.Ka.No.756/A1/2017 dated 18-08-2017 confirming the order passed by the 2nd Respondent in his Proceedings A.Thi.Mu.No.2253/A2/2017 dated 07-08-2017 and quash the same, and direct the Respondents approve the appointment of the petitioner as Secondary grade Assistant from 17-09-2012 and confer all the consequential benefits.



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For Petitioner : Mr.P.Ganesan
for M/S.C.S.Associates

For R1 to R3 : Ms.P.Raja Rajeswari
Government Advocate

For R4 : Mr.B.Balavijayan

For R5 : Mr.B.Gopalakrishnan

ORDER

The petitioner's appointment dated 15.09.2012 as Secondary grade Assistant was forwarded by the 3rd respondent herein to the Educational Authorities for the purpose of approval and on 07.06.2017, it was rejected through the impugned proceedings dated 03.07.2017, on the ground that petitioner did not qualify in the Teacher Eligibility Test (TET).

2. The issue as to whether passing of TET is a pre-requisite for granting approval of the appointment of a Teacher in a Minority institution is no more res integra.

3. In one such decision of the Honourable Division Bench of this Court, in the case of the Director of School Education and others Vs. J.Prabha Vinothini and another, taken in W.A.(MD). Nos.791 of 2020 and batch, this proposition was reiterated in the following manner:-

"4. The learned Single Judge had taken up all the Writ petitions together and disposed of the same vide common order dated 26.02.2019 and it is relevant to extract the same hereunder:

"3.The learned counsel appearing for the petitioners and the learned Special Government Pleader appearing for the respondents submitted that in similar circumstances, this Court, by order, dated 26.07.2018 in W.P(MD)No.16428 of 2018, at paragraph Nos.7 and 8 held as follows:-

"7.In this case also, the petitioner was appointed in the fourth respondent School, which is admittedly a recognised minority aided School. The appointment also has been made within the sanctioned strength and the petitioner claimed that, he is having every qualification to hold the post. When that being the position, as no other reason has been given in the impugned order, except the reason of TET



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qualification, that too, citing the reason that, no guidelines given by the first respondent/Director to the lower level approving authorities to approve such appointment without TET qualification, this Court is of the firm view that the impugned order cannot be sustained and it is liable to be quashed. 8. In the result:-

(i) the impugned order is quashed and the Writ Petition is allowed;

ii) the matter is remitted back to the respondents, especially, the second respondent, who shall pass necessary orders with regard to the grant of approval to the petitioner's appointment, as no other impediment has been cited in the impugned order, except the guidelines to be issued by the Director for making approval of the Teachers, who have been appointed in the minority aided School without TET qualification;

(iii) Such orders of approval shall be passed within a period of four weeks from the date of receipt of a copy of this order; and

(iv) It is needless to mention that, once the approval is given, the petitioner is entitled to get all service and monetary benefits, as per the eligibility and the same shall also be paid to the petitioner forthwith." 5. The learned Special Government Pleader appearing for the appellants/official respondents would submit that the fact remains that, the passing of Teacher Eligibility Test is for the benefit of students for whom the education is important and therefore, it is obligatory on the part of the private respondents/Writ petitioners to clear the same and the said aspect has not been taken into consideration and it is also against the judgment of the Constitution Bench of the Honourable Supreme Court in T.M.A.Pai Foundation & Ors vs State Of Karnataka & Ors reported in LNIND 2002 SC 740. 6. Per contra, Mr.S.Chellapandian, learned Counsel appearing for the private respondents/Writ petitioners would submit that in the light of yet another judgment of the Constitution Bench of the Honourable Supreme



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Court in Pramati Educational and Cultural Trust and others v. Union of India and others reported in 2014 (8) SCC 1 : 2014 4 MLJ 486, passing of Teacher Eligibility Test is not necessary in respect of Teachers employed in minority institution, especially, religious minority institution and as such, the common impugned order do not warrants interference.

7. This Court has carefully considered the rival submissions and also perused the materials placed before it.

8. In Pramati Educational and Cultural Trust and others v. Union of India and others (cited supra), the Honourable Supreme Court of India in paragraph No.46, observed that "In our view, if the 2009 Act is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Therefore, the 2009 Act insofar it is made applicable to minority schools referred in clause (1) of Article 30 of the Constitution is ultra vires the Constitution". The said judgment has also been followed by this Court in various pronouncements. 9. In the light of the above cited legal position, grounds urged on behalf of the appellants lack merits. In the result, all the Writ Appeals are dismissed, confirming the common order dated 26.02.2019 made in W.P. (MD).Nos.2770, 2771, 2772 and 2773 of 2019. The appellants/official respondents are directed to comply with the common order dated 26.02.2019, passed in W.P. (MD).Nos.2770, 2771, 2772 and 2773 of 2019, as confirmed in these Writ Appeals within a period of 12 (Twelve) weeks from the date of receipt of a copy of this order and communicate the decision taken to the concerned educational institutions."

4. The aforesaid order is self explanatory. As such, the impugned proceedings of the 3rd respondent herein rejecting the proposal for approval on the ground that the petitioner did not pass TET, cannot be sustained.

5. At this juncture the learned Counsel appearing for the 5th respondent herein would submit that the original appointment of the petitioner itself is irregular since there is no valid



appointment for him. The said submission has no relevance in the present Writ Petition since order under challenge is one of rejection of the approval petition which was forwarded by the 3rd respondent themselves. As such the objection raised by the 5th respondent does not require consideration in the present Writ Petition.

6. In the light of the above observations, the impugned order passed by the 3rd Respondent in his Proceedings Na.Ka.No.756/A1/2017 dated 18-08-2017 confirming the order passed by the 2nd Respondent in his Proceedings A.Thi.Mu.No.2253/A2/2017 dated 07-08-2017 is set aside. Consequently, there shall be a direction to the **(*) 2nd respondent** to pass orders approving the appointment of the petitioner dated **(*) 17.09.2012**, within a period of 4 weeks from the date of receipt of a copy of this order. The connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)
Dated:03/01/2022

(*)Corrected as per the order of
this Court dated 04/02/2022
for Being Mentioned in W.P.No.25065 of 2017
Sd/-
Assistant Registrar(CS-IV)
Dated:07/02/2022

//True Copy//

Sub Assistant Registrar

gd

To

- 1.Director of Elementary Education,
Chennai-600 006.
- 2.District Elementary Educational Officer,
Vellore, Vellore District.
- 3.Assistant Elementary Educational Officer,
Pernambut Range, Vellore District.
- 4.Correspondent,
IELC Schools,
Perambut & Gudiyatham Range,
Vellore District.

To be substituted
the order already
despatched on
28/01/2022



5. Secretary,
Education Committee,
Ambur Synod, IELC,
Ambur, Vellore District.

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+1cc to M/s.C.S.Associates, Mr.P.Ganesan, Advocate, **S.R.No.7196**

W.P.No.25965 of 2017

NR(CO)
SB(04/01/2022)

br[co]
srg 07/02/2022