



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.299 of 2021

and

W.M.P (MD)No.229 of 2021

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S.Seelan Jeyakumar

... Petitioner

Vs.

1.The District Educational Officer,
Thenkasi, Thenkasi District.

2.The Block Educational Officer,
Sengottai,
Thenkasi District.
Previously called as
Assistant Elementary Educational Officer.

3.The Correspondent,
A.G.Primary School,
Kannupulimettu-27 809.
Thenkasi District.

... Respondents

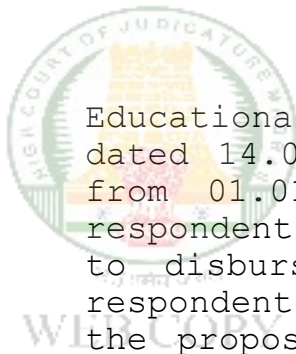
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceeding issued by the second respondent herein in O.Mu.No.748/A/17, dated 25.09.2017, quash the same and further direct the first respondent herein to disburse the yearly increments and all other monetary benefits to the petitioner w.e.f., date of appointment i.e., 01.03.2011.

For Petitioner : Mr.A.Ajith Geethan
For R1 & R2 : Mr.P.Subbaraj
Government Advocate

ORDER

The petitioner has filed this writ petition to quash impugned proceeding issued by the second respondent herein in O.Mu.No.748/A/17, dated 25.09.2017 and for a direction to the first respondent herein to disburse the yearly increments and all other monetary benefits to the petitioner w.e.f., date of appointment i.e., 01.03.2011.

2. The petitioner is working as Secondary Grade Teacher in the third respondent School, which is a recognised aided minority institution. The petitioner was appointed on 01.03.2011 in the third respondent School in a sanctioned vacancy. His appointment was approved from the date of appointment by the District



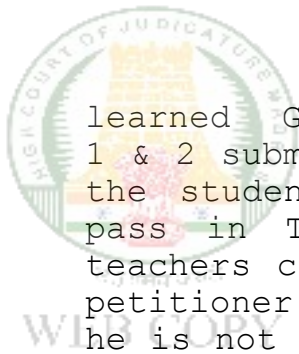
Educational Officer, vide proceedings in Ni.Mu.No.2590/Aa1/2011, dated 14.07.2011. However, his yearly increment has been stopped from 01.01.2013 by the respondents 1 & 2. Hence, the third respondent school submitted the proposal dated 01.09.2017 requesting to disburse the yearly increment from 01.01.2013. The second respondent by the impugned proceedings, dated 25.09.2017 returned the proposal stating that the petitioner is not entitled for the yearly increment, as he has not passed Teachers Eligibility Test.

3. He further submitted that in pursuance of the Right of Children to Free and Compulsory Education Act, 2009, pass in "Teacher Eligibility Test" was prescribed as additional qualification for appointment of teachers vide G.O(Ms)No.181 (School Education (C2) Department), dated 15.11.2011. The learned counsel for the petitioner further submitted that with regard to the applicability of the Right of Children to Free and Compulsory Education Act, 2009 to minority educational institutions the Hon'ble Supreme Court in ***Pramati Educational Cultural Trust and others vs Union of India*** reported in **2014 (4) MLJ 486 (SC)**, has categorically held that the Right of Children to Free and Compulsory Education Act, 2009 is ultra vires and the same cannot be made applicable to minority educational institutions. Hence, the qualification of pass in "Teacher Eligibility Test" prescribed in pursuance of Right of Children to Free and Compulsory Education Act, 2009, cannot be made applicable to minority educational institutions.

4. He further submitted that the Principal Bench of this Hon'ble Court, by order dated 24.08.2016, in a batch of Writ Petitions and W.A.Nos.213 & 572 of 2016 held that G.O.(Ms)No.181 (School Education (C2) Department), dated 15.11.2011, is not applicable to minority educational institutions and therefore, directed to approve the appointments made in minority educational institutions. Therefore, the denial of yearly increment for want of pass in Teachers Eligibility Test, cannot sustain in the eye of law. Since the law is well settled, the School has taken several attempts to get yearly increment to the petitioner. However, the respondents have not provided yearly increment to the petitioner. Finally, the School submitted the representation to the second respondent herein on 07.11.2020 requesting to re-consider the issue and disburse the yearly increment to the petitioner. However, the respondents 1 & 2 did not take any steps on the representation submitted by the School. The petitioner is entitled yearly increment without pass in "Teacher Eligibility Test", as per the aforesaid order passed by this Court. The learned counsel appearing for the petitioner further submitted that the impugned order of return is arbitrary, illegal and void and liable to be set aside and prayed for allowing the writ petition.

5. The respondents filed counter affidavit. Mr.P.Subburaj,

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



learned Government Advocate appearing for the respondents 1 & 2 submitted that in order to give good and better education to the students, the Government has prescribed the qualification of pass in Teacher Eligibility Test, so that, a highly qualified teachers can be appointed for the betterment of the students. The petitioner has not passed the Teachers Eligibility Test and hence, he is not entitled for annual increment and prayed for dismissal of the writ petition.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents 1 & 2 and perused the materials available on record.

7. From the impugned order and materials on record, it is seen that the petitioner was denied annual increment only on the ground that he has not passed Teachers Eligibility Test. It is an admitted case that the petitioner is appointed in the third respondent School, which is an aided minority institution, in a sanctioned vacancy and his appointment was approved by the respondents 1 & 2. While so, the respondents 1 & 2 stopped yearly increment from 01.01.2013. The issue whether a teacher appointed in a minority educational institution must pass in Teachers Eligibility Test is no longer *res integra*. The Hon'ble Apex Court in ***Pramati Educational Cultural Trust and others vs Union of India*** reported in **2014 (4) MLJ 486 (SC)** held that the Right of Children to Free and Compulsory Education Act, 2009 is ultra vires and the same cannot be applicable to minority educational institutions. Pass in Teachers Eligibility Test is not mandatory, for the teacher appointed in the minority educational institution. Further, the petitioner was appointed on 01.03.2011 and his appointment was approved on 14.07.2011 much prior to issuance of G.O(Ms) No.181 (School Education (C2) Department), dated 15.11.2011, prescribing the Educational qualification of pass in Teachers Eligibility Test.

8. For the above reasons, the impugned order of the second respondent in O.Mu. No.748/A/17, dated 25.09.2017 is set aside and the writ petition is allowed. The first respondent is directed to sanction and disburse the annual increment and all other monetary benefits to the petitioner w.e.f., date of appointment I.e., 01.03.2011. No costs. Consequently, connected miscellaneous petition is closed.

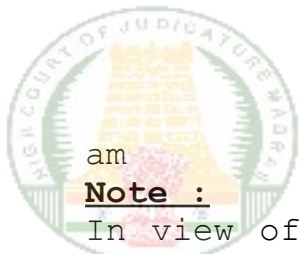
Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)



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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

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+1 CC to M/s.SPL GP (SR-19550[F] dated 17/06/2021)

W.P. (MD) No.299 of 2021

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