



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.3438 of 2021

and W.M.P. (MD).Nos.2788 & 2790 of 2021

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St.Joseph's Higher Secondary School,
Rep. by its Correspondent,
Sekkakudi,
Sivagangai District.

...Petitioner

Vs.

1.The Director of School Education,
(Higher Secondary), Chennai - 6.

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

3.The District Educational Officer,
Devakottai,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned proceedings of the 3rd respondent in A.Thi.Mu.No.5131/Aa1/2020, dated 30.12.2020 and quash the same and consequently, direct the 3rd respondent to sanction the annual increment with all attended benefits to the said Mrs.I.Arul Isabella Rani, B.T.Assistant (Tamil) from 01.04.2013.

For Petitioner : Mr.R.Devaraj

For Respondents : Mr.N.Shanmuga Selvam
Additional Government Pleader

O R D E R

Heard the learned counsel for the petitioner and the learned Additional Government Pleader, appearing for the respondents.

2.The petitioner herein is a minority institution. When they had sent a proposal to the third respondent, seeking for release of annual increments in favour of Tmt.I.Arul Isabella Rani, B.T. Assistant Tamil, it was returned on 30.12.2020 by the third respondent stating that the above said person would be entitled for the annual increments only after completion of the Teachers Eligibility Test (TET).

3.This Court had time and again, held that the TET is not a mandatory requirement for the grant of annual increment for the



teachers of a minority school. 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.

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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 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 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 respondents herein cannot insist the qualification of TET as a requirement for granting of annual increments.

5.Though the petitioner's proposal has been returned on 30.12.2020, effectively it is an order of rejection, since the reason of failure to qualifying the TET has also been mentioned therein and therefore, this Court would be justified in granting a positive directions.

6.In the light of the above observations, the impugned return endorsement, A.Thi.Mu.No.5131/Aa1/2020, dated 30.12.2020, is hereby quashed. Consequently, the petitioner is directed to represent the proposal to the third respondent, seeking for annual increment with all attended benefits to the said Mrs.I.Arul Isabella Rani, BT Assistant (Tamil) and on receipt of the same, the third respondent shall sanction the annual increments with effect from 01.04.2013. Such an exercise shall be completed by the third respondent, within a period of twelve weeks from the date of receipt of a copy of this order.

7.This writ petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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.

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To

1.The Director of School Education,
(Higher Secondary), Chennai - 6.

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



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

3.The District Educational Officer,
Devakottai,
Sivagangai District.

+1 CC to M/s.R.DEVARAJ, Advocate (SR-8097[F] dated 02/03/2021)

+1 CC to M/s.SPL GP (SR-8438[F] dated 03/03/2021)

W.P. (MD) No.3438 of 2021
02.03.2021

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