



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.7513 of 2021

WEB COPY

P.S.Mohamed Nazimudeen

... Petitioner

vs.

1.The Chief Educational Officer,
Tirunelveli,
Tirunelveli District.

2.The District Educational Officer,
Tirunelveli,
Tirunelveli District.

3.The Secretary and Correspondent,
The Muslim Higher Secondary School,
Melapalayam,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in A.T.Mu.No.1267/A4/2021, dated 22.03.2021 of the second respondent herein and quash the same and consequently direct the respondents 1 and 2 herein to award annual increments, incentive, surrender leave benefits and other attendant benefits to the petitioner from the date of the petitioner's appointment namely 07.09.2016 with all attendant benefits including pay fixation and allowance.

For Petitioner : Mr.T.Pon Ramkumar

For RR 1 & 2 : Mr.K.S.Selvaganesan
Government Advocate

ORDER

The petitioner has filed the present Writ Petition, to quash the impugned order, dated 22.03.2021, passed by the second respondent and to direct the respondents 1 and 2 to award annual increments, incentive, surrender leave benefits and other attendant benefits to the petitioner from the date of his appointment viz., 07.09.2016, including pay fixation and allowance.

2.According to the petitioner, he was appointed as B.T Assistant (Maths) in the third respondent School in the vacancy arose due to the superannuation of one A.M.Jafurullahkhan in the sanctioned post. The appointment of the petitioner was approved by the second respondent, by proceedings, dated 23.03.2017, with effect



from 07.09.2016 ie., from the date of appointment of the petitioner. The respondents 1 and 2 did not sanction the annual increment. The petitioner gave a representation for sanctioning annual increment. The third respondent School sanctioned and forwarded the same to the second respondent for approval. The second respondent returned the same by impugned proceedings, dated 22.03.2021, stating that as per the letter of the Director of School Education, dated 31.10.2017, the Government aid is sanctioned only for the salary for the teachers appointed without pass in Teachers Eligibility Test and hence, the annual increment cannot be granted to the petitioner who has not passed Teachers Eligibility Test. Challenging the said return, the petitioner has come out with the present Writ Petition.

3.The learned counsel appearing for the petitioner contended that as per the Judgment of the Hon'ble Apex Court reported in **(2013) 5 SCC 752 [Pramati Educational and Cultural Trust and others Vs. Union of India and others]**, the provisions of Right to Education Act, 2009, is not applicable to the minority institution. The learned counsel appearing for the petitioner further submitted that G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011, imposing condition of passing Teachers Eligibility Test for appointment was made inapplicable by this Court in number of cases. In view of the same, the impugned order passed by the second respondent is invalid and illegal and prayed for setting aside the impugned order and allowing the Writ Petition.

4.The respondents 1 and 2 filed counter-affidavit.

5.Mr.K.S.Selvaganesan, learned Government Advocate appearing for the respondents 1 and 2 reiterated the averments made in the counter-affidavit and submitted that as per the letter of the Director of School Education, dated 31.10.2017, the petitioner is not entitled to any annual increments. The Director of School Education by the proceedings, dated 31.10.2017, directed payment of grant to the teachers appointed in minority Schools, who have not passed the Teacher Eligibility Test. The District Educational Officer, Tirunelveli, vide order, dated 23.03.2017, directed payment of grant to the petitioner from the date of his appointment ie., from 07.09.2016 onwards. Since the petitioner is not qualified in the Teachers Eligibility Test, the other benefits have not been extended to him except his salary. In view of the same, the impugned order is valid 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 and 2 and perused the entire materials available on record.

7.From the materials available on record, it is seen that the proposal claiming approval for grant of annual increment and salary as per 7th Pay Commission was returned by the second respondent,



based on the letter of the Director of the School Education, dated 31.10.2017. The second respondent has returned the proposal on the ground that the petitioner has not passed Teachers Eligibility Test and hence, he is not entitled to the said benefits except salary. The reason given by the second respondent is erroneous and contrary to the Judgment of the Division Bench of this Court and the Hon'ble Apex Court and the orders passed in various Writ Petitions. The Hon'ble Apex Court in the Judgment reported in **(2013) 5 SCC 752 [Pramati Educational and Cultural Trust and others Vs. Union of India and others]**, held that the Right to Education Act, 2009, is not applicable to the minority institution, like the third respondent School. Further, G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011, prescribing minimum educational qualification of passing Teachers Eligibility Test was challenged before this Court. This Court held that passing Teachers Eligibility Test is not applicable to the minority institution. Once the appointment of the petitioner is approved by the authority, the petitioner is entitled to all the benefits including annual increments. In view of the same, the impugned order returning the proposal sent by the third respondent School based on the letter of the Director of School Education, dated 31.10.2017, is invalid. In view of the Judgment of the Hon'ble Apex Court and this Court, the impugned order, dated 22.03.2021, passed by the second respondent, is set aside. The third respondent School is directed to re-submit the proposal within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the respondents 1 and 2 are directed to consider and pass orders within a period of four weeks thereafter.

8. With the above directions, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

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

1.The Chief Educational Officer,
Tirunelveli,
Tirunelveli District.

2.The District Educational Officer,
Tirunelveli,
Tirunelveli District.

+1 CC to M/s.T. PON RAMKUMAR, Advocate (SR-23853[F] dated
26/07/2021)

+1 CC to M/s.SPL GP (SR-24013[F] dated 27/07/2021)

W.P(MD)No.7513 of 2021
26.07.2021

RD(19.08.2021) 4P 5C