



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.04.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD) No.8468 of 2021

S.M.A.Mohideen Ashan Fathima ... Petitioner

-Vs-

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

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

3.The Correspondent,
Amir Jamal Higher Secondary School,
Idyankulam,
Padmaneri Post Office,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents 1 & 2 to sanction the annual increments with all attendant benefits to the petitioner from 01.09.2017 onwards with all consequential benefits, by considering the representation given by the petitioner, dated 11.03.2021.

For Petitioner : Mr. E.Marees Kumar
For R1 & R2 : Mr.C.M.Mari Chelliah Prabhu
Additional Government Pleader

ORDER

This Writ Petition is filed to direct the respondents 1 & 2 herein to disburse the yearly increments and all other monetary benefits to the petitioner w.e.f., the date of appointment i.e., 01.09.2017.

2.Mr.C.M.Mari Chelliah Prabhu, learned Additional Government Pleader takes notice on behalf of the respondents 1 & 2

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2. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3. The petitioner was appointed in the third respondent School, namely, Amir Jamal Higher Secondary School, which is a Religious Minority Educational Institution, as B.T. Assistant (History) on 01.09.2017 and is working as such in the said School. As per G.O.(Ms)No.181, School Education Department, dated 15.11.2011, Teachers Eligibility Test (TET) is mandatory for all the schools except Minority Educational Institutions.

4. According to the petitioner, the third respondent has sent a proposal dated 10.10.2017 to the respondents 1 & 2 for approving the appointment of the petitioner. On receipt of the said proposal, the first respondent passed an order on 15.12.2017, releasing the salary from the date of her appointment i.e., from 01.09.2017. Though the petitioner was sanctioned with salary, yearly increments payable to her have not been paid so far. In this regard, the petitioner has submitted a detailed representation to the respondent on 11.03.2021 and the same is kept pending without any progress.

5. The learned counsel for the petitioner submitted that the petitioner was paid with only salary, but was not given yearly increments by the respondents 1 & 2. Once the appointment is approved, the teacher is entitled to all other monetary benefits. Though the appointment of the petitioner was approved w.e.f 01.09.2017, the respondents 1 and 2 have not sanctioned the yearly increments. In pursuant to the Right of Children to Free and Compulsory Education Act, 2009, pass in "Teachers Eligibility Test" was prescribed as an additional qualification for appointment of Teachers, vide G.O.(Ms)No.181, School Education (C2) Department, dated 15.11.2011. As regards, the applicability of the Right of Children to Free and Compulsory Education Act, 2009, to minority educational institutions are concerned, 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 applied to minority educational institutions. Therefore, 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. 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 the minority educational



institutions. As such, the petitioner is entitled for yearly increment without pass in "Teachers Eligibility Test" as per the aforesaid order passed by this Court. The petitioner was appointed as B.T. Assistant in the sanctioned post and she is entitled to yearly increments and hence, she has come out with the present writ petition for the above stated relief.

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

7. From the above contentions, it is seen that according to the petitioner, even though the third respondent has sent request on 10.10.2017 itself to the first and second respondents to disburse the yearly increments to the petitioner, the second respondent informed the petitioner orally that yearly increments have not been disbursed to her, as she has not passed Teachers Eligibility Test. But, no such order was passed by the second respondent in writing. In any event, the respondents 1& 2 have not passed any orders on the request and remainders of the third respondent. The similar issue was considered by this Court in W.P (MD) No.23701 of 2019, vide order, dated 11.11.2019. After considering the order dated 26.07.2018, made in W.P (MD) No.16428 of 2018, this Court granted relief to the petitioner therein. The relevant portion of the said order reads as follows:-

"3. The case of the petitioner is that the fifth respondent School is a recognized minority aided School and the petitioner was appointed as Secondary Grade Teacher in the fifth respondent School, in the sanctioned post. As such, the fifth respondent sent the proposals for appointment to the third respondent through fourth respondent, for approval and the same was approved and the monthly salary of the petitioner was alone disbursed, but, the respondents failed to confer all service benefits to the petitioner, for which, a proposal dated 10.07.2017 was sent by the fifth respondent to the fourth respondent. The same was not considered, for non-compliance of TET qualification. Hence, the writ petitioner is before this Court with the above said prayer.

4. The learned counsel appearing for the petitioner 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



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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. This Court is of the view that the aforesaid order holds good in favour of the petitioner herein, as she was appointed in the fifth respondent School, which is admittedly a recognised minority aided School; the appointment has also been made within the sanctioned strength; the petitioner claimed that she is having the required qualification to hold the said post."

8. In the present case, the petitioner was regularised as per the order of the first respondent and a pass in Teachers



Eligibility Test is not mandatory for the Teachers appointed in the minority educational institutions, as per the judgment of the Hon'ble Apex Court in ***Pramati Educational Cultural Trust and others vs. Union of India*** reported in **2014 (4) MLJ 486 (SC)**.

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9. For the above reasons, the writ petition is allowed. The third respondent is directed to resubmit the proposal to the respondents 1 & 2 within a period of two (2) weeks from the date of receipt of a copy of this order. On receipt of such proposal, the respondents 1 & 2 are directed to consider the proposal of the third respondent, for disbursing the yearly increments and other monetary benefits to the petitioner with effect from the date of her appointment and pass orders on merits and in accordance with law. No costs.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Am/smn2

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 District Educational Officer,
Valliyur,
Tirunelveli District.



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

+1 cc to Mr.E.Marees Kumar , Advocate SR.No.17459

+1 cc to The Special Government Pleader Sr.No.18393

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KM(03.06.2021) 6P 5C