



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.8452 of 2021

A.Pushpalatha

... Petitioner

-Vs-

1.The District Educational Officer,
Thoothukudi @ Pudukottai,
Thoothukudi District.

2.The Block Educational Officer,
Srivaikundam,
Thoothukudi District.

3.The Correspondent,
R.C.Middle School,
Sebathaiapuram,
Srivaikuntam Taluk,
Thoothukudi District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing 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., 24.06.2013.

For Petitioner : Mr. A.Ajith Geethan
For R1 & R2 : Mr.N.Shanmugaselvam
Additional Government Pleader

ORDER

This Writ Petition is filed to direct the first respondent herein to disburse the yearly increments and all other monetary benefits to the petitioner w.e.f., the date of appointment i.e., 24.06.2013.

2.Mr.N.Shanmugaselvam, learned Additional Government Pleader takes notice on behalf of the respondents. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3. The petitioner is working as B.T.Assistant (Science) in the third respondent School, which is a recognised aided minority educational institution. The petitioner was appointed as B.T.Assistant (Science) in a sanctioned vacancy with effect from 24.06.2013. She has not passed Teachers Eligibility Test and hence, her approval for appointment was denied. Therefore, the petitioner filed a writ petition in W.P(MD)No.22084 of 2015. This Court, by



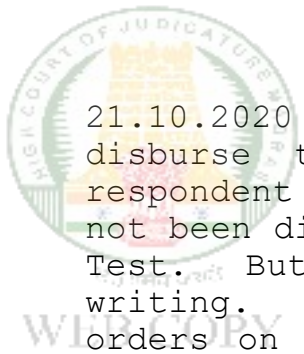
order, dated 24.08.2016 allowed the writ petition, directing the first respondent to approve the appointment of the petitioner as B.T.Assistant from the date of appointment. As per the order of this Court, the first respondent approved the appointment of the petitioner, by the proceedings, dated 22.11.2017.

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4. The learned counsel for the petitioner submitted that the petitioner was paid only salary but was not given yearly increment by the respondents 1 & 2. Once the appointment is approved, the teacher is entitled to all other monetary benefits. Hence, the third respondent School submitted several representations to the respondents 1 & 2, requesting to disburse the yearly increment to the petitioner. Finally, on 21.10.2020 the third respondent School sent representation to the first respondent through second respondent requesting to disburse the yearly increment to the petitioner. The respondents 1 & 2 have not passed any orders on the representation submitted by the school. In pursuance of 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 increment and hence, she has come out with the present writ petition for the above stated relief.

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

6. From the above contention, it is seen that according to the petitioner, even though the third respondent has sent request on



21.10.2020 to the first respondent through second respondent to disburse the yearly increments to the petitioner, the second respondent informed the petitioner orally that yearly increment has 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 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 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.



9. In the result, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar (T&P)

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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.

To

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+1 CC to M/s.SPL GP (SR-17514[F] dated 26/04/2021)

W.P. (MD)No.8452 of 2021
23.04.2021

ES (CO)
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