



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.8807 of 2021

and

W.M.P(MD)No.6627 of 2021

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S.M.Shanthi

... Petitioner

vs.

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

2.The Block Educational Officer,
Kalaiyarkovil,
Sivagangai District.

3.The Correspondent,
R.C Middle School,
Soosaiapparpattinam,
Kalaiyarkovil,
Tirunelveli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the second respondent in his proceedings in O.Mu.No.259/A1/2021, dated 25.03.2021 and quash the same and direct the first and second respondents to sanction yearly increments to the petitioner from the year 2012 onwards with all consequential benefits.

For Petitioner : Mr.V.Panneer Selvam

For RR 1 & 2 : Mr.N.Shanmuga Selvam
Additional Government Pleader

ORDER

The Writ Petition is filed seeking a Writ of Certiorarified Mandamus, to quash the order passed by the second respondent, vide proceedings in O.Mu.No.259/A1/2021, dated 25.03.2021 and directing the first and second respondents to sanction yearly increments to the petitioner from the year 2012 onwards with all consequential benefits.

2.Mr.N.Shanmugaselvam, learned Additional Government Pleader accepts notice on behalf of the respondents 1 and 2.



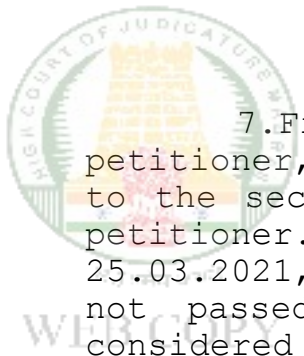
3. According to the petitioner, she is working as B.T (Assistant) in the third respondent School, which is a minority institution. The petitioner was appointed as B.T (Assistant) in a sanctioned vacancy with effect from 01.02.2012 and her appointment was approved by the first respondent on 06.08.2012.

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4. The learned counsel for the petitioner submitted that 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 increments to the petitioner. Finally, on 15.03.2021, the third respondent School sent a representation to the second respondent, requesting to disburse the yearly increments to the petitioner. The second respondent rejected the same, vide impugned order, dated 25.03.2021, on the ground that the petitioner has not passed Teachers Eligibility Test. Challenging the said impugned order, the petitioner has come out with the present Writ Petition.

5. The learned counsel appearing for the petitioner submitted that in pursuance of 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 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 increments 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 prayed for allowing the Writ Petition.

6. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 and 2.



7. From the above contention, it is seen that according to the petitioner, the third respondent sent a representation on 15.03.2021 to the second respondent to disburse the yearly increments to the petitioner. But, the second respondent, vide impugned order, dated 25.03.2021, rejected the same on the ground that the petitioner has not passed Teachers Eligibility Test. 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.



10. In the result, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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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 District Educational Officer,
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+1 CC to M/s.SPL GP (SR-18266[F] dated 30/04/2021)

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29.04.2021

RK(11.05.2021) 5P 5C