



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.8853 of 2021

K.Priya Pauline

... Petitioner

vs.

1.The District Educational Officer,
Tenkasi,
Tenkasi District.

2.The Block Educational Officer,
Sengottai,
Tenkasi District.

3.The Correspondent,
AG Primary School,
Sengottai,
Tenkasi District - 627 809.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the first respondent herein to disburse the yearly increments and all other monetary benefits to the petitioner with effect from the date of appointment ie., 01.08.2011.

For Petitioner : Mr.A.Ajith Geethan
For RR 1 & 2 : Mr.C.M.Mari Chelliah Prabhu
Additional Government Pleader

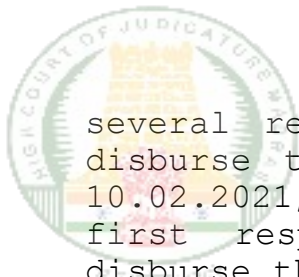
ORDER

The Writ Petition is filed seeking a Writ of Mandamus, directing the first respondent to disburse the yearly increments and all other monetary benefits to the petitioner with effect from the date of appointment ie., 01.08.2011.

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

3.According to the petitioner, she is working as a Secondary Grade Teacher in the third respondent School, which is a recognised aided minority educational institution. The petitioner was appointed as Secondary Grade Teacher in a sanctioned vacancy with effect from 01.08.2011 and her appointment was approved by the first respondent, vide proceedings in Ni.Mu.No.6792/Aa1/2012, dated 30.05.2012.

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 10.02.2021, the third respondent School sent a representation to the first respondent through the second respondent requesting to disburse the yearly increments to the petitioner. The respondents 1 & 2 have not passed any orders on the representation submitted by the school. 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 Secondary Grade Teacher 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.

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

6.From the above contention, it is seen that according to the petitioner, even though the third respondent has sent a representation on 10.02.2021 to the first respondent through the second respondent 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 the 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.

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."

7. In the present case, the petitioner's appointment was approved by the first respondent, vide proceedings in Ni.Mu.No.6762/Aa1/2012, dated 30.05.2012 and passing in Teachers Eligibility Test is not mandatory for the Teacher appointed in the minority institution, as per the judgment in **Pramati Educational Cultural Trust and others vs. Union of India** reported **2014 (4) MLJ 486 (SC)**.

8. For the above reasons, the third respondent is directed to re-submit 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 appointment i.e., on 01.08.2011 and pass orders on merits and in accordance with law, within a period of four weeks.

9. In the result, the Writ Petition is allowed. No costs.

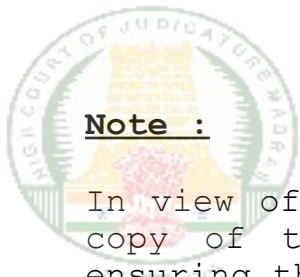
Sd/-

Assistant Registrar (Records)

// 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.

To

1.The District Educational Officer,
Tenkasi,
Tenkasi District.

2.The Block Educational Officer,
Sengottai,
Tenkasi District.

+1 CC to M/s.SPL GP (SR-18300[F] dated 30/04/2021)

W.P (MD) No.8853 of 2021
29.04.2021

PM(CO)
KB(13.05.2021) 5P 4C