



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.10505 of 2021

S.Devavaram Selva Jeberson

... Petitioner

-Vs-

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

2.The Block Education Officer No.II,
Kalakad Union, Kalakad.

3.The Hindu Primary School
(A Minority Institution),
Represented by its Correspondent,
Panditharkurichi Village,
Paththai Post, Kalakad,
Nanguneri Taluk, Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents 1 and 2 to pay the yearly increment to the petitioner by approving the sanction of yearly increment from 01.10.2018 as per the proposal forwarded by the third respondent and pay all monetary benefits within the time fixed by this Court.

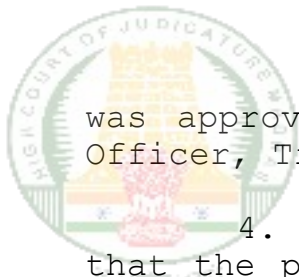
For Petitioner : Mr. H.Arumugam
For R1 & R2 : Mr.K.S.Selvaganesan
Government Advocate

ORDER

This Writ Petition is filed to direct the respondents 1 and 2 to pay the yearly increment to the petitioner by approving the sanction of yearly increment from 01.10.2018 as per the proposal forwarded by the third respondent and pay all monetary benefits within the time fixed by this Court.

2.Mr.K.S.Selvaganesan, learned Government Advocate takes notice on behalf of the respondents 1 & 2. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3. The learned counsel appearing for the petitioner submitted that the petitioner was appointed as Secondary Grade Teacher on 03.10.2017 in a sanctioned vacancy due to the superannuation of one J.Helen Arul Emiman in the third respondent School, which is a recognised aided minority educational institution. His appointment



was approved on 12.03.2018 by the District Elementary Educational Officer, Tirunelveli.

4. The learned counsel appearing for the petitioner submitted that the petitioner was paid only salary, but was not given yearly increment due from 01.10.2018 without any reason. Once the appointment is approved, the teacher is entitled to all other monetary benefits. Hence, the petitioner requested the second respondent and the same was kept pending for non-compliance of Teachers Eligibility Test qualification. 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 Secondary Grade Teacher in the sanctioned post and he is entitled to yearly increment and hence, he 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 Government Advocate 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 04.05.2021 to the first respondent through second respondent to disburse the yearly increments to the petitioner, 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 reminders 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 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 was appointed as Secondary Grade Teacher in the third respondent School, which is admittedly a recognised minority aided School and the appointment has also been made within the sanctioned strength. As per the judgment in ***Pramati Educational Cultural Trust and others vs. Union of India*** reported **2014 (4) MLJ 486 (SC)**, a qualification of pass in Teachers Eligibility Test is not mandatory for the Teacher appointed in the minority institution.

8. 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 increment and other monetary benefits to the petitioner with effect from the date of appointment i.e., on 03.10.2017 and pass orders on merits and in accordance with law.

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

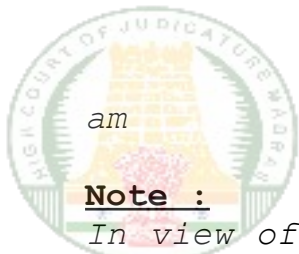
Sd/-

Assistant Registrar(CS-I)

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/ /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,
Valliyoor, Tirunelveli District.

2.The Block Education Officer No.II,
Kalakad Union, Kalakad.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-20289[F] dated 25/06/2021)

+1 CC to M/s.SPL GP (SR-20329[F] dated 25/06/2021)

W.P. (MD) No.10505 of 2021

24.06.2021

SGS (CO)

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