



WEB COPY

W.A.(MD)No.1371 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD) No.1371 of 2021

and

C.M.P (MD) No.5712 of 2021

1. The State of Tamil Nadu,  
Rep. by its Secretary to Government,  
Department of School Education,  
Fort St.George, Chennai.
2. The Director of School Education,  
College Road, Chennai - 600 006.
3. The Chief Educational Officer,  
Chief Educational Office,  
Ramnad District.
4. The District Educational Officer,  
District Educational Office,  
Paramakudi, Ramnad District. ... Appellants/Respondents

**Vs.**

Hairathul Jamalia Higher Secondary School,  
Rep. by its Correspondent,  
C.A.Sadique Basha,  
Paramakudi, Ramanathapuram District. ... Respondent/Writ Petitioner

**Prayer:**

Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court made in W.P.(MD) No.12389 of 2020, dated 23.09.2020.

**Prayer in WP(MD). 12389/ 2020 :**

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue Writ of Mandamus to direct the respondents to release the increment from the year 01/04/2014 to the teacher namely Mrs.k.Ummuameena , B.T.Assistant( Tamil ) and continue to pay the increment for subsequent years

For Appellants : Mr.R.Baskaran,  
Standing Counsel for Government



**J U D G M E N T**

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

We have heard Mr.R.Baskaran, learned Government Counsel appearing for the appellants.

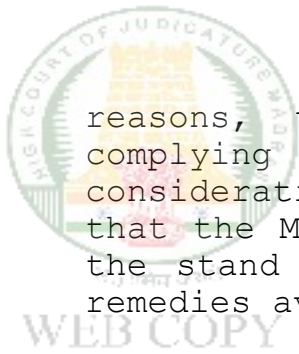
2. This appeal filed by the State is directed against the order dated 23.09.2020, in W.P(MD).No.12389 of 2020.

3. Mr.R.Baskaran, learned Government Counsel appearing for the appellants submitted that the teacher for whom the Management has given a proposal has not passed the Teachers Eligibility Test (TET), which is a qualification prescribed under the Right of Children to Free and Compulsory Education Act, 2009. If the argument that the Teachers Eligibility Test is not made applicable to minority institutions is accepted, it would be a clear discrimination among the teachers. Further, it is submitted that the Hon'ble Supreme Court in the celebrated decision in the case of **Tma Pai Foundation & Ors., v. State of Karnataka & Ors.,** has held that the Government has authority to prescribe the qualification of teachers and the same would be applicable to minority institutions also.

4. In this regard, the learned Government Counsel appearing for the appellants has referred to paragraph No.5(c) of the judgment. Further, the issue which is raised in this appeal was considered in W.P(MD).No.18489 of 2019 and W.P(MD).No.7574 of 2018 and the said writ petitions have been directed to be placed before the Division Bench after impleading the Ministry of Human Resource and Development Department, Government of India, New Delhi, on the ground that the decision in the case of **Pramati Educational and Cultural Trust v. Union of India & Ors.,** has not dealt with the Teachers Eligibility Test issue.

5. In our considered view, the necessity to adjudicate the above grounds raised by the learned Government Counsel may not arise in this appeal, on account of the nature of direction issued by the learned Single Bench. In paragraph No.6 of the impugned order, the direction issued to the fourth appellant is to consider the proposal of the respondent-School, who have sought for sanction of annual increment to a teacher, who was appointed on 15.06.2011, as a B.T. Assistant (Tamil).

6. The learned Writ Court has directed to pass necessary orders on the said proposal, which would mean that, orders have to be passed on merits and in accordance with law. Thus it goes without saying, that when a proposal is submitted by the Management, if the proposal is feasible of consideration, then the Department may approve the proposal. But, if the proposal is defective for certain



reasons, the proposal can be returned for resubmission after complying the defects and if the proposal is not feasible for consideration, then the Department has to pass a speaking order, so that the Management as well as the teacher will know as to what is the stand of the Department to enable them to work out the other remedies available with them under the law.

7. Therefore, we are not inclined to entertain this appeal and dispose of this appeal with the observation that the fourth respondent shall comply with the orders passed by the learned Single Bench by passing an order on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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**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 Secretary to Government,  
The State of Tamil Nadu,  
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+1 CC to M/s.SPL GP ( SR-23215[F] dated 19/07/2021 )