



WEB COPY

W.A(MD)No.2142 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A(MD)No.2142 of 2021

and

C.M.P(MD)No.10032 of 2021

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort. St. George,
Chennai-600 009.

2.The Director of School Education,
College Road,Chennai-600 006.

3.The Chief Educational Officer,
Ramnad, Ramnad District.

4.The District Educational Officer,
Paramakudi, Ramnad District.

: Appellants/Respondents

.vs.

The Correspondent,
Hyrathul Jamalia Higher Secondary School,
Paramakudi,
Ramnad District.

: Respondent/Writ Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD)No.3029 of 2014, dated 09.12.2019.

Prayer in WP(MD). 3029/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 2nd respondent/ director of school education in Na.Ka.No.34116/D1/E4/2013 dated 7.11.2013 and the consequential order issued by the 4th respondent DEO in Na.Ka.No.9373/A3/2013 dated 20.11.2013, Quash the same in so far as the petitioner is concerned and further direct the respondents 2 to 4 to continue to disburse the grant in aid towards salary to the B.T Assistant in the petitioners school so as to enable the teacher Mrs. M. Millath Gani. to continue in employment and receive salary.

For Appellants

: Mr.P.Subbaraj

Additional Government Pleader

<https://hcservices.ecourts.gov.in/hcservices/>



For Respondent

: Mr.K.Vadivelu

JUDGMENT

[Judgment of the Court was made by **P.VELMURUGAN, J.**]

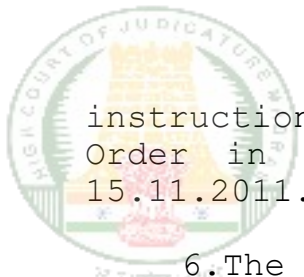
This writ appeal is filed against the order passed by this Court in W.P.(MD)No.3029 of 2014, dated 09.12.2019, filed by the respondent/writ petitioner.

2.The case of the writ petitioner/respondent school herein is that the petitioner/respondent is an aided minority school and the respondent school appointed one teacher, namely, Mrs.M.Millath Gani as Graduate Teacher on 01.12.2011. The District Educational Officer/4th appellant herein, approved the appointment of the said teacher on 14.12.2011 itself. Subsequently, based on G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2021 issued by the Government, second respondent has been directed to instruct all the District Educational Officers including the fourth respondent to cancel the orders of approval of appointment in respect of 499 teachers, who had not passed the Teacher Eligibility Test (TET) and therefore, the fourth respondent cancelled the approval of the said teacher, Mrs.M.Millath Gani, vide order, dated 20.11.2013. Challenging the said order of the cancellation passed by the fourth respondent, the writ petitioner/respondent school filed a writ petition before this Court.

3.The learned Single Judge, after hearing the arguments considered the materials and relied on the decision of the Hon'ble Division Bench of this Court in the case of **P.Savarimuthi Maria George Vs. The District Elementary Educational Officer, Virudhunagar District and others [W.A. (MD)No.948 of 2018]** and allowed the writ petition and directed the respondents to continue to disburse the grant-in-aid towards salary to the aforesaid teachers with arrears, if any, in accordance with law, within a period of four weeks from the date of receipt of a copy of that order. Now, challenging the said order passed by this Court, dated 09.12.2019, the appellants/respondents filed the present writ appeal before this Court.

4.Heard the learned Additional Government Pleader appearing for the appellants and the learned counsel appearing for the respondent school.

5.It is not in dispute that the respondent school is an aided minority school and that the respondent school appointed one Mrs.M.Millath Gani as Graduate Teacher and it is not in dispute that the appointment of the said teacher was approved by the District Educational Officer/4th appellant herein. Subsequently, since the said teacher did not pass the Teacher Eligibility Test (TET), her appointment was cancelled by the fourth appellant as per the



instruction given by the second respondent based on the Government Order in G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011.

6.The main contention of the learned Additional Government Pleader appearing for the appellant is that since the said teacher did not get through the Teacher Eligibility Test (TET) and she has not complied with the Government directions, her appointment was subsequently cancelled among other teachers about 499 teachers. The learned Single Judge failed to consider the same and allowed the writ petition. Hence, the appellants have preferred the present writ appeal.

7.The learned counsel appearing for the respondent school would submit that the issue is covered under the earlier decisions of the Hon'ble Division Bench of this Court in ***W.A.Nos.213 and 572 of 2016, dated 24.08.2016, W.A.No.948 of 2018, dated 13.12.2018 and W.A.No.948 of 2018, dated 13.12.2018.*** Therefore, the Government Order in G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 is not applicable to the respondent/school, since the respondent/school is a minority school.

8.We have considered the submissions on either side and perused the records.

9.Admittedly, the respondent school is an aided minority school and therefore, the said subject was dealt with by the Division Bench of this Court in the case of ***P.Savarimuthi Maria George Vs. The District Elementary Educational Officer, Virudhunagar District and others [W.A. (MD)No.948 of 2018]***. For approving all the teachers appointed by the minority school, the Teacher Eligibility Test is not necessary. Therefore, the learned Single Judge allowed the writ petition, in which, the relevant paragraph of the said decision is extracted hereunder:-

"...4.The issue involved in this case already came up for consideration before several Division Benches of this Court and it has been consistently held that G.O.Ms.No.181 is not applicable to the minority institutions and therefore, the respondents cannot insist the teachers working in minority institution to have TET qualification. In a recent decision in ***P.Savarimuthu Maria George v. The District Elementary Educational Officer, Virudhunagar District & Others, (W.A. (MD) No.948 of 2018)***, a Division Bench of this Court has noted all the decisions on this issue and allowed the appeal filed by a Teacher. For better appreciation, the relevant portion is extracted hereunder:

"4.Shortly after the disposal of the Writ Petition which is the subject matter of this appeal, a Division Bench of this Court in ***Secretary to Government,***



Government of Tamil Nadu, Chennai -vs- S. Jeyalakshmi [(2016) 5 CTC 639], held in paragraph Nos. 39 and 40, as follows:-

"39. In the decision relied upon by the Learned Senior Counsel for the Petitioners in **Ashwini Thanappan -vs- Director of Education** [(2014) 8 SCC 272], the issue that arose for consideration related to the interpretation of Article 27. The matter was referred to the Bench of appropriate strength for further examination. Since the Learned Counsel submitted that the Judgment in **Pramati Educational and Cultural Trust** is inconsistent with the Judgment of the Constitution Bench in **P.A. Inamdar -vs- State of Maharashtra** [(2005) 6 SCC 537]. The matter is pending consideration.

40. In view of the above, the contention of the Learned Additional Advocate General that the order of the Learned Single Judge directing the release of salary is not sustainable, in view of the reference of **Ashwini Thanappan** case to the Bench of appropriate strength, cannot be accepted, since the issue in **P.A. Inamdar** is with respect quota of admission of students in the unaided professional institutions, entrance test and fee structure. Therefore, the outcome of **Ashwini Thanappan** has nothing to do with the case on hand."

It would also be relevant to refer the following paragraphs in that Judgment of the Division Bench of this Court:-

"52. However, the Government, before issuing G.O. Ms.No. 181 dated 15.11.2011, lost sight of one important fact, namely imposition of a condition on the Teachers, who were appointed prior to the issue of G.O., in non minority Schools, both aided and unaided, to qualify themselves with TET within a period of five years, in order to continue in service, would cause great hardship to them. Moreover, if the Teachers who have put in more number of years of service, could not pass TET within five years, their contribution in service would be in jeopardy. Further, it is seen that the percentage of pass in the TET examination conducted in 2012 and 2013 was very minimal.

56. We are, therefore, of the considered view that the Government may seek a clarification from the NCTE, in the light of what is stated in the preceding paragraph, whether the prescription of minimum qualification of TET can be made applicable prospectively for the Teachers who were appointed subsequent to the date of issue of G.O., in both non minority and minority institutions and not retrospectively as the same would cause undue hardship



to the Teachers who have been serving for a quite a long time.

58. In our opinion, non qualifying in TET by the Teachers already in service should not defeat the object of the Government to provide quality and standard education and therefore, the Government may, in the alternative, conduct a refresher course and also some interactive sessions during annual vacation, in order to ensure and enhance the quality of education.

60. In the light of the above, we are of the view that the Government cannot insist upon the minority institution, both aided or unaided, to abide by any Regulation framed under the provisions of the RTE Act. Therefore, we hold that G.O. Ms. No. 181, School Education (C2) Department dated 15.11.2011 issued by the Government of Tamil Nadu, is not applicable to the minority institutions.

62. However, keeping in mind the larger interest in which the Government has issued the above G.O.s, this Court feels that the minority institutions may also consider conducting a refresher course and also some interactive sessions to all the Teachers during annual vacation, in order to ensure and improve the quality of Teachers."

The resultant effect of that decision is that it is not necessary for teachers in schools run by aided minority institutions to secure a pass in Teacher Eligibility Test for approving their appointment. The said view has been reiterated by the subsequent decisions of the Division Benches of this Court in **K. Solomon Jeyaraj -vs- Secretary, Department of School Education** (Judgment dated 25.11.2016 in W.A. (MD) No. 1437 of 2016), **Y. Kanagaraj -vs- State of Tamil Nadu** (Judgment dated 16.06.2017 in W.A. (MD) No. 724 of 2017) and **K. Anita -vs- State of Tamil Nadu** (Judgment dated 26.02.2018 in W.A. (MD) No. 1090 of 2017)"

10. In view of the same, the writ appeal fails and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

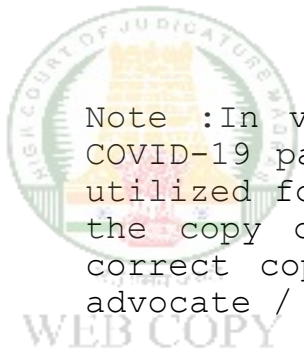
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Sub Assistant Registrar(CS)

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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

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- 4.The District Educational Officer,
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+1 CC to M/s.K. VADIVELU, Advocate (SR-36466[F]
dated 30/11/2021)

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and
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