



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A(MD)Nos.2243 and 2244 of 2021

and

C.M.P(MD)Nos.11122 and 11123 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
in both Writ Appeals

.vs.

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

:Respondent/Writ Petitioner
in both Writ Appeals

COMMON PRAYER: Writ Appeals filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD)Nos.18950 and 18951 of 2013, dated 18.07.2016.

Prayer in WP(MD). 18950/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue an appropriate writ, order or direction in the nature of a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 2nd Respondent Director of school education Na.Ka.No.34116/D1/E4/2013 dated 07.11.2013 and the consequential order issued by the 4th Respondent DEO in Na.Ka.No.9373/A3/2013 dated 18.11.2013 quash the same in so far as the petitioner is concerned and further direct the respondent 2 to 4 to continue to disburse the grant in aid towards salary to the BT Assistant in the



petitioners school Mrs. R.I.Asiath Jailani, and pass such further or other suitable order/ orders as this Hon'ble Court.

Prayer in WP(MD). 18951/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue an appropriate writ, order or direction in the nature of a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 2nd Respondent Director of school education Na.Ka.No.34116/D1/E4/2013 dated 07.11.2013 and the consequential order issued by the 4th Respondent DEO in Na.Ka.No.9373/A3/2013 dated 18.11.2013 quash the same in so far as the petitioner is concerned and further direct the respondent 2 to 4 to continue to disburse the grant in aid towards salary to the BT Assistant in the petitioners school Mrs. P. Benazir, and pass such further or other suitable order/orders as this Hon'ble Court.

For Appellants	: Mr.P.Subbaraj
in both W.As'	Special Government Pleader
For Respondent	: Mr.K.Vadivelu

COMMON JUDGMENT

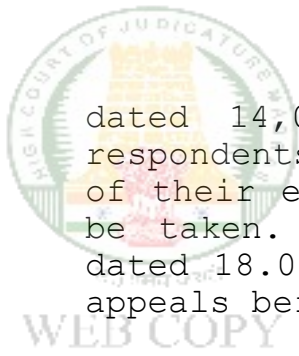
[Judgment of the Court was made by **PUSHPA SATHYANARAYANA, J.**]

These writ appeals are filed against the orders passed by this Court in W.P(MD)Nos.18950 and 18951 of 2013, dated 18.07.2016, 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 two teachers, namely, R.I.Asiah Jailani and Mrs.P.Benazir as B.T.Assistant on 21.09.2012 The District Educational Officer/4th appellant herein, approved the appointment of the said teachers on 16.10.2002 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 teachers, Mr.R.I.Asiath Jailani and Mrs.P.Benazir vide order, dated 18.11.2013. Challenging the said orders of the cancellation passed by the fourth respondent, the writ petitioner/respondent school filed a writ petitions 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 W.A.No.1299 of 2015,

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dated 14.09.2015, allowed the writ petitions and directed the respondents to give salary to the Petitioners herein in the course of their employment and no steps to remove them from service shall be taken. Now, challenging the said order passed by this Court, dated 18.07.2016, the appellants/respondents filed the present writ appeals before this Court.

4. Heard the learned Special Government Pleader appearing for the appellants and perused the materials placed before this Court.

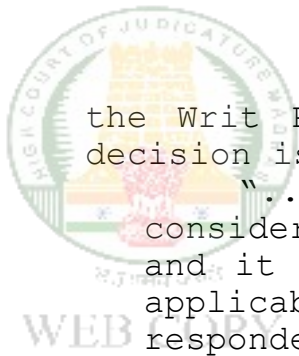
5. It is not in dispute that the respondent school is an aided minority school and that the respondent school appointed two teachers, namely, R.I. Asiah Jailani and Mrs. P. Benazir as B.T. Assistants on 21.09.2012 and it is not in dispute that the appointment of the said teachers was approved by the District Educational Officer/4th appellant herein. Subsequently, since the said teachers did not pass the Teacher Eligibility Test (TET) and hence, their 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 Special Government Pleader appearing for the appellants is that since the said teachers did not get through the Teacher Eligibility Test (TET) and they have not complied with the Government directions, their appointments were subsequently cancelled among other teachers about 499 teachers. The learned Single Judge failed to consider the same and dispose of the writ petitions with certain directions. Hence, the appellants have preferred the present writ appeals.

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 Hon'ble Division Bench of this Court in the case of ***P. Savarimuthu 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 Petitions, 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 appeals fail and the same stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsn

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,
The State of Tamil Nadu,
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.

+2 CC to M/s.K.VADIVELU, Advocate (SR-39930[F] dated 22/12/2021)
+1 CC to M/s.SPL GP (SR-40252[F] dated 23/12/2021)

COMMON ORDER MADE IN
W.A(MD)Nos.2243 and 2244 of 2021
and
C.M.P(MD)Nos.11122 and 11123 of 2021
22.12.2021

DJ(CO)

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