



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.09.2021

CORAM

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P. (MD) No. 11751 of 2021

A.Rafeek Ahmad

... Petitioner

Vs.

- 1.The Chief Educational Officer,
Tirunelveli,
Tirunelveli District.
- 2.The District Educational Officer,
Tirunelveli,
Tirunelveli District.
- 3.The Correspondent,
Rahmania Higher Secondary School,
Melapalayam,
Tirunelveli District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for issuance of a **Writ of Certiorarified Mandamus**, calling for the records relating to impugned order in O.Mu.No 1040/A2/2021 dated 30.06.2021 of the 2nd respondent herein and quash the same and consequently direct the respondents 1 and 2 herein to award annual increments, incentive, surrender leave benefits and other attended benefits to the petitioner from the date of petitioner's appointments namely 01.06.2016 with all attendant benefits including pay fixation and allowance and pass such other and further orders as this Court.

For Petitioner : Mr.T.Pon Ramkumar
For Respondents : Mr.A.K.Manikkam,
Standing Counsel,
for respondents 1 and 2

O R D E R

This Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in O.Mu.No 1041/A2/2021 dated 30.06.2021, passed by the second respondent, and quash the same in so far as seeking "Teacher Eligibility Test" particulars of the petitioner, direct the third respondent to resubmit the proposal for yearly annual



increment to the petitioner for the post of B.T. Assistant (Science) in the third respondent school and consequently direct the second respondent to approve the proposal of yearly annual increment to the petitioner with all monetary benefits within the time frame.

2. According to the petitioner, he was appointed as B.T.Assistant, on 01.06.2016 in the third respondent school, which is a minority institution, in a sanctioned post. The third respondent school sent a proposal to the second respondent for approval of appointment of the petitioner. The second respondent, vide proceeding dated 30.06.2021, returned the proposal on the ground that the petitioner has not passed the Teacher Eligibility Test. Aggrieved against the said order, the petitioner has filed the present Writ Petition.

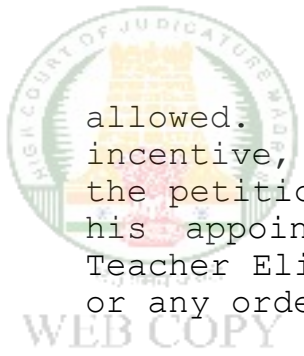
3. The learned counsel appearing for the petitioner submitted that in a similar circumstances, a batch of Writ Petitions in W.P. (MD)No.16428 of 2018 was filed before this Court, seeking annual increments to the teachers who are working in the minorities school without Teacher Eligibility Test. By order dated 26.07.2018, this Court allowed the said Writ Petition. As against the said order, the respondents herein filed Writ Appeal in W.A.(MD)No.1413 of 2019 etc. batch before this Court. This Court by order dated 17.11.2019, dismissed the said Writ Appeals. Hence, following the said judgment, the case of the petitioner is to be considered.

4. The learned Standing Counsel for the State appearing for the respondents would submit that as against the judgment in W.A.(MD) No.1413 of 2019, no further appeal has been preferred by the respondents.

5. Heard the learned counsel appearing for the petitioner, the learned Standing Counsel for the State appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent and perused the materials available on record.

6. On a perusal of the records, it is seen that, this Court in a similar circumstances, by order dated 26.07.2018 in W.P.(MD) No.16428 of 2018, directed the respondents to award annual increment to the teachers, who are working in the minority institution, without passing Teacher Eligibility Test, like petitioner. Further, both sides admitted that the aforesaid issue is now under reference before the Hon'ble Supreme Court in the case of ***Aswini Vs. Thenappan***. Therefore, subject to the out come of the said case, the second respondent cannot deny the relief as sought for by the petitioner. Hence, this Court has no hesitation to quash the impugned order passed by the second respondent.

7. Accordingly, the impugned order passed by the second respondent dated 30.06.2019 is quashed and this Writ Petition is



allowed. The respondents are directed to award annual increments, incentive, surrender leave benefits and other attendant benefits to the petitioner including pay fixation and allowance from the date of his appointment viz., 01.06.2016, without insisting to pass in Teacher Eligibility Test, subject to the outcome of any modification or any order passed by the Court. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

btr/mnr

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 Chief Educational Officer,
Tirunelveli,
Tirunelveli District.
- 2.The District Educational Officer,
Tirunelveli,
Tirunelveli District.

+1 CC to M/s.T.PON RAMKUMAR, Advocate (SR-30084[F] dated 23/09/2021)

W.P. (MD) .No.11751 of 2021
23.09.2021

SRK (CO)
GC(28.10.2021) 3P 4C