



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2021

CORAM

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.(MD) No. 12460 of 2021

and

W.M.P(MD).No.9761 of 2021

WEB COPY

S. Sahaya Elisa Rosary
BT Assistant English
St. Mary's Girls Higher Secondary School,
Devakottai -630 302.

... Petitioner

Vs.

1. The Chief Educational Officer,
Sivagangai, Sivagangai District.

2. The District Educational Officer,
Devakottai, Sivagangai District.

3. The Correspondent,
St. Mary's Girls Higher Secondary School,
Devakottai - 630302.

...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 the impugned proceedings issued by the second respondent District Educational Officer in A.Thi.Mu.No.354/A2/2021 dated ..01.2021, quash the same, and further direct the respondents 1 and 2 herein to sanction forthwith the annual increments and other allowances towards the salary of petitioner as BT Assistant English in the third respondent school from the date of her appointment i.e., 01.06.2012.

For Petitioner

:Ms. Amala .A

For Respondents

:Mr.S.Shanmugavel,

Standing Counsel for State
for R1 & R2.

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 proceedings issued by the second respondent District Educational Officer in A.Thi.Mu.No.354/A2/2021 dated Nil.01.2021, quash the same and consequently, direct respondents 1 and 2 to sanction forthwith the annual increments and other allowances towards the salary of petitioner as BT Assistant (English) in the third respondent school from the date of her appointment i.e. 01.06.2012.



2. According to the petitioner, the petitioner was appointed as B.T. Assistant English in the third respondent school, with effect from 01.06.2012. The said appointment was approved by the second respondent. The petitioner claims that she is entitled to annual increment as per the Government Orders. The said proposal for payment of annual increment was rejected by the second respondent on the ground that the petitioner has not passed the Teacher's Eligibility Test as per the Right to Children to Free and Compulsory Education Act, 2009. Challenging the said order, the present writ petition has been filed.

3. The learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of *Pramati Educational and Cultural Trust and ors. vs. Union of India and Ors.* (2014) 4 MLJ 486 (SC) wherein it is held that the Right to Children to Free and Compulsory Education Act, 2009 itself is not applicable to the minority institutions. Following the said order of the Hon'ble Supreme Court, a Division Bench of this court in the case of *Secretary to Government vs. S.Jayalakshmi* (2016) 5 CTC 639, by judgment dated 24.08.2016 quashed the G.O.Ms.No.181 insofar as it is applicable to minority institutions holding that the teachers appointed in minority educational institutions need not possess the Teacher's Eligibility Test qualification.

4. The same issue, with regard to payment of annual increment, came before this court in WP(MD) Nos.19603 and 19659 of 2019, and this court has passed an order directing the educational authorities to pay annual increment to the petitioner therein and has allowed the writ petition. Challenging the said order, the respondents therein have preferred an appeal in W.A.(MD) Nos.643 and 643 of 2020 and the Hon'ble Division Bench of this court has dismissed the writ appeals by order dated 27.08.2020.

5. According to the learned counsel for the petitioner, the present issue is also squarely covered by the orders passed by the Hon'ble Supreme Court and Division Bench of this court. Therefore, the learned counsel prays for quashing the impugned order and the consequential direction as mentioned above.

6. A counter-affidavit has been filed by the second respondent. On a perusal of the counter-affidavit, it is seen that the respondents have not disputed the above position, nor any contra judgment has been cited.

7. This court has heard the learned counsel and perused the documents available on record. The judgment passed by the Division Bench of this court in the writ appeals has become final. The respondents have not produced any judgment wherein a different view



has been taken. Therefore, in such circumstances, judgment of the the Division Bench of this court is binding on this court.

8. This court had an occasion to deal with a writ petition of similar nature in WP (MD) No.13374 of 2021. The said writ petition was disposed of by order dated 05.08.2021, and this court has, in paragraphs 6 and 7, held as under:-

"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 petitioner 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 20.01.2020 is quashed and this Writ Petition is allowed. The respondents are directed to award annual increments, incentive, surrender leave benefits and other attended benefits to the petitioner including pay fixation and allowance from the date of his appointment viz., 16.07.2012, without insisting to pass in Teacher Eligibility Test. No costs. Consequently, connected miscellaneous petition is closed".

9. In view of the above, this court has no hesitation to hold that the impugned order is not in consensus with the earlier decisions rendered by this court. The third respondent is, therefore, directed to resubmit the proposal within a period of two weeks from the date of receipt of a copy of this order. In case the third respondent has already resubmitted the said proposal to the educational authority, the second respondent shall consider the same and pass orders, with copies marked to the third respondent, in the light of the decisions cited supra, to grant annual increment to the petitioner, without insisting upon to pass the TET examination. Such exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.



10. With the above directions, the writ petition is disposed of. There is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS II)

// 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,
Sivagangai, Sivagangai District.
2. The District Educational Officer,
Devakottai, Sivagangai District.

+1 CC to M/s.A.AMALA, Advocate (SR-29907[F] dated 22/09/2021)

+1 CC to M/s.SPL. GP (SR-29768[F] dated 21/09/2021)

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and
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MGJ/PM(15.11.2021) 4P 5C