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W.P.(MD) No.13848 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2021

CORAM

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P. (MD) No.13848 of 2021

and W.M.P (MD) Nos.10808 & 10810 of 2021

H.Manjula Rajam

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep. by the Secretary,
Department of School Education,
Fort St. George,
Madras - 600 009.
- 2.The Director of School Education,
DPI Campus,
College Road, Chennai - 600 006.
- 3.The Chief Educational Officer,
The Office of the Chief Educational Officer,
Tenkasi District.
- 4.The District Educational Officer,
The Office of the District Educational Officer,
Cheranmadevi,
Tirunelveli District.
- 5.The District Educational Officer,
The Office of the District Educational Officer,
Tenkasi - 627 811, Tenkasi District.
- 6.The Correspondent,
St. Antony's High School,
Kalyanipuram, Karuthapillayur,
Tenkasi District - 627 418.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings, dated 10.03.2021, in A.Thi.Mu.No.367/AA3/2021, on the file of the 5th respondent and quash the same in respect of the petitioner, directing the respondents to allow the increment and incentive for the petitioner Mrs.H.Manjula Rajam, as B.T.Assistant (Science) in St.Antony's High School, Kalyanipuram, Karuthapillayur, Tenkasi District - 627 418 w.e.f. 11.07.2013, with all service benefits.



For Petitioner : FR.V. John Kennedy for
M/s.Father Xavier Associates

For Respondents : Mr. A.K.Manickam
Standing Counsel for Govt. for R1 to R5

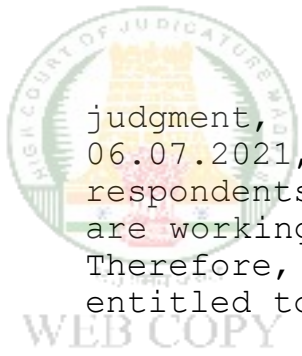
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O R D E R

This Writ Petition has been filed challenging the impugned order passed by the fifth respondent and for a consequential direction to the respondents to award increments and incentive to the petitioner.

2. According to the petitioner, she was appointed as B.T.Assistant (Science), on 11.07.2013 in the sixth respondent school in the vacancy arising out of the transfer of one Mr.Valentine Durai Santiago on 02.07.2013. The said post is a regular sanctioned post with grant-in-aid from the Government. The proposal for the approval to the appointment of the petitioner as B.T.Assistant (Science) in the above said School, was forwarded to the educational authorities. But the said proposal was returned on 30.11.2013, on the ground that the petitioner has not passed the Teacher Eligibility Test. Thereafter, in view of the final order passed in W.A.No.213 of 2016 and etc, batch cases, dated 24.08.2016, wherein the Hon'ble Division Bench of this Court directed the respondents to grant approval and pay salary, the fourth respondent, vide proceedings in Na.Ka.No.4471/A4/15, granted approval to the appointment of the petitioner and thereafter, the petitioner is receiving the salary. After obtaining approval on 21.03.2017, the sixth respondent school sent a proposal, requesting to grant increment and incentive to the petitioner. However, the fifth respondent by the impugned proceeding dated 10.03.2021, returned the said proposal stating that the proposal will be considered only after receiving orders from the Director of School Education in this regard. Challenging the same, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner would submit that on the similar issue, the Division Bench of this Court in ***Secretary to Government, Government of Tamil Nadu, Education Department and others Vs. S.Jeyalakshmi and another*** reported in ***(2016) 7 MLJ 155***, has held that G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011, through which TET was introduced, is not applicable to the minority institutions. Based on the said judgment, the second respondent vide proceeding dated 31.01.2017, has issued directions to all the CEOs and DEOs to disburse salary to the teachers, who are working in the minority institutions, without TET qualifications. He further submitted that following the said



judgment, the Division Bench of this Court, by order dated 06.07.2021, in W.A.(MD)Nos.1273 & 1274 of 2021, directed the respondents to grant increment and incentive to the teachers, who are working in the minority institutions without TET qualifications. Therefore, following the said judgment, the petitioner is also entitled to get the relief as sought for in this Writ Petition.

4. The learned Standing Counsel for the Government appearing for the respondents 1 to 5 would submit that the issue of granting approval to the teachers, who are working in the minority institutions without TET qualification, is pending before the Larger Bench of the Hon'ble Supreme Court and therefore, subject to the outcome of the decision of Hon'ble Supreme Court, the request of the petitioner will be considered and appropriate orders will be passed.

5. I have anxiously considered the rival submissions and also perused the materials placed on record.

6. It is relevant to extract the relevant portion of the judgment of the Division Bench of this Court in W.A.(MD)Nos.1273 & 1274 of 2021

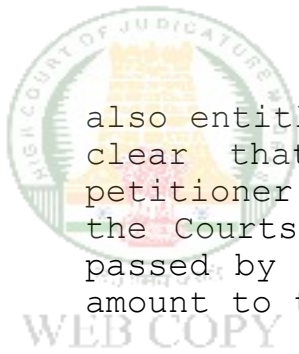
"4. Furthermore, identical relief was sought for in W.P(MD).Nos.10950 to 10953 of 2019, which was allowed by order dated 29.04.2019 and such order was put to challenge by the Department in W.A(MD).Nos.1416 to 1419 of 2019, which was dismissed by the judgment dated 27.11.2019.

5. We find that these orders have been implemented by the Department in March, 2021 and benefits have been sanctioned. Therefore, we are of the considered view that selectively filing appeals in few cases alone by the Department and implementing the other orders cannot be appreciated.

6. In any event, the judgment of the Division Bench on the same issue remain unassailed as on date. That apart, the judgments referred to above have been taken note of and the orders issued in the respective writ petitions have been complied with. Therefore, the appellant-Department cannot discriminate between the teachers, who are similarly placed. It is made clear that in the event the appellant-Department succeeds in any appeal, which they might have filed before the Hon'ble Supreme Court, obviously, the Department is entitled to proceed further in accordance with law.

7. With the aforementioned liberty, these Writ Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

<https://hcservices.ecourts.gov.in/hcservices> 7. In the light of the aforesaid judgment, the petitioner is



also entitled to get the increment and incentive. However, it makes clear that the sanctioning of increment and incentive to the petitioner will be subject to the outcome of the orders passed by the Courts of law. Therefore, in the event of any adverse orders passed by the Courts of law, the petitioner has to refund the said amount to the respondents.

8. In the light of the above facts and circumstances and in the light of the judgment cited supra, the impugned order dated 10.03.2021 is quashed. Consequently, this Writ Petition is allowed, directing the respondents to award increment and incentive to the petitioner in accordance with law as expeditiously as possible, preferably, within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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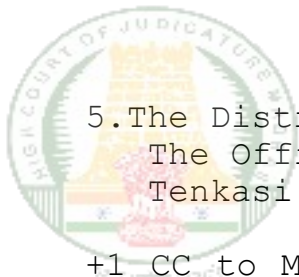
Sub Assistant Registrar(CS)

vsm

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,
Government of Tamil Nadu,
Department of School Education,
Fort St. George, Madras - 600 009.
- 2.The Director of School Education,
DPI Campus,
College Road, Chennai - 600 006.
- 3.The Chief Educational Officer,
The Office of the Chief Educational Officer,
Tenkasi District.
- 4.The District Educational Officer,
The Office of the District Educational Officer,
Cheranmadevi,
Tirunelveli District.



5.The District Educational Officer,
The Office of the District Educational Officer,
Tenkasi - 627 811, Tenkasi District.

+1 CC to M/s.FATHER SAVIER ASSOCIATES, Advocate (SR-27234[F] dated
25/08/2021)

+1 CC to M/s.GP (SR-27314[F] dated 25/08/2021)

**W.P. (MD) No.13848 of 2021
and**

**W.M.P (MD) Nos.10808 & 10810 of 2021
23.08.2021**

RD(14.09.2021) 5P 8C