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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 21.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. No.32873 of 2017

M.Ani

... Petitioner

vs

- 1 The Government of Tamil Nadu
Rep. by its Additional Chief Secretary The
Department of School Education (C2)
Fort St George Chennai 600 009
 - 2 The Director of School Education
DPI Campus College Road
Chennai 600 006
 - 3 The District Educational Officer
The Office of the District Educational officer
Behind Collectorate
Thiruvallur 602 001
 - 4 The District Elementary Educational officer
The office of the District Elementary Educational Officer
Thiruvallur 602 001
 - 5 The Assistant Elementary Educational officer
office of the Assistant Elementary Educational Officer
Poonamallee, Chennai 600 056
 - 6 The Correspondent
R.C.M.High School Karayanchavadi
Poonamallee
Chennai 600 056
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings dated .. 07.2017 in Na.Ka.No.1964/AA2/2017, on the file of the 3rd respondent and quash the same and directing the respondents 2 to 4 to continue to pay the salary to the petitioner with all service benefits.



For Petitioner

: Dr.Father A.Xavier Arulraj
Senior counsel,
for M/s.A.Arul Mary

For Respondents

: Mr.L.S.M.Hasan Fizal,
Additional Government Pleader
for respondents 1 to 5

No appearance
for the 6th respondent

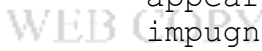
O R D E R

The petitioner was appointed B.T. Assistant (Maths) with effect from 09.01.2012 in the 6th respondent school against a vacancy arising out of retirement of one Mrs.Vijaya Fathima Veronica as secondary grade teacher on 31.05.2011. The said teacher was working in the Upper Primary Sections of Standards VI to VIII. The said post is a regular sanctioned post with grant-in-aid from the Government. An application was made by the school to the fourth respondent to convert the Secondary Grade Assistant post into B.T. Assistant (Maths), on 01.06.2011. The fourth respondent, vide proceedings dated 16.12.2001, converted the post as per the request in terms of G.O.Ms.No.100, School Education dated 27.06.2013. The petitioner was appointed as BT Assistant (Maths) with effect from 09.01.2012.

2. Thereafter, a proposal was sent to the authorities for grant of approval and approval was also accorded vide proceedings of the fourth respondent dated 27.04.2012. The petitioner had also received salary and allowances from the date of her appointment. However, an endorsement was made that her approval was subject to the condition that the petitioner had to complete Teachers Eligibility Test (TET) within five years.

3. Subsequently, the school was upgraded as High School and the petitioner came to be absorbed as BT Assistant (Maths) in the upgraded school, with effect from 01.10.2016. The absorption was also duly approved by the fourth respondent. Thereafter, the petitioner also received yearly increments from 01.01.2013 to 01.01.2016, duly in endorsed by the fifth respondent.

4. The petitioner had taken six months maternity leave from 21.01.2014 to 19.07.2014 for her second child and the leave was granted by the sixth respondent management. The leave also was duly endorsed by the fifth respondent. While the matter stood thus, all of a sudden, the third respondent issued proceedings dated ...07.2017 for recovering of the amount paid by way of



5. The learned Senior Counsel Father Xavier Arulraj appearing for the petitioner would submit that the basis of the impugned order seeking recovery of increments already granted to the petitioner was that the petitioner did not qualify in Teachers Eligibility Test (TET) and therefore, not entitled to the annual increments and also maternity leave benefits. According to the learned Senior Counsel, the prescription of TET qualification in terms of the Right of Children to Free and Compulsory Education Act, 2009 was held to be not applicable to minority institutions by a Constitution Bench of the Supreme Court. The sixth respondent school being a minority institution and the petitioner being employed in the said school, the impugned action of recovery of increments and discontinuance of further grant of two annual increment cannot therefore be countenanced in law.

7. The learned Senior counsel in this regard would refer to the recent decision of this Court rendered in M.Jayaraj vs. Commissioner of School Education, Chennai and ors. (W.P.No.23710 of 2021, dated 02.12.2021). He would particularly draw reference to paragraphs 8 to 13. The said paragraphs are extracted hereunder:

5. After the verdict of the Hon'ble Apex Court, the Division Bench of this Court



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in the case of Secretary to Government, Government of Tamil Nadu, Educational Department, Fort St.George, Chennai Vs., S.Jeyalakshmi reported in (2016) 5 CTC 639 has held that the provisions of the RTE Act, insofar as the minority Aided School are concerned, are inapplicable and therefore, the Teachers employed in such minority schools need not pass the TET qualifications for being eligible for service and monetary benefits. The said order of the Division Bench has become final.

6. It is also stated by the learned counsel for the petitioner that the respondents have implemented the requests made by similarly placed Teachers of the minority institutions in some of the cases. One such order passed by this Court, which came to be implemented by the respondents is in the case of Director of School Education and two others Vs., John Wesley and others dated 27.11.2019.

7. In view of the same, the impugned order dated 20.08.2018 in O.Mu.No.1091/M1/2018 stands quashed and consequently, the respondents are directed to disburse the service and monetary benefits and medical leave salary to one Lakshmi within a period of eight weeks from the date of receipt of a copy of this order.

8. Accordingly, this Writ Petition stands allowed. No costs.

9. Another learned Judge of this Court vide order dated 29.04.2021 in W.P.(MD) No.8807 of 2021 following the earlier orders has held as under.

8. In the present case, the petitioner's appointment was approved by the first respondent, vide proceedings, dated 06.08.2012 and passing in Teachers Eligibility Test is not mandatory for the Teacher appointed in the minority institution, as per the judgment in Pramati Educational Cltural Trust and others vs. Union of India reported in 2014 (4) MLJ 486 (SC).



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9. For the above reasons, the impugned order, dated 25.03.2021 passed by the second respondent is quashed. The third respondent is directed to re-submit the proposal to the respondents 1 & 2 within a period of two (2) weeks from the date of receipt of a copy of this order. On receipt of such proposal, the respondents 1 & 2 are directed to consider the proposal of the third respondent, for disbursing the yearly increments and other monetary benefits to the petitioner with effect from the date of appointment in the year 2012 and pass orders on merits and in accordance with law, within a period of four weeks.

10. In the result, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Further reference has been made to a recent decision of this Court dated 26.08.2021 in W.P.Nos.17887, 17888 & 17891 of 2021 where yet another learned Judge of this Court following the ruling of the Supreme Court in Pramati Educational Cultural Trust and others vs. Union of India reported in 2014(8) SCC 1 has allowed the writ petition as under.

4. In the light of the above these writ petitions are allowed. The 3rd respondent is directed to pass appropriate orders by approving the service of the petitioner together with monetary benefits within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

10. The learned Senior Counsel would therefore, submit that the issue is no more open to contest and in all the cases, the Government has accepted the decision and implemented the orders by grant of annual increment. Therefore, he would implore this Court to grant the prayer for issuance of Mandamus.

11. The learned Additional Government Pleader Mr.V.Manoharan, appearing for the respondents on instruction would submit that the matter is covered as contended by the learned Senior Counsel and he



would have nothing further to add on behalf of the official respondents.

12. In view of the above factual narrative and also several orders passed by this Court subsequent to the ruling of the Division Bench of this Court reported in 2016(7) MLJ 155 (Secretary to Government, Government of Tamilnadu, Education Department vs. S.Jeyalakshmi), this Court has no hesitation in allowing the present writ petition as well. It is not in dispute that the issue is fully covered by the earlier rulings of this Court as aforementioned and extracted supra and therefore, this Court has to necessarily hold that the petitioner herein has made out a case for grant of relief.

13. In the above circumstances, the Writ Petition is allowed and the 3rd respondent is directed to implement the regularisation of service of the petitioner with all service and monetary benefits from the date of his appointment in terms of the legal principle laid down by the Hon'ble Division Bench of this Court reported in 2016(7) MLJ 155 (Secretary to Government, Government of Tamilnadu Education Department vs. Jeyalakshmi). The 3rd respondent is directed to pass appropriate orders in this regard within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

8. The learned Senior counsel therefore would submit that the issue is no more res integra and the impugned order is liable to be interfered with.

9. On behalf of the respondents 1 to 5, Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader appeared. The learned Additional Government Pleader would not dispute the settled legal position. He would also not seriously dispute the submissions made on behalf of the petitioner as to the validity of the impugned order passed by the authorities.

10. In consideration of the above factual narrative, this Court has to come to an inevitable consideration that the impugned action of the third respondent is patently illegal and unconstitutional and cannot be sustained in law. The above decision of this Court, following the earlier legal precedent on the subject-matter, would be squarely applicable to the present case as well. In the said circumstances, this Court has no



hesitation to allow the writ petition filed by the petitioner herein.

11. According to the impugned proceedings dated ..07.2017 in Na.Ka.No.1964/AA2/2017, the third respondent is hereby set aside and the official respondents are consequently directed to grant appropriate annual increments that are otherwise admissible to the petitioner.

12. It is also clarified that if any recovery was effected as a consequence of the impugned order, the same being held illegal herein. The recovered amounts shall be refunded to the petitioner forthwith.

13. The competent authorities are directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order.

14. In the result, the writ petition is allowed. There will be no order as to costs. Consequently, WMP Nos.36233 to 36235 of 2017 are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

- 1 The Additional Chief Secretary
Department of School Education (C2)
Fort St George Chennai 600 009
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5

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+2ccs to M/s.Father Xavier Associates, Advocate, S.R.No.27440

+1cc to the Government Pleader, S.R.No.27541

W.P. No.32873 of 2017

RSV(CO)
SU(04/05/2022)