



WP(MD)Nos.17176 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.06.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD)No.17176 of 2021
and
W.M.P.(MD)No.15000 of 2021

J.Esther

... Petitioner

/vs./

1.The Director of School Education,
DPI Compound,
College Road, Chennai.

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

3.The District Educational Officer,
Valliyur Educational District,
Valliyur, Tirunelveli.

4.The Correspondent,
St.Andrew's High School,
Kudankulam,
Tirunelveli District.

5.The Correspondent,
Walker's Higher Secondary School,
Donavoor, Tirunelveli District.

... Respondents



WP(MD)Nos.17176 of 2021

WEB COPY

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 3rd respondent in Na.Ka.No.3288/A3/2019 dated 17.03.2020 and quash the same as illegal and consequently direct the 2nd and 3rd respondents to confer all other service benefits such as yearly increments, incentives, earn leave, arrears of salary from the date of appointment (ie 24.07.2017).

For Petitioner : Mr.S.Chellapandian
For R1 to R3 : Mr.A.Kannan
Additional Government Pleader
For R4 & R5 : Mr.P.P.Alwin Balan

ORDER

The writ petitioner was appointed as BT Assistant (Tamil) on 24.07.2017, which appointment came to be approved by the District Educational Officer on 15.09.2017. Through the impugned order dated 17.03.2020, the petitioner's annual increment was denied on the ground that she had not passed TET. Challenging this order, the present writ petition has been filed.



WP(MD)Nos.17176 of 2021

WEB COPY

2.The fifth respondent herein is a minority institution. Several Division Benches of this Court as well as the Single Judges have been consistently holding that the Department cannot mandatorily insist the teachers working in the minority institution to have passed TET qualification and that the benefit cannot be denied on the ground that the teachers working in the minority institution have not passed TET.

3.In one decision of the Hon'ble Division Bench in the case of **the Director of School Education, Chennai and Others vs. John Wesley** in WA(MD)No. **1416 to 1419 of 2019** dated **27.11.2019**, such a proposition was held in the following manner:

“2. These appeals have been filed against the common order dated 29.04.2019 made in W.P.(MD)Nos.10950 to 10953 of 2019. By the said order, the writ petitions were allowed and the matter was remitted back to the Department to pass necessary orders to grant approval of the writ petitioners' appointment. It is not disputed by the learned Special Government Pleader appearing for the respondents that an identical issue was decided against the Government by allowing the appeal in W.A(MD)No. 859 of 2019 on 26.09.2019. The operative portion of the order is quoted as follows:-



WP(MD)Nos.17176 of 2021

WEB COPY

5.This issue came up for consideration before several Division Benches of this Court and it has been held that the department cannot mandatorily insist the teachers working in minority institution to have TET qualification. One of the recent decision of the Division Bench is in P.Savarimuthu Maria George v. The District Elementary Educational Officer, Virudhunagar District & Others [2018 0 Supreme (Mad) 4017] (W.A.(MD) No.948 of 2018), wherein the Division Bench noted all the decisions on this issue and allowed the appeal filed by the Teacher. It will be beneficial to refer to the following portions of the order.

“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



WEB COPY



WP(MD)Nos.17176 of 2021

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



WEB COPY



WP(MD)Nos.17176 of 2021

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



WEB COPY



WP(MD)Nos.17176 of 2021

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.



WEB COPY



WP(MD)Nos.17176 of 2021

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)”

6.The learned Special Government Pleader appearing for the respondents 1 and 2 placing reliance on the decision of the Hon'ble Supreme Court in TMA Pai Foundation v. State of Karnataka [2005 (5) CTC 201 (SC)] would submit that the respondent State being the controlling authority sanctioning aid for the minority institutions can always prescribe qualifications, salaries as well as experience and other conditions bearing on the merits of an individual for being appointed as a teacher of an educational institution. Further, it is submitted by the learned Special Government Pleader that if the contention advanced by the learned counsel appearing for the appellant is accepted and TET is not made applicable to the minority institutions, then it is a clear discrimination among the teachers because one set of teachers, who are working in the non-minority institutions, are under the threat of losing their jobs for not possessing TET and the other set of teachers, who do not have TET, who are working at aided minority institutions, are safe and the



WP(MD)Nos.17176 of 2021

WEB COPY

applied in the instant case. In the light of the above, these writ appeals are dismissed.”

4.The aforesaid extract is self-explanatory. Thus, the reason assigned by the respondents in denying annual increments to the petitioner, cannot be sustained.

5.Accordingly, the impugned order dated 17.03.2020 is quashed. Consequently, there shall be a direction to the third respondent herein to grant annual increments, incentives, earned leave and arrears of salary from the date of the petitioner's appointment ie., 24.07.2017, by passing appropriate orders, within a period of six (6) weeks from the date of receipt of a copy of this order. This Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

23.06.2022

Index : Yes / No
Internet : Yes / No
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WP(MD)Nos.17176 of 2021

WEB COPY

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WEB COPY



WP(MD)Nos.17176 of 2021

M.S.RAMESH, J.

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Order made in
W.P.(MD)No.17176 of 2021

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