



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.01.2022

Pronounced on : 09.02.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD) No.10761 of 2016 and
WMP(MD).No.8347 of 2016

Sharmila Banu

:Petitioner

..VS..

1.The Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai - 9.

2.The Director of School Education,
College Road, DPI Campus, Chennai.

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

4.The Correspondent,
St. Michael Girls Higher Secondary School,
Tenkasi, Tirunelveli District.
Respondents

:

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Mandamus directing the respondents 1 to 3 to grant approval to the petitioner's appointment as B.T. Assistant in the 4th respondent minority aided school.

For Petitioner : Mr. P. Chellapandian

For Respondents : Mr. J.K. Jeyaselan
Government Advocate (Civil Side)

O R D E R

The petitioner is seeking a direction to the respondents to grant approval to the petitioner's the appointment as B.T Assistant in the fourth respondent minority aided school.

2. The petitioner has completed Higher Secondary examination in the year 1993 and B.Sc., (Maths) in May 2007 and completed B.Ed. in December 2012. She was appointed in the 4th



respondent school, which is a minority aided school, as B.T., Assistant on 02.06.2014 in the place of one Mary Dhanaseeli. The fourth respondent school submitted a proposal dated 22.02.2016 to approve the appointment of the petitioner. The respondents through proceedings dated 13.05.2016 had returned the proposal directing to submit the certificate in Teacher Eligibility Test. In the meanwhile, the second respondent vide order dated 07.11.2013 directed the Chief Educational Officer to cancel the approval of appointment of teachers appointed after 15.11.2011, wherever, the Teachers are not possession of Teachers Eligibility Test Qualification. The said letter was challenged before this Court in several writ petitions and this Hon'ble Court directed the authorities concerned to provide five years period to qualify TET. The contention of the petitioner that the said letter will not cover the case of the petitioner since the fourth respondent school is a minority school and the Teachers Eligibility Test qualification is not applicable to the minority.

3. The question of applicability of Right of Children to Free and Compulsory Education Act, 2009 to minority institutions was considered by Apex Court in Pramati Education and Cultural Trust and others in W.P(C) No. 416 of 2012 etc., batch wherein it is held that the said Act is not applicable to minority institutions. Since the Teachers Eligibility Test was introduced under the said Act, the teachers who are appointed in minority schools are not necessary to possess TET qualification. Based on Pramati's case W.P(MD).No.14072 of 2015 was filed in Principal Bench of this Court and this Court vide order dated 03.06.2015 has granted an order of interim direction directing the respondents to grant temporary approval of appointment. The petitioner is seeking the same interim direction to grant temporary approval and disburse the salary.

4. The respondents have not filed any counter.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents 1 to 3. The fourth respondent is not represented by the counsel.

6. This Court vide order dated 26.06.2016 has granted an interim relief and the relevant portion is extracted hereunder:

"4. Following the order made in W.A. (MD). No. 220 of 2016, dated 05.02.2016, this Court directs that the petitioner shall be given her salary in the course of her employment and no steps to remove her from service shall be taken till the disposal of this Writ Petition. However, it is made clear that this order is subject to the result of this Writ Petition. It is further made clear that the petitioner shall not claim any equity on account of this order, without prejudice to the rights and contentions of the parties herein."



Based on this interim direction the petitioner is still continuing in the said post and is receiving salary.

7. When the case was taken up for final hearing the petitioner submitted based on interim direction the petitioner's appointment was approved and she is receiving salary and nothing survives in this Writ Petition for adjudication. On perusal of the interim order, it is seen that the interim direction is given which would be subject to the result of main Writ Petition and the petitioner shall not claim any equity on account of this order (interim order). Therefore, the impugned order is still pending for adjudication.

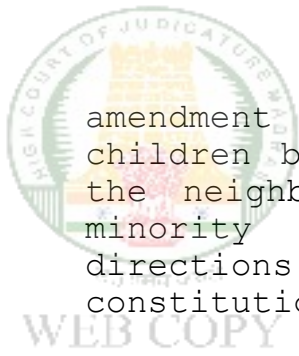
8. The brief history is necessary to adjudicate this issue. The Right of Children to Free and Compulsory Education Act, 2009 was enacted by Central Government and received President assent on 26.08.2009 and published in Government Gazette on 24.02.2010. Under Section 23 (1) the qualifications for appointment was prescribed wherein it is stated that,

"Any person possessing such minimum qualifications as laid down by an academic authority, authorized by the Central Government, by notification shall be eligible for appointment as a teacher"

The government had appointed "the National Council for Teacher Education (in short NCTE)" as the academic authority. The NCTE issued a notification dated 23.08.2010 stating the minimum qualifications for the person to be eligible for appointment as a teacher in Class I to VIII, wherein TET is prescribed as one of the qualification. Thereafter, the Government of Tamil Nadu has issued G.O.Ms.181, dated 15.11.2011 appointing "the Teachers Recruitment Board" as a Nodal Officer. The Teachers Recruitment Board has conducted the first examination in the month of July 2012.

9. As per NCTE a Teacher is eligible to be appointed only if the teacher has passed in "Teachers Eligibility Test" i.e. TET. However, several judgments had held that TET is not applicable to minority institution, since it has been held in Paramati case that "RTE Act" is not applicable to minority institution.

10. However in Paramati case (Five Member Bench), the reference is made to render a finding on the validity of clause (5) of Article 15 of the Constitution inserted by the Constitution (Ninety-third Amendment) Act, 2005 with effect from 20.01.2006 and on the validity of Article 21A of the Constitution inserted by the Constitution (Eighty-Sixth Amendment) Act, 2002 with effect from 01.04.2010. The issue was that whether the inserting clause (5) in Article 15 and 21A is applicable to minority institutions. This



amendment read with RTE Act has directed the school to admit 25% children belonging to weaker sections and disadvantaged groups in the neighbourhood and whether such direction shall be given to minority institutions. The Hon'ble Court has held that such directions cannot be issued since it alters basic structure of constitution.

11. The Hon'ble Supreme Court has observed while considering the above issue, that RTE Act is not applicable to minority institution. However, there was no reference before the Hon'ble Supreme Court whether RTE Act is applicable to the Minority Institution or whether the TET is applicable for minority institutions. Under RTE Act there is no specific provisions for exemption from TET for minority institution.

12. In TMA Pai Foundation case the Hon'ble Supreme Court (Eleven Member Bench) has held that the government has authority to prescribe the qualification of the teachers and the same would be applicable to minority institutions also. The relevant portion is in Q. 5 (c) of the judgment. The Hon'ble Supreme Court has held that the State or other controlling authorities, however can always prescribe the minimum qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an educational institution. Therefore, the argument that TET is not applicable to minority institution is against the judgment of Constitutional Bench rendered in TMA Pai case. The relevant portion is culled out hereunder:

"Q 5 (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition / withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees etc. would interfere with the right of administration of minorities?"

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like appointment of staff, teaching and non-teaching and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for selection of teaching staff and



for taking disciplinary action has to be evolved by the management itself. For redressing the grievances of such employees who are subjected to punishment or termination from service, a mechanism will have to be evolved and in our opinion, appropriate tribunals could be constituted and till then such tribunal could be presided over by a judicial officer of the rank of District Judge. **The State or other controlling authorities, however can always prescribe the minimum qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an educational institution.**

13. The respondents also submitted that if the argument of TET is not applicable to minority institutions is accepted, then there would be clear discrimination amongst the teachers. On one hand the teachers in non-minority institutions are facing a situation to lose job without TET, on the other hand the teachers in minority institutions are claiming salary, incentive increments and other service benefits without TET. The same is against Article 14 of the Constitution

14. The respondents also submitted that this Hon'ble Court vide order dated 28.08.2019 has placed the issue before Division Bench in a writ petition W.P. (MD) No. 18489 / 2019 and W.P. (MD) No. 7574 / 2018 after impleading the Ministry of Human Resources Department, Central Government and the case is pending.

15. The respondents also submitted that the issue is still pending in the Supreme Court in Ashwini Thanappan Case. Also the government has preferred SLP in the case of Annie Packiarani Bai and the same is pending.

16. Since the issue is pending before the Supreme Court, this Court is of the considered opinion that the petitioner is not entitled for any positive direction to approve the appointment as B.T. Assistant. However, the respondents are directed to consider the case of the petitioner after the outcome of the aforesaid two Special Leave Petitions.

17. With the above observations the writ petition is disposed of. No Costs. Connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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/ /2022

Sub Assistant Registrar(CS)



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School Education Department,
Fort St. George,
Chennai - 9.

2.The Director of School Education,
College Road, DPI Campus,
Chennai.

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

+1 CC to M/s.SPL GP (SR-5386[F] dated 10/02/2022)

Pre Delivery Order made in
W.P(MD) No.10761 of 2016 and
WMP(MD) .No.8347 of 2016
09.02.2022

MK/18.02.2022/6P/5C