



W.P.(MD) No.24902 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.07.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.24902 of 2019

T.Sahayam

... Petitioner

Vs.

**1.The District Educational Officer,
Tiruchendur, Tuticorin District.**

**2.The Block Educational Officer,
Alwarthirunageri @ Thenthiruperai,
Tuticorin District.**

**3.The Correspondent,
St. Michael's R.C.Middle School,
Serndamangalam,
Tiruchendur Taluk,
Tuticorin District – 628 151.**

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 1st respondent herein vide Na.Ka.No. 2321/A4/2018, dated 13.09.2019, quash the same and further direct the 1st respondent herein to approve the appointment of petitioner as Secondary



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For Petitioner : Mr.A.Ajith Geethan

For Respondent : Mr.A.Kannan for R1 and R2
Additional Government Pleader

M/s.Father Xavier Associates for R3

ORDER

Heard the counsel on either side.

2. The third respondent school is a Minority Aided Educational Institution. The petitioner herein was appointed as a Secondary Grade Teacher in the third respondent's School on 19.01.2018 in the sanctioned vacancy that arose due to the retirement of another teacher. The third respondent school had submitted a proposal to the District Educational Officer herein, seeking for approval of the petitioner's appointment with effect from 19.01.2018, which was rejected on the ground that there were surplus teachers working in other Schools run by the same Management of the third respondent School. The other reason for rejection was that the petitioner had not passed the Teachers Eligibility Test (TET).



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3. The issue as to whether the Educational Authorities can reject a proposal of the Management seeking for approval of the appointment of a teacher in Minority Institution on the ground that there are surplus teachers either in the District or under the Corporate Management of the School is no more *res integra*, since it has been dealt with in various decisions, against the Authorities.

4. In a batch of writ petitions filed before this Court in the case of ***The Secretary to Government, Government of Tamil Nadu, School Education Department and others Vs. Iruthaya Amali and another*** reported in ***2021 SCC online Madras 1285***, the Honourable Division Bench of this Court had held that for the purpose of fixing the staff strength of the School, the School as such, shall be the unit and not the Educational Agencies/ School Management/ Corporate Management. This finding has been applied in various other orders in writ petitions, whereby, it was held that the existence of surplus teachers in other Schools under the same Management, cannot be a ground for rejection of the proposal.



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5. In a recent decision taken in a batch of writ petitions in **W.P.No.3194 of 2020, etc.**, dated **18.04.2022** in the case of ***B.Kurinjimalaron vs. the State of Tamil Nadu, Represented by its Secretary, Education Department, Fort St.George, Chennai 600009***, this aspect was dealt with in the following manner:

5. The learned counsel appearing for the petitioners would submit that the G.O.Ms.No.165 dated 17.9.2019 as well as the judgment passed by the Division Bench of this Court in a Batch of Writ Appeals in W.A.(MD) No.76 of 2019 are prospective in nature. In the present cases, the appointment was made prior to the Government order passed in G.O.Ms.No.165 issued by School Education Department, dated 17.9.2019. Therefore, there is no legal impediment for approving the appointment made by the School Management to the aforesaid posts in the light of the existing Rules thereunder.

6. The learned Additional Advocate General submitted that as against the judgment passed by the Division Bench of this Court in a Batch of Writ Appeals in W.A.(MD) No.76 of 2019, etc., the State Government has preferred an appeal before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.15702 of 2021. It is further submitted that the Hon'ble Supreme Court



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stayed the judgment only in respect of Clause (i) of paragraph 95 of the said judgment. Further, it is also brought to the notice of this Court that the Division Bench in paragraph 6 of the said judgment, has observed that, "no fresh appointment even in the sanctioned vacancy shall be made by any school which are managed by the Corporate Management.

7. The learned counsel appearing for the petitioners would submit that in the instant case, no appointment was made by the School Management pursuant to the judgment passed by the Division Bench of this Court. All the appointments were made prior to the issuance of G.O.Ms.No.165 dated 17.9.2019 and the proposals were also sent to the educational authorities prior to the said G.O.Ms.No.165 dated 17.9.2019. Thus, G.O.Ms.No.165 dated 17.9.2019 and the Division Bench judgment will not bind over the appointment made by the School Management in the instant writ petitions. Therefore, the learned counsel appearing for the petitioners seeks to quash the impugned orders and consequently, direct the educational authorities to accord approval to the appointment to the post of B.T. Assistant and Secondary Grade Teacher, made by the School Management in the instant writ petitions.

8. According to the learned Additional Advocate General, the State Government has preferred an appeal



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before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.15702 of 2021 as against the judgment passed by the Division Bench of this Court in the Batch of Writ Appeals in W.A.(MD) No.76 of 2019, etc. and obtained stay insofar as Clause (i) of paragraph 95 of the said judgment. Except the aforesaid clause (i) of paragraph 95, there was no stay in respect of remaining portion of the judgment. It is agreed by the learned Additional Advocate General that the writ petitioners were appointed prior to the G.O.Ms.No.165 dated 17.9.2019 and therefore, it can be considered and an appropriate order may be passed.

9. On perusal of the judgment of the Division Bench of this Court in the aforesaid Batch of cases and also the G.O.Ms.No.165 issued by the School Education Department, dated 17.9.2019, both the judgment as well as G.O.Ms.No.165 are prospective in nature. The appointments made by the School Management in the instant writ petitions are prior to the issuance of G.O.Ms.No.165 dated 17.9.2019 and proposals for the said appointment were also forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.9.2019. Therefore, there is no legal impediments for the respondents to accord approval to the appointment made by the School Management in the instant writ petitions.



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10. Having regard to the rival submissions of the parties, taking note of the judgment passed by the Division Bench of this Court in a Batch of Writ Appeals in W.A.(MD) No.76 of 2019, etc., G.O.Ms.No.165 issued by the School Education department, dated 17.9.2019 will not prohibit the educational authorities to approve the appointment made by the School Management in the instant writ petitions since the proposals for approval of appointment made by the School Management were forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.9.2019. Therefore, this Court is of the view that the respondent department without considering the G.O.Ms.No.165 dated 17.9.2019 in proper perspective and passed the impugned order rejecting the proposals submitted by the School Management. Therefore, the impugned orders passed by the respondent department are liable to be quashed.”

6. Thus, the reason assigned by the respondents for rejecting the proposal, on the ground of availability of surplus teacher, under the Corporate Management of the respondent's School, cannot be sustained.



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7. Insofar as the reason assigned by the respondent that the proposal cannot be accepted for want of TET qualification is concerned, this reasoning has also been dealt with by this Court in several writ petitions, wherein it was held that the pre-requirement of TET qualification for a teacher in a Minority Institution, is not mandatory.

8. In one such decision of this Court in the case of ***J.D.Christopher Asir Vs. The Director of School Education, DPI Campus, College Road, Chennai and others*** in ***W.P.(MD).No.13935 of 2018, dated 29.06.2018***, this preposition was held in the following manner:

“9.The issue of requirement of TET qualification for any teacher employed or appointed in a school run by the minority management can no longer be res integra as in a number of cases, the said requirement directed not to be insisted upon. In this regard, as has been pointed out by the learned counsel appearing for the petitioner, the issue has been decided in a judgment of Division Bench of the Principal Seat of this Court in the matter of Secretary to Government, Government of Tamil Nadu, Education Department and others Vs. S.Jeyalakshmi and another reported in (2016) 7 MLJ



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155.

10. In the said judgment, the Hon'ble Division Bench has made it clear that the requirement of TET qualification cannot be insisted upon from the teacher working in minority institutions and in this regard a view expressed by the Division Bench and the law held thereon are extracted hereunder:-

“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 a refresher course and also some interactive sessions during annual vacation, in order to ensure and enhance the quality of education.

59. Insofar as minority institutions are concerned, the contention of the learned senior counsel appearing for the minority Schools is that when Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 received the assent of the President of India and it is still in force, it cannot be supplanted by an Executive Order, namely, by G.O.Ms.No.181 dated 15.11.2011. Further, the Apex



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Court has clearly held in Pramati Educational and Cultural Trust V. Union of India (Supra) that RTE Act, 2009 is not applicable to the minority institutions. Therefore, we have no hesitation to hold that the right conferred under Article 30(1) of the Constitution cannot be abrogated. Consequently, G.O.Ms.No.181 dated 15.11.2011, which was issued pursuant to the directions of NCTE, cannot be made applicable to the minority institutions.

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. Similarly, G.O.Ms.No.76 dated 18.03.2015 issued by the Government of Puducherry, is also not applicable to the minority institutions.”

11.Following the said judgment of the Division Bench, a number of orders have been passed in similar



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situations, where the teachers appointed in minority institutions / schools sent for approval to the authorities, where the said approval had been rejected on the ground that those teachers did not have the TET qualification.

Thus, the respondents may not be legally justified in insisting that the petitioner, who is a teacher in Minority Institution, should have passed the TET.

9. For all the foregoing reasons, the impugned order passed by the 1st respondent herein vide Na.Ka.No.2321/A4/2018, dated 13.09.2019, is hereby quashed. Consequently, the third respondent herein is called upon to resubmit the proposal to the first respondent herein and on receipt of such proposal, the first respondent herein shall pass appropriate orders approving the appointment of the petitioner to the post of Secondary Grade Teacher with effect from 19.01.2018. Such orders shall be passed, atleast within a period of six weeks from the date of receipt of re-submission of the proposal.



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WEB COPY 10. Accordingly, this writ petition stands allowed. No costs.

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Index : Yes
Speaking Order
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To

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M.S.RAMESH,J.

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