



W.P.14478 of 2013 batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.03.2023

RONOUNCED ON : .04.2023

C O R A M :

The Hon'ble Mrs. Justice **J. NISHA BANU**

W.P.Nos.14478 to 14490 of 2013
and
connected miscellaneous petitions.

W.P.No.14478 of 2013:-

L.Jecintha Mary

..Petitioner

.Vs.

- 1.The Union Territory of Puducherry
Rep. by its Secretary
Department of education, Secretariat
Puducherry-605 001
- 2.The Director of School Education
Government of Puducherry
Directorate of School Education
Puducherry-605 005
- 3.The Senior Accounts Officer
Government of Puducherry
Directorate of School Education
Puducherry-605005.



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4.The Correspondent

Nirmala Ranee Girl's Hr.Sec.School
33, Nehru Street, Karaikal-609 602

..Respondents.

Prayer in W.P.No.14478 of 2013 :

Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of certiorarified mandamus calling for the records pertaining to the proceedings dated 15.02.2012 in No.14-1/DSE/GIAS/U.3/2012-13 on the file of the 3rd respondent and the consequential proceedings dated 25.03.2015 in No.23-I/DSE/GIAS/U,III/2013-2014 on the file of the 2nd respondent and quash the same, directing the respondents to accord approval from the date of appointment w.e.f.14.08.2006 to the petitioner, working as Trained Graduate Teacher (TGT) in Nirmala Ranee Girl's Hr.Sec.School, 33, Nehru Street, Karaikal-609 602, regularizing her services in so far as petitioner concerned with all attendant benefits.

For Petitioners in all Wps : Dr.Fr.A.Xavier Arulraj

For respondents in all Wps : Mr.R.Syed Mustafa,
Spl.G.P. (Pondy) for R1 to R3

: Mr.V.John Kennedy for R4.



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COMMON ORDER

The petitioners in the above writ petitions were appointed as Trained Graduate Teacher on 14.08.2006, 03.11.2008, 06.11.2006, 14.06.2010, 14.06.2010, 21.06.2010, 14.06.2010 and 04.01.2010 in the Nirmala Rane Girl's Hr.Sec. Schools, Karaikal; on 10.08.2007, 10.07.2008, 24.10.2009, 24.10.2009 in St.Antony's Government Aided High School, Puducherry; on 14.08.2006 in St.Theresa's Government Aided High School respectively. The 4th respondent school is the aided minority school, established and administered by the religious Congregation of St.Joseph of Cluny, which is a declared Minority Educational Agency.

2. The management has forwarded the proposal for approval to the 2nd respondent-Director of School Education on 21.08.2006.

3. It is averred in the writ petitions that in filling up of vacancies in respect of 189 upgraded posts and 266 newly created posts, proposal was asked to resubmitted by the 2nd respondent on or before 04.08.2010



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and in accordance with the said direction, the 4th respondent. forwarded the proposal.

4. The 3rd respondent has communicated by Memorandum dated 15.05.2012 to the 2nd respondent that Grant-in-Aid has been released in respect of 10 teaching staff w.e.f. 29.03.2012 and not from the date of original appointment. There was a condition that the teachers shall pass Teachers Eligibility Test (TET) as stipulated by NCTE.

5. Again vide order dated 25.03.2013, the 2nd respondent withdrawn the release of Grants-in-Aid w.e.f. March 2013 stating that appointment of the petitioner(s) falls after the Notification of TET that is on 23.08.2010.

6. According to the petitioners, they were appointed in the year 2006 and just because the Government delayed granting approval, the original appointment and continuity of service cannot be nullified. On the other hand, NCTE was introduced only w.e.f. 23.08.2010.



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7. Dr.Fr.A.Xavier Arulraj, learned counsel for the petitioners submitted that the petitioners appointment was in a regular and sanctioned post. Therefore, the order dated 29.03.2012 is not sustainable which holds that the appointment is dated 29.03.2012. The original appointment date i.e., in the year 2006 is the date for which approval was sought and the delayed approval is in violation of legal provisions and procedures.

8. The learned counsel would further submit that the impugned date of belated approval and the consequential order of withdrawal of grant-in-aid to the petitioners is in violation of principles of natural justice.

9. It is the submission of the learned counsel that TET eligibility is only a subsequent development and not a condition precedent to the appointment in the case of the petitioners.

10. The learned counsel would contend that the petitioners by way of representation dated 18.04.2013 to the 2nd respondent, sought to



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grant approval from the date of their initial appointment and also submitted their hardship that salary is not been paid to them after the impugned order and therefore, approached this court by way of present writ petitions.

11. Per contra, Mr.R.Syed Mustafa, learned Special Government Pleader (Pondy) appearing for respondents 1 to 3 would submit that the 4th respondent school is the Government Aided Private School functioning in the Union Territory of Puducherry and the said school was sanctioned with few teaching and non-teaching posts at the time of its inception. Since the school management has engaged the petitioners on consolidated pay basis and shown against them in the newly upgraded vacancies, the proposal of the school management seeking approval of the department for appointment in various posts was considered and duly granted. Therefore, when all the petitioners were appointed on consolidated pay basis, they cannot be appointed on regular basis under Grant-in-aid retrospectively and the benefit of approval cannot be granted from the date of their initial appointment. The learned Special



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Government Pleader by filing counter affidavit, would further submit that the Puducherry Education Act and Rules governs and applicable to all the private schools including aided minority school. The procedure and concept of seeking ex-post fact approval for all the actions of 4th respondent school and making the competent authority to approve their action is unknown to service jurisprudence.

12. The learned Special Government Pleader (Pondy) would reiterate his submissions that similarly placed persons who approached this court by filing writ petitions for similar relief was disposed of in a batch of writ petitions in W.P.No.21112 to 21117 of 2015 vide order dated 13.12.2017 contemplating compliance of TET and as against the said order, W.A.2557 of 2018 batch has been filed and the same is pending as on date.

13. Heard both sides and perused the records carefully.

14. A careful reading of the typed set of papers and the citations relied on by the learned counsel for the petitioners would go to show that



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the petitioners herein are continuing as Teachers in the 4th respondent by virtue of interim order of stay of the impugned orders passed by this court at the time of admission of the present writ petitions.

15. The contentions of the learned counsel for the petitioners is that the petitioners herein are working in the Christian minority institutions and they were all appointed either in the existing/regular posts arising due to retirement, resignation and transfer or in existing upgraded posts under G.O.Ms.No.86 dated 21.07.2006. The institutions also submitted to the authorities the proposal for approval and releasing Grant. But the authorities granted approval belatedly stating it will take effect from the date of appointment.

16. In so far as the above contention of the learned counsel for the petitioners, the learned counsel for the petitioners relied on the decision of this court reported in **2008(5) CTC 648 [A.Karol Vs. Union Territory of Puducherry, rep by its Secretary (Education) and others]**, wherein, it is held that in view of the settled legal principle in the case of



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S.D.Rajkumar Vs. State of Tamil Nadu rep. by its Secretary to Governemnt, School Education Department, Secretariat, Chennai-9 (W.A.(MD).No.456 of 2008 dated 04.08.2008), the appointments of the petitioners in their respective posts should be approved from the date of their initial appointment. As such, the approval shall be given from the date of appointment.

17. The next contention of the learned counsel for the petitioners is that pursuant to the approval on 29.03.2012, the 2nd respondent had withdrawn the Grant-in-Aid to the petitioners on the ground that the petitioners had failed to complete TET qualification as they have been approved in the year 2012.

18. The learned counsel for the petitioners while making his arguments challenging the withdrawal of Grant in aid dated 25.03.2013, relied on the decision of a Division Bench of Madurai Bench of Madras High Court dated 26.09.2019 in W.A.(MD).No.859 of 2019 ***[B.Annie Packiarani Bai Vs. 1.The Director of School Education, Chennai-6 and***



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others]. The learned counsel would submit that TET qualification cannot be insisted retrospectively for the period before the issuance of G.O.No.76 dated 18.03.2015 of Union Government of Puducherry, which is parimateria with G.O.Ms.No.181 dated 15.11.2021 of the Tamil Nadu Government.

19. The subject matter of the present writ petitions is squarely covered by the decision cited supra [W.A.(MD).No.859 of 2019]. The Division Bench while answering the issue raised in the said Writ Appeal that as to whether the respondent department can mandatorily insist passing Teachers Eligibility Test, especially when the appellant is working in a minority aided institution, the Division Bench, pointed out that the department cannot mandatorily insist the teachers working in minority institution to have TET qualification. In the said decision, the Division Bench of this court, while following the decision in ***P.Savarimuthu Maria George Vs. The District Elementary Educational Officer, Virudhunagar District & others [2018 0 Supreme (Mad) 4017]*** (***W.A.(MD).No.948 of 2018***), held that the consistent stand as regards the



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legal position and the reference to the decision of the Constitutional Bench of the Supreme Court in ***Paramati Educational & Cultural Trust Vs. Union of India [2014(8) SCC 1]*** rendered are taken note of by the Division Bench of this court and decided 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.

20. The issues raised in the present writ petitions having been settled by this court in the catena of judgments as discussed above, this court is inclined to accept the prayer made by the petitioners.

21, In the result,

(i) The above writ petitions are allowed.

(ii) The impugned orders are set aside.

(iii) The respective respondents/authorities are directed to approve the appointment of the petitioners from the date of their initial appointment in the schools, where they are working and to sanction the grant, within a period of eight weeks from the date of receipt of a copy of



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this order.

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(iv) No costs. Consequently, miscellaneous petitions are closed.

Index: Yes/No

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nvsri

To

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Department of education, Secretariat

Puducherry-605 001

2.The Director of school education

Government of Puducherry

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J.NISHA BANU, J.

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Order in

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(12 CASES)

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