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W.A.No.1020 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.06.2023

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.1020 of 2023
AND
C.M.P.No.10203 of 2023

1. Director of Elementary Education
Chennai 600 006

2. District Elementary Educational Officer
Vellore, Vellore District

3. Assistant Elementary Educational Officer
Peranambut Range, Vellore District

.. Appellants

Vs.

1. E. Angeline Jeba Priya

2. Correspondent
IELC Schools
Peranambut & Gudiyatham Range
Vellore District

3. Secretary
Education Committee
Ambur Synod, IELC
Ambur, Vellore District

.. Respondents



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Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 16.12.2021 passed by the learned Judge in W.P.No.25956 of 2017.

For Appellant : Mr.S.Silambanan
Additional Advocate General
Assisted by Mr.Stalin Abimanyu
Additional Government Pleader

For 1st Respondent : Mr.P.Ganesan

JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

Heard both sides and perused the materials available on record.

2. This Writ Appeal arises from the order dated 16.12.2021 passed by the learned Judge in W.P.No.25956 of 2017.

3. The brief facts leading to the filing of this writ appeal are as follows :

The 1st respondent was appointed as B.T. Assistant (Science) by the 3rd respondent on 07.06.2017, in the existing vacancy and thereafter, a proposal seeking approval for the same was sent to the appellants 2 and 3 on 11.06.2017.

However, the said proposal was returned by the 2nd appellant *vide* proceedings



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dated 07.08.2017, on the ground that the 1st respondent did not qualify the Teacher Eligibility Test (TET). Further, the 3rd appellant, by his proceedings dated 16.08.2017, returned the proposal, confirming the proceedings of the 2nd appellant. Assailing the same, the 1st respondent has preferred W.P.No.25956 of 2017. Following the decision of the Apex Court and the Division Bench of this Court that passing of TET is not necessary in respect of Teachers employed in minority institution, especially religious minority institution, the learned Judge, by order dated 16.12.2021, allowed the said writ petition, directing the 2nd appellant to pass orders approving the appointment of the 1st respondent, within a period of four weeks. Aggrieved by the same, the State has preferred the present writ appeal.

4. It is submitted by both sides that the issue involved herein is covered by a common judgment passed by this Bench earlier in *The Director of School Education D.P.I. Campus, College Road, Chennai vs M. Velayutham (W.A.No.313 of 2022 etc., batch decided on 02.06.2023)*. The key issues for determination and also the resultant portion of the said judgment, read as under:

"1.The key issues that arise for determination in these batch of writ appeals and writ petitions are:

(i) whether passing of the Teacher Eligibility Test (TET) is mandatory for promotion to the post of B.T. Assistant/Graduate Teacher, from the cadre of Secondary Grade Teacher (already in service).



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(ii) whether non-possession/non-acquisition of a pass in TET by a teacher appointed prior to 29.07.2011 would affect his/her continuance in service and drawal of increment, without seeking for further promotion to the post of BT Assistant/Graduate Teacher."

WHETHER TET IS A NECESSARY MANDATE FOR TEACHERS APPOINTED IN MINORITY SCHOOLS

71.1. A perusal of the orders impugned in the writ petitions leading to these writ appeals would indicate that the fact that the teachers, in respect of whom approval of appointment was sought for by the school, did not possess TET pass eligibility was not a ground for refusal for grant of appointment approval, nor was it an issue raised before the learned Single Judge at the time of disposal of the writ petitions. Only in the writ appeals, the State Government has raised an additional ground that the teachers whose appointment approval was sought for, did not possess TET. Notwithstanding the same, it is hereby clarified that by virtue of the judgment of the Constitution Bench of the Hon'ble Supreme Court in *Pramati Educational and Cultural Trust & Ors. v. Union of India*, [(2014) 8 SCC 1], wherein, it was held that the RTI Act, 2009 insofar as it applies to minority schools, aided or unaided, covered under Article 30(1) is ultravires the Constitution, meaning thereby that the 2009 Act will not apply to minority schools, the eligibility of TET pass as required for appointment of teachers in non-minority schools, will not apply to minority schools. In other words, the approval of appointment of teachers in minority schools, both aided and unaided, cannot be refused or rejected on the ground that they do not possess a pass in TET. Further, this specific issue is also pending consideration before the Supreme Court and the law laid down by the Supreme Court in *Pramati Educational and Cultural Trust*, cited supra, holds the filed as on today. For these reasons, the order of the Learned Judge in the writ petitions is affirmed and the above four writ appeals are dismissed.

"74. For the sake of clarity and ease of reference, the upshot of the above discussion is as under:

(a) Any teacher appointed as Secondary Grade Teacher or Graduate Teacher/BT Assistant prior to 29.07.2011 shall continue in service and also receive increments and incentives, even if they do not possess/acquire a pass in TET. At the same time, for future promotional prospects like promotion from secondary grade teacher to B.T. Assistant as well as for promotion to Headmasters, etc., irrespective of their dates of original appointment, they must necessarily possess TET, failing which they will not be eligible for promotion.



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(b)Any appointment made to the post of Secondary Grade Teacher after 29.07.2011 must necessarily possess TET.

*(c)Any appointment made to Graduate Teacher/BT Assistant, after 29.07.2011, whether by direct recruitment or promotion from the post of Secondary Grade Teacher, or transfer, must necessarily possess TET. **The principles laid down in this judgment will not have application to minority schools both aided and unaided as explained in paragraph no.71.1.***

(d)The Special Rules for the Tamil Nadu School Educational Subordinate Service issued in GO (Ms.) No.13 School Education (S.E3(1)) Department dated 30.01.2020 insofar as it prescribes “a pass in Teacher Eligibility Test (TET)” only for direct recruitment for the post of BT Assistant and not for promotion thereto in Annexure-I (referred to in Rule 6) is struck down, thereby meaning that TET is mandatory/essential eligibility criterion for appointment to the post of BT Assistant even by promotion from Secondary Grade Teachers.

(e)The language employed in G.O. (Ms) No. 181 dated 15.11.2011 is to be read and understood to the effect that for continuance in service without promotional prospects, TET is not mandatory."

5. A reading of the above judgment would make it clear that any appointment made to Graduate Teacher/BT Assistant, after 29.07.2011, whether by direct recruitment or promotion from the post of Secondary Grade Teacher, or transfer, must necessarily possess TET. However, the same will not have application to minority schools both aided and unaided as explained in paragraph no.71.1, as referred to above.

6. Applying the aforesaid ratio to the facts of the present case, wherein, it is an admitted fact that the respondent school is a minority institution, this court is of the view that the order of the learned Judge does not



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require any interference. Accordingly, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
08.06.2023

Internet : Yes
gya

To

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Chennai 600 006

2.District Elementary Educational Officer
Vellore, Vellore District

3.Assistant Elementary Educational Officer
Peranambut Range, Vellore District



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