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WP.No.14024 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.14024 of 2021

and

WMP.No.14899 of 2021

Annai Velankanni Middle School,
Government Aided School,
Rep. by its Secretary,
Ennanagaram,
Cuddalore-608 502.

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Petitioner

Vs.

1.The Director of Elementary Education,
College Road, Chennai-6.

2.The District Educational Officer,
Vadalur,
Cuddalore District.

3. The Block Educational Officer,
Keerapalayam.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order passed by the 2nd respondent vide Na.Ka.337/Aa4/2021, dated 18.03.2021 and quash the same and direct the 2nd respondent to approve the appointment of Thiru.K.Balamurugan as Headmaster w.e.f.15.11.2019, with all consequential monetary benefits.



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For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.G.Nanmaran, Special Government Pleader

ORDER

This Writ petition has been filed to call for the entire records connected with the impugned order passed by the 2nd respondent vide Na.Ka.337/Aa4/2021, dated 18.03.2021 and quash the same and direct the 2nd respondent to approve the appointment of Thiru.K.Balamurugan as Headmaster w.e.f.15.11.2019, with all consequential monetary benefits.

2. The petitioner's school is an aided primary school and middle school is running under self finance. As on date the school is a two teachers school, sanctioned with one Headmaster and one Secondary Grade Teacher post. Due to the sudden demise of the headmistress on 29.04.2019 the vacancy has arisen. The only Secondary Grade Teacher had also relinquished the promotion as Headmaster in the petitioner school. Hence the 2nd respondent vide his proceedings dated 21.10.2019, granted permission to fill up the vacant post of Headmaster. After observing the necessary recruitment formalities, the school committee selected and appointed Mr.K.Balamurugan as Headmaster by an order dated 15.11.2019. The petitioner sent a proposal on 18.11.2019 to the 2nd



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respondent through 3rd respondent. The said proposal was returned by the 3rd respondent, subsequent to the proceedings of the 2nd respondent dated 19.05.2020 and the file was resubmitted on 14.08.2020. So far, the 2nd respondent has not passed any order. Hence the Petitioner's school has made an appeal to the Chief Educational Officer on 22.09.2020 and the Chief Educational Officer also directed the 2nd respondent to approve the appointment of Headmaster in accordance with the Tamil Nadu Recognised Private School Regulation Act and Rules. Despite the direction of the Chief Educational Officer, the 2nd respondent has not passed any order. Hence a Writ Petition in WP.No.871 of 2021 has been filed and in which a direction was given to consider the proposal for approval of appointment of Headmaster in accordance with law. In pursuant to the court order, the 2nd respondent by an impugned order dated 18.03.2021 rejected the approval of the appointment of Headmaster on the basis of G.O.Ms.No.181 dated 15.11.2011 and G.O.Ms.No.165 dated 17.09.2019.

3. Heard the submissions made by both side learned counsels and perused the materials available on record.

4. According to the petitioner neither G.O.Ms.No.181 dated 15.11.2011 nor G.O.Ms.No.165 dated 17.09.2019 is applicable to the facts of the present case. The G.O.Ms.No.181 dated 15.11.2011, prescribes Teachers Eligibility Test



only in respect of Secondary Grade and B.T. Assistant Teachers and it does not prescribe any Teachers Eligibility Test as a qualification for the post of Headmaster. Hence the petitioner has filed the present writ petition seeking to quash the above proceedings and hence directed the second respondent to approve the appointment proposal.

5. The main contention of the learned Government Advocate for the respondents is that the G.O.Ms.No.181 School Education Department dated 15.11.2011 had mandated that the Teachers who have to be recruited in future for the Elementary Segment should have passed the Teachers Eligibility Test (TET) conducted by the appropriate Government in accordance with the guidelines framed by the National Council for Teacher Education. By applying the above Government Order the second respondent had returned the proposal by stating Balamurugan has not passed the Teacher Eligibility Test and he did not have the five years of experience as a Secondary Grade Teacher.

6. However, the records would show that Balamurugan has got five years of qualifying experience. So far as the Teacher Eligibility Test clearance is concerned, the said condition prescribed in G.O.Ms.No.181 dated 15.11.2011 is not applicable to the minority schools (i.e.) both aided and unaided.

7. The learned counsel for the petitioner invited the attention of this Court



to the judgement of Hon'ble Division Bench held in W.A.Nos.313 of 2022 and batch dated 02.06.2023 wherein it is held that the Teacher Eligibility Test condition is not applicable to the minority school both aided and unaided. In a well analysed judgement of the above Division Bench, it has been held as under:

“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.

(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.*



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(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.”

8. A single Bench of this Court has also made it crystal clear in WP.No.(MD)NO.15130 of 2021 dated 23.06.2022 that any rules framed under Article 309 of the Constitution of India should be made applicable to the Government servants i.e. the Teachers who are employed in government schools and not to teachers in private schools, because they are governed only under the Tamil Nadu Recognised Private Schools (Regulation) Act 1973, and the Rules made there under:

“2. In the case of Director of School Education and others vs.



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Geldon Wifred Viola reported in 2009(2) TLNJ 101 (Civil), the Hon'ble Division Bench of this Court had held that "the Government Order G.O.Ms.No.361, Education Department dated 31.12.1999 which is questioned though has been issued in exercise of the power under Article 309 of the Constitution of India, in our opinion, that would be made applicable only to the Government Servants viz., the teachers who are employed in the Government Schools and not to the teachers in private schools, as those teachers are governed only by the provisions of the Act and the rules made thereunder". This proposition was ratified by another Hon'ble Division Bench of this Court in the case of the Director of Elementary Education vs. G.Vijayalakshmi in W.A(MD).No.251 of 2015 dated 14.07.2015 and the relevant portion of the judgment reads as under:-

32. On this aspect, firstly we wish to consider the decision made in K.Michael Antony v. State of Tamil Nadu reported in 2010 (4) MLJ 1207. In the reported case, the request of the petitioner therein, for alteration of Date of Birth was rejected, on the ground that as per Rules framed under the Rules, applicable to government servants the respondents therein are not bound to entertain any application for alteration of date of birth, received after lapse of 5 years from the date of entry into service. Adverting to the above, with reference to the service conditions of the employees in a private school, governed under the Tamil Nadu Recognised Private Schools (Regulation) Act 1973, and the Rules made thereunder vis-a-vis the applicability of the Tamil



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Nadu State and Subordinate Service Rules, framed under Article 309 of the Constitution of India, only to the members of the State service and the decision of this Court in The Director of School Education, College Road, Chennai and others v. Geldon Wifred Viola and others reported in 2009 (2) TNLJ 101 (Civil), wherein, this Court held that, “the Government Order which was issued in exercise of the powers under Article 309 of the Constitution of India would be made applicable only to the Government servants viz., the teachers who are employed in Government schools and not to the teachers in Private Schools as they are governed only by the Tamil Nadu Recognized Private Schools (Regulation) Act, 30 1973 and the rules made thereunder. “

9. The learned Government Advocate submitted that the issue whether a pass in Teacher Eligibility Test is required for those teachers who were appointed before 29.07.2011, has been dealt early by two Hon'ble Division Benches and a conflicting opinion were given. Hence the matter is referred to a larger bench.

10. So far as the issue in hand is concerned, it is not with regard to applicability of the above rule to the Teachers who were appointed prior to 29.07.2011, but the applicability for minority schools both aided or not aided. So I do not feel any harm in following the order passed by the Hon'ble Division Bench of this Court in W.A.Nos.313 of 2022 and batch, dated 02.06.2023.



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11. With the above observation, this Writ Petition is **allowed** and the impugned order passed by the 2nd respondent vide Na.Ka.337/Aa4/2021, dated 18.03.2021 is quashed. Consequently The 2nd respondent is directed to approve the appointment of Thiru.K.Balamurugan as Headmaster w.e.f.15.11.2019, with all consequential monetary benefits, in accordance with law. No cost. The connected miscellaneous petition is also closed.

31.10.2023

Index : Yes

Internet : Yes/No

jrs

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R.N.MANJULA, J.
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