



W.P.No.34238 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2023

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.34238 of 2017

and

W.M.P.Nos.38125 and 38126 of 2017

E.Julie Selvakumari Margaret

...Petitioner

Versus

- 1.The State of Tamil Nadu,
Rep.by its Secretary to Government,
Education Department,
Fort St.George, Secretariat, Chennai -9.
- 2.The Director of School Education,
College Road, Chennai – 6.
- 3.The Chief Education Officer,
Vellore, Vellore District.
- 4.The District Education Officer,
Thirupattur, Vellore, Vellore District.
- 5.The Correspondent,
Kasam Devalois Higher Secondary School,
Kasm, Katpadi,
Vellore – 632 007.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of certiorarified mandamus calling for the entire records connected with the impugned order passed by the 4th respondent



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vide A.Thi.Mu.No.0608/Aa4/2017 dated 22.03.2017 and quash the same and direct the respondents to approve the appointment of the petitioner as B.T.Assistant (History) in the 5th respondent School w.e.f 10.09.2012 with all consequential monetary benefits, in the light of the decision rendered in the case of ***J.Remila vs. The Government of Taminadu & Ors. in W.P.(MD).No.1853 of 2016 dated 22.6.2017.***

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mrs.Meera Arumugam
Additional Government Pleader
for R1 to R4
No appearance for R5

ORDER

The petitioner has filed the present writ petition seeking issuance of a writ of certiorarified mandamus to quash the impugned order dated 22.03.2017 passed by the fourth respondent and consequently approve the appointment of the petitioner as B.T.Assistant (History) in the fifth respondent School w.e.f 10.09.2012, together with all consequential monetary benefits.

2. The petitioner's grievance is that she was appointed as Secondary Grade teacher consequent to the vacancy that arose for the post in the fifth respondent School due to the demise of one Mrs.Daisy Rani on 19.8.2012. The fifth respondent being a minority institution, the



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petitioner's case is that no permission is required to fill up the vacancies.

Therefore, the petitioner was selected and appointed as B.T.Assistant (History) and the order of appointment came to be passed on 06.9.2012 and she joined duty on 10.09.2012. The fifth respondent submitted a proposal dated 06.11.2012 for approval of the petitioner's appointment as B.T.Assistant (History). The fourth respondent returned the proposal on the ground that the teachers, who were qualified with Teachers Eligibility Test (TET) as mandated under G.O.Ms.No.181 School Education (C2) Department, dated 15.11.2011 alone can be appointed. The fifth respondent being a minority institution, the requirement of the petitioner qualifying with Teachers Eligibility Test does not arise in view of the decision of the Hon'ble Supreme Court in the case of ***Pramti Educational and Cultural Trust and Ors. Vs. Union of India and Ors.*** reported in ***(2014) 4 MLJ 486 (SC)***. Referring to the said judgment of the Hon'ble Supreme Court, the fifth respondent school re-submitted the proposal and again sought for approval of the petitioner's appointment on 25.1.2017. However, the fourth respondent vide proceedings dated 22.3.2017 again rejected the approval of the appointment of the petitioner on the ground that no permission was obtained from the



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Department for upgrading the vacant Secondary Grade teacher post as

B.T.Assistant post.

3. The petitioner's case is that no such permission is required for conversion or upgradation of Secondary Grade teacher post into B.T.Assistant post in a minority institution.

4. Heard Mr.S.N.Ravichandran, learned counsel for the petitioner and Mrs.Meera Arumugam, learned Additional Government Pleader for respondents 1 to 4 and perused the records.

5. The learned counsel for the petitioner would submit that the issues is no longer *res integra*, in view of the decision of this Court in W.P.No.18044 of 2011 dated 21.3.2012 and series of pronouncements of this Court. In W.P.No.18044 of 2011, a learned Single Judge of this Court held that in the absence of any Rules framed as contemplated under Section 56 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, G.O.Ms.No.144 School Education (D1) Department dated 04.07.2008 cannot be applied to privately managed aided schools. The very same issue also came before the Hon'ble Division Bench of this Court in W.A.(MD)No.1350 of 2017 dated 14.11.2017, which was preferred by the Government of Tamil Nadu



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against the order of the learned Single Judge of this Court. The only point for consideration in the said writ appeal was, as to whether Government aided minority educational institutions were required to obtain prior approval from the concerned Educational Authorities for conversion of Secondary Grade post as B.T.Assistant post, before making appointment of a teacher in the B.T.Assistant post.

6. After considering the entire gamut of facts and law, the Hon'ble Division Bench of this Court concluded that the institutions being recognised as minority institutions were protected under Article 30(1) of the Constitution of India. Though the State may have power to regulate the minority educational institutions in the interest of 'Efficiency', 'Discipline', 'Health', 'Sanitation', 'Morality' and 'Public order', the same cannot extend over entire administrative control of the minority institutions over its staff and its right to establish unregistered educational institutions. The Hon'ble Division Bench of this Court agreed with the order of the learned Single Judge and held that no prior permission was required before converting the Secondary Grade post to B.T.Assistant post.



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7. One another Hon'ble Division Bench of this Court in W.A.(MD).No.201 of 2020 dated 14.08.2020 had followed the consistent view taken by this Court and held that it is settled position of law that once the appointment is made to a sanctioned post, then, prior approval is not necessary. The said writ appeal was also at the instance of the State and it came to be dismissed.

8. Per contra, the learned Additional Government Pleader appearing for the respondents 1 to 4 would place reliance on the judgment in Rev.Aplc(MD).No.136 of 2022 in W.A.(MD).No.1115 of 2019 dated 06.6.2023 and submit that the recent view taken by the Hon'ble Division Bench of this Court should prevail and the review application was disposed of directing the management to fill up the vacancies in the teaching post only after getting prior permission from the Department and the petitioner's case cannot be accepted.

9. Considering the entire facts and circumstances, including the various pronouncements of this Court upto the recent pronouncement in Rev.Aplc(MD).No.136 of 2022 in W.A.(MD).No.1115 of 2019 dated 06.6.2023, the issue certainly is no longer *res integra*.

10. In view of the judgments relied on by the learned counsel



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for the petitioner, two of which are the Hon'ble Division Bench of this Court. However, the decision relied on by the learned Additional Government Pleader, appears to be taking a contrary view. However, at the same time, from the reading of the judgment of Hon'ble Division Bench rendered in Rev.Applc(MD).No.136 of 2022 in W.A.(MD).No. 1115 of 2019 dated 06.6.2023, it is clear that a direction was given to the management to fill up the vacancies in teaching post only after getting prior permission from the Department and the right of the minority institution has also been discussed. However, at the same time, none of the earlier judgments of this Court had been placed before the Hon'ble Division Bench and moreover a direction was given by the Hon'ble Division Bench in the review application, which appears to be only prospective while filling up the vacancies in teaching post. However, in the instant case the petitioner's appointment was made on 10.09.2012 and she has already attained the age of superannuation and she is before this Court only for getting her service benefits that she would be entitled.

11. Therefore, I am of the view that the observations made in Rev.Applc(MD).No.136 of 2022 in W.A.(MD).No.1115 of 2019 dated 06.6.2023 will not apply to the facts of the present case and the



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consistent view of this Court being no prior permission is required before conversion or upgradation of the post, the petitioner is therefore, entitled for the relief as sought for before this Court.

12. Accordingly, this writ petition is allowed. The respondents shall notionally approve the appointment of the petitioner as B.T.Assistant with effect from 10.09.2012 and settle all her consequential monetary benefits. This exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

27.06.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

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State of Tamil Nadu,
Education Department,
Fort St.George, Secretariat, Chennai -9.
- 2.The Director of School Education,
College Road, Chennai – 6.
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P.B.BALAJI, J.,

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