



W.P.(MD).No.1935 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2023

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.1935 of 2020

and

W.M.P(MD)Nos.1616,1618 & 3747 of 2020

D.Lawrence

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George,
Chennai-600 009.
- 2.The Director of Elementary Education,
College Road, Chennai-600 006.
- 3.The District Educational Officer,
District Educational Office,
Government Boys Higher Secondary School,
Sankarankovil,
Tenkasi District.
- 4.The Block Educational Officer,
Block Educational Office,
Kuruvikulam, Thiruvankadam,
Tenkasi District.



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5. The Correspondent,
R.C.Middle School,
Chidambarapuram,
Thiruvankadam,
Tenkasi District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned proceeding issued by the 3rd respondent District Educational Officer in Na.Ka.no.904/a3/2017 dated 21.01.2020(received on 24.1.2020) and the consequential impugned proceedings of the 4th respondent Block Educational Officer in Na.Ka.No.874/a2/17 dated 21.01.2020 (received on 24.1.2020) quash the same.

For Petitioner : M/s.A.Amala

For R1-R4 : Mr.N.Ramesh Arumugam
Government Advocate

ORDER

The present writ petition has been filed to call for the records relating to the impugned proceeding issued by the 3rd respondent District Educational Officer in Na.Ka.no.904/a3/2017 dated 21.01.2020(received on 24.1.2020) and the consequential impugned proceedings of the 4th respondent Block



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Educational Officer in Na.Ka.No.874/a2/17 dated 21.01.2020 (received on 24.1.2020) quash the same.

2. The petitioner is working as B.T Assistant Maths in the 5th respondent school. The petitioner was appointed as B.T Assistant Maths in the 5th respondent school with effect from 22.06.2012 in a sanctioned vacancy which arose on account of the retirement of the secondary grade teacher J.Francis Mary on 31.05.2012. The 5th respondent school is administered by the R.C Diocese of Palayamkottai. It is a minority corporate management. The petitioner possessed the required qualification for the post of B.T Assistant Maths. After her appointment, the 5th respondent school has sent a proposal to the then District Elementary Education Officer (hereinafter referred as DEEO) requesting to approve her appointment and disburse the grant-in-aid towards the salary. However, the said proposal was declined to be approved since the petitioner did not qualify in Teachers Eligibility Test (hereinafter referred as TET).

3. Assailing the same, the petitioner filed W.P(MD)No.22316 of 2015 and the same was allowed by this Court on 14.03.2016 directing the 3rd



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respondent District Educational Officer (hereinafter referred as DEO) to disburse the salary with effect from 14.03.2016. The petitioner was permitted to receive salary from 14.06.2016. Hence, the petitioner filed contempt petition in Cont.P(MD)No.930 of 2017 seeking to disburse his salary from the date of his appointment. To avoid contempt proceedings, the 3rd respondent DEO vide proceedings, dated 14.09.2017 disbursed the salary to the petitioner from the date of appointment from 22.06.2012. The petitioner's appointment as B.T Assistant maths was approved by the 3rd respondent DEO.

4. The petitioner requested the 4th respondent Block Educational Officer (hereinafter referred as BEO) to disburse the annual increment and incentive increments for acquiring higher qualification on M.Sc Maths. Considering the same, the 4th respondent disbursed the annual increments and incentive increments for additional higher qualifications vide his proceedings, dated 18.09.2019. under such circumstances, the 3rd respondent DEO cancelled the petitioner's approval vide the impugned proceedings, dated 21.01.2020 and the same was received by the petitioner on 24.01.2020. Simultaneously, the 4th respondent BEO in a consequential impugned proceeding, dated 21.01.2020 which was also received on 24.01.2020 by the petitioner cancelled the annual



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increment and incentive increments which are already sanctioned. When the appointment of the petitioner is against the sanctioned vacancy as per the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules, the respondents 3 and 4 ought not to have cancelled the petitioner's approval and incentive increments and other increments without providing the petitioner with a bare minimum opportunity of hearing or without any rhyme or without any reason. Hence, assailing the said impugned order, the writ petition came to be filed. The learned counsel for the petitioner insisted to allow the writ petition by quashing the impugned orders.

5. The learned Government Advocate submitted that based on the order passed by the Division Bench of this Court in W.A(MD)No.157 of 2016 and on the basis of the legal opinion obtained by the 3rd respondent in the matter of Cont.P(MD)No.930 of 2017, only grant-in-aid was sanctioned for the petitioner on 14.09.2017 at the first instance. Thereafter, on 23.05.2019, the petitioner's appointment was approved on the condition that the petitioner's lack in TET would be subject to the outcome of the SLP pending before the Hon'ble Apex Court. However, later, the respondents came to know that the said impugned approval order was issued without getting appropriate legal opinion and as a



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result of which, the said approval order was issued by the authorities without getting appropriate legal opinion. Hence, the same came to be cancelled vide the impugned order, dated 21.01.2020 and the same need not be interfered. Because the matter is still pending before the Hon'ble Apex Court. Considering the fact that this issue is no longer *res integra* and the Hon'ble Division Bench of this Court in W.A(MD)No.735 of 2023 has dealt with the similar case. The operative portion of which is derived as follows:

“It is the consistent view of several Division Bench Judgments of this Court that Teachers Eligibility Test is not required for even appointment in Minority Institutions. The question is now pending before the Honourable Supreme Court.

2. A Division Bench of this Court in its Judgment dated 28.09.2021 in W.A.(MD)No.1862 of 2021, after taking note of the pendency of Special Leave Petition before the Apex Court, has observed as follows:

“3.Since the issue is already covered by a Division bench judgment, no question arises of revisiting the same. In the event the SLP succeeds and the relevant order is set aside, that will govern all matters.....”

6. In another case which has been dealt with by the Hon'ble Division Bench of this Court in W.A.No.313 of 2022 batch has held as follows:



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*“3.On the above submission, we have heard the learned counsel appearing for the other parties, who jointly submitted that whether the Department can insist for TET examination pass in case of a teacher of a minority institution and whether providing such a qualification would affect any of the rights of the minority institution guaranteed under the Constitution of India, are pending consideration before the Hon'ble Supreme Court. However, as of now, the decision of the Constitutional Bench of the Hon'ble Supreme Court in **Pramati Educational and Cultural Trust and others v. Union of India [(2014) 8 SCC 1]** is in force.*

*4.Though the point so argued by the learned Additional Advocate General, was not raised before the learned Judge in the writ petitions and the order impugned in WA Nos.19, 31, 32 and 36 of 2023 came to be passed, in order to settle the issues in all respects, this court is inclined to clarify the query raised by the learned Additional Advocate General. Accordingly, it is clarified in nutshell that by virtue of the judgment of the Constitutional Bench of the Hon'ble Supreme Court in *Pramati Educational and Cultural Trust* (cited supra), the eligibility of TET pass as required for appointment of teachers in non-minority schools, will not apply to minority schools and paragraph no.71.1. under column (C) is added to that effect, in the common judgment dated 02.06.2023 passed in these batch of cases, which reads as follows:*

“C. W.A. Nos.19, 31, 32, 36 of 2023



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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 RTE Act, 2009 insofar as it applies to minority schools, aided or unaided, covered under Article 30(1) is *ultra vires* 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 field 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."

That apart, in order to elucidate the position, the following lines are added at the end of paragraph nos.73 and 74(c) of the judgment



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dated 02.06.2023:

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"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.""

7. This Court in consonance with the said orders passed by the Hon'ble Division Bench of this Court is inclined to observe that the impugned order is not sustainable, since the approval which is already granted on 23.05.2019 itself is a conditional approval which insist that approval would be subject to the outcome of the Hon'ble Apex Court judgment. In view of the same, it is not necessary to get an additional legal opinion for sustaining the said approval order and hence, the impugned order of cancellation of approval letter, dated 21.01.2020 is non-est in the eye of law and the consequential impugned order, dated 21.01.2020 cancelling the incentive and annual increments is also not legally sustainable.

8. In view of the same, both the impugned orders, dated 21.01.2020 proceedings in Na.Ka.no.904/a3/2017 and Na.Ka.No.874/a2/17 are quashed and this Court remits the case back to the 3rd respondent for re-considering the



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case in the light of the order of this court with respect to the approval of the petitioner's appointment and also incentive and annual increments within a period of eight (8) weeks from the date of receipt of a copy of this order.

9. With the above said observations, this Writ Petition stands allowed.

No costs. Consequently, connected Miscellaneous Petitions are closed.

28.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To

1. The Secretary,
The State of Tamil Nadu,
Department of School Education,
Fort St.George,
Chennai-600 009.
- 2.The Director of Elementary Education,
College Road, Chennai-600 006.
- 3.The District Educational Officer,
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Tenkasi District.

L.VICTORIA GOWRI, J.

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