



W.A.(MD)No.354 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)No.354 of 2020
and C.M.P. (MD) No.2398 of 2020

1.The District Educational Officer,
Sankarankovil,
Tirunelveli District.

2.The Block Educational Officer,
Vasudevanallur,
Tirunelveli District.

... Appellants/Respondents 1 & 2

Vs.

1.P.Elsi Jemima,
Secondary Grade Teacher,
C.M.M.L. High School,
Vadamalapuram P.O. - 627 755.
Mullikulam Via, Kadayanallur Taluk,
Tirunelveli District.

... 1st Respondent/Writ Petitioner

2.The Manager,
C.M.M.L. Primary School,
Vadamalapuram P.O. - 627 755.
Mullikulam Via, Kadayanallur Taluk,
Tirunelveli District.

... 2nd Respondent/3rd Respondent



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PRAYER: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 22.11.2019 made in W.P.(MD)No.24178 of 2019 on the file of this Court.

For Appellants : Mr.A.Kannan
Additional Government Pleader

For 1st Respondent : Mr.T.Pon Ramkumar

JUDGMENT

(Judgment of the Court was delivered by ***R.SURESH KUMAR, J.***)

This Writ Appeal has been directed against the order of the Writ Court dated 22.11.2019, made in W.P.(MD) No.24178 of 2019.

2. The first respondent P.Elsi Jemima was appointed as a Secondary Grade Teacher in the second respondent school in a regular vacancy, which was a sanctioned post with grand in aid from the Government, with effect from 03.06.2019.

3. After appointment, the School sent a proposal for approval, which was negatived by the appellant Department by proceedings dated 08.08.2019, which was under challenge before the Writ Court.



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4. The said Writ Petition was allowed by the learned Judge through the order impugned dated 30.01.2019. Aggrieved over the same, the present Writ Appeal has been filed.

5. Assailing the impugned order of the learned Judge of the Writ Court, the learned Additional Government Pleader appearing for the appellants would submit that, admittedly the Teacher did not qualify with the TET and after the cut of date no appointment shall be made without the TET qualification, which is a mandate of Right of Children to Free and Compulsory Education Act, 2009, as well as the Rules made thereunder, including the Government Order issued in this regard by the State Government. Therefore, such an order passed by the Writ Court, allowing the said Writ Petition, directing the appellants to approve the appointment of the teacher concerned is unjustified, therefore, on this ground this appeal has been filed, he contended.

6. We have heard Mr.T.Pon Ramkumar, learned counsel appearing for the first respondent, who would submit that, since the second respondent, where the teacher was appointed, is a minority school and when



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there has been no quarrel to that effect, the appointment of the teacher has been effected even without the TET qualification in view of the law having been declared by the Hon'ble Supreme Court in ***Pramati Educational and Cultural Trust and others v. Union of India*** reported in ***(2014) 8 SCC 1***.

7. We have considered the said submissions made by both sides.

8. As has been rightly pointed out by the learned counsel appearing for the first respondent, since the second respondent school, where the first respondent was appointed, is a minority school, the insistent of having the qualification of TET, insofar as the teachers who are appointed in a minority run institution, is concerned, it is not required in view of the law having been declared by the Hon'ble Supreme Court in ***Pramati Educational and Cultural Trust's*** case (cited supra).

9. Taking note of this factor and all other aspects on the issue as to whether the TET qualification is a must for the teachers who have been appointed in various schools, including the schools run by minority educational society or trust, had engaged the Division Bench of this Court



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where the main order passed by the said Divisional Bench in *the Director of School Education and others v. M.Velayutham and another* in *Writ Appeal No.313 of 2022 etc., batch dated 02.06.2023* reported in *2023 SCC OnLine Mad 3643* has been subsequently clarified by the order of the very same Division Bench dated 14.06.2023, where the law declared by the *Pramati Educational and Cultural Trust's* case (cited supra) having been taken note of by the Division Bench and has passed the following order:-

“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

WHETHER TET IS A NECESSARY MANDATE



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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 dated 02.06.2023:

"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."

5.Registry is directed to issue certified copy to all the parties concerned, after adding paragraph no.71.1 and in paragraph nos.73 and 74(c) as referred to above, in the judgment dated 02.06.2023 passed in W.A.No.313 of 2022 etc. batch and upload the corrected judgment."

10. In view of the settled legal position, as declared by the Hon'ble Supreme Court, which has been consistently followed in various judgments of this Court, including the impugned judgment as stated supra, the view taken by the learned Judge in the impugned order cannot be said to be



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erroneous, therefore, the said order has to be sustained. In view of the same, the Writ Appeal fails, therefore, it is liable to be dismissed.

11. During the pendency of the Writ Appeal, the appellant Department by order dated 23.02.2021, has approved the appointment of the teacher, however, no other service benefit except the mere salary has been extended to the teacher concerned. In view of the same, there shall be a direction to the appellant department to extend all service benefits, for which the teacher is entitled, from the date of appointment till date and continue to pay the same and the needful shall be undertaken by the appellant Department within a period of 8 weeks from the date of receipt of a copy of this order.

12. With these directions, this Writ Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(R.S.K., J.) & (K.K.R.K, J.)
22.06.2023

NCC : Yes
Index : Yes
Internet : Yes
SJ

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