



W.A.(MD)No.592 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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and

C.M.P.(MD)No.2689 of 2021

1.The Director of School Education,
(Higher Secondary), Chennai-6.

2.The Chief Educational Officer,
Sivagangai, Sivagangai District.

3.The District Educational Officer,
Devakottai, Sivagangai District.

... Appellants / Respondents

Vs.

St.John's Girls Higher Secondary School,
Rep. by its Correspondent,
Velimuthu Vilakku

... Respondent / Writ Petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 23.12.2020 made in W.P.(MD)No.19336 of 2020 on the file of this Court.



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For Appellants : Mr.A.Kannan,
Additional Government Pleader
For Respondent : Mr.S.Savarimuthu,
For M/s.Father Xavier Associates

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 23.12.2020 made in W.P.(MD)No.19336 of 2020.

2.The teacher has been appointed in the respondent School, which is a minority run institution. Insofar as the approval is concerned, that has been made by the appellant Department, whereas the annual increment, for which the teacher is entitled to, has been denied on the ground that the teacher concerned is not qualified in Teacher Eligibility Test.

3.The said issue was agitated before the Writ Court, where the learned Single Judge allowed the Writ Petition, by order dated 23.12.2020, which is impugned in this Writ Appeal.



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4.The issue raised in this Writ Appeal has already been raised in a number of cases even we have disposed one case in W.A.(MD)No.558 of 2021 on 22.06.2023 with almost similar facts, where we have passed the following order:-

“This Writ Appeal has been directed against the order of the Writ Court dated 23.12.2020, made in W.P.(MD) No. 19334 of 2020.

2. The respondent School appointed a teacher by name viz.. S.Kitheri Sugirtha Mary by proceedings dated 09.06.2014 as B.T. Assistant (Tamil) with effect from 10.06.2014 and she has sought for approval from the appellant department.

3. The approval was also given by the third respondent on 18.01.2017, however, the annual increment, for which the teacher is entitled to, has not been allowed or extended or given. Therefore, in order to get the annual increment, when a plea was made on behalf of the teacher, it was negatived by order dated 05.11.2020, passed by the appellant department. Challenging the same, the said Writ Petition was filed.

4. The reason for non-grant of increment to the teacher concerned, according to the appellant department, is that, the teacher did not qualify with TET i.e., Teacher Eligibility Test, therefore, the teacher was not entitled to get the increment. The



same was not accepted by the learned Judge in view of the law declared by the Courts of law that, if an appointment is made in a teaching post of a minority run institution, the insistent of TET qualification is not required in view of the law declared by the Hon'ble Supreme Court of India in **Pramati Educational and Cultural Trust and others v. Union of India** reported in (2014) 8 SCC 1. Accordingly, the learned Judge allowed the said Writ Petition through the order dated 23.12.2020, which is impugned herein.

5. Assailing the same, Mr.A.Kannan, learned Additional Government Pleader appearing for the appellants would contend that, insofar as the issue as to whether the minority institution has an absolute right to make an appointment of the teacher even without the TET qualification, which is essential and basic qualification as prescribed by the academic authority viz., NCTE as per the provisions of the Right of Children to Free and Compulsory Education Act, 2009, is concerned, still it is a question to be decided, for which the issue has been referred before a Larger Bench of the Supreme Court, therefore, though approval of the appointment of the teacher was given, the increment has been withheld and it is just and necessary to withhold such increment, which has not been considered in a proper perspective by the learned Judge, who passed the order impugned, hence, the learned Additional Government Pleader seeks indulgence of this Court to set aside



the impugned order.

6. Heard Mr.S.Savarimuthu, learned counsel for the respondent / Writ petitioner, who made submissions stating that, the issue is no more res integra in view of the law having been declared by the Hon'ble Supreme Court and therefore, the approach of the learned Judge cannot be found fault with, he contended.

7. We have considered the said rival submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.

*8. As has been rightly pointed out by the learned counsel appearing for the respondents, the issue as to whether the teacher appointed in a minority school must have qualified with TET was the question that was answered by the Hon'ble Supreme Court in **Pramati Educational and Cultural Trust's** case (cited supra), thereafter, since no contra decision has come for the present, it cannot be stated that, without such qualification if he / she is appointed in a minority school where the appointment is also approved, he / she is not entitled to get annual increment.*

9. Once the appointment is approved by the competent authority, the question of withholding the increment alone does not arise because if the appointment is approved, the teacher is eligible to get salary as well as all other perquisites, including the increment, for which the teaching grant is being sanctioned



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by the Government from time to time for such aided schools.

10. Since the first respondent school is one of such aided school and minority institution, where if the teacher has got appointment and her appointment was also having been approved, the appellant department cannot refuse to give the annual increment. Therefore, the order passed by the learned Judge cannot be found fault with, hence, the order has to be sustained.

11. In view of the aforestated, this appeal fails, hence, it is liable to be dismissed.

12. As a sequel, there shall be a direction to the appellant department to calculate the annual increments, for which the teacher concerned is entitled to, and pay the same to the teacher and continue to pay the same and the needful shall be undertaken by the appellant department as indicated above within a period of 8 weeks from the date of receipt of a copy of this order.

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

5.Once the appointment is approved by the competent authority, the question of withholding the increment alone does not arise because if



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the appointment is approved, the teacher is eligible to get salary as well as all other perquisites, including the increment, for which the teaching grant is being sanctioned by the Government from time to time for such aided schools.

6.Since the respondent school is one of such aided school and minority institution, where if the teacher has got appointment and her appointment was also having been approved, the appellant department cannot refuse to give the annual increment. Therefore, the order passed by the learned Judge cannot be found fault with, hence, the order has to be sustained.

7.In view of the aforestated, this Writ Appeal fails, hence, it is liable to be dismissed, accordingly, it is dismissed.

8.As a sequel, there shall be a direction to the appellant department to calculate the annual increments, for which, the teacher concerned is entitled to, and pay the same to the teacher and continue to pay the same and the needful shall be undertaken by the appellant department as



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indicated above within a period of 8 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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

23.06.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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