



W.P.(MD)No.5105 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:13.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)Nos.5105 of 2020
and
W.M.P(MD)Nos.4462 and 4463 of 2020

Miss.A.Amali Josepha

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep. by its Additional Chief Secretary,
Department of School Education,
Fort St. George, Chennai – 9.
- 2.The Director of Elementary Education,
DPI Campus,
College Road, Chennai – 6.
- 3.The District Elementary Educational Officer,
The Office of the District Educational Officer,
Tirunelveli District – 627 001.
- 4.The Block Educational Officer,
Ambasamuthram Block,
Ambasamuthram,
Tirunelveli.



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5. The Correspondent,
St. Joseph's Primary School,
Ambasamudram – 627 401.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings dated 09.05.2019 in Na.Ka.No.1390/AA2/2019, on the file of the fourth respondent and quash the same in respect of the petitioner based on the Division Bench orders dated 24.08.2016 and made in W.A.No.213 of 2016 and made in W.A(MD)No.1019 of 2013 dated 24.11.2016 directing the respondents to approve the appointment of the petitioner Miss.A.Amali Josepha, working as Secondary Grade Teacher in St. Joseph's Primary School, Ambasamudram, Tirunelveli – 627 401, w.e.f., 06.03.2019, with all service benefits.

For Petitioner	: Fr.Xavier Arul Raj, Senior Counsel for M/s.Father Xavier Associates
For R1 to R-4	: Mr.T.Amjadkhan, Government Advocate
For R-5	: No Appearance



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ORDER

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This writ petition has been filed to quash the impugned proceedings of the fourth respondent in Na.Ka.No.1390/AA2/2019, dated 09.05.2019, in respect of the petitioner, based on the decisions of the Division Bench, dated 24.08.2016 made in W.A.No.213 of 2016 and dated 24.11.2016 made in W.A(MD)No.1019 of 2013 and to direct the respondents to approve the appointment of the petitioner Miss.A.Amali Josepha, working as Secondary Grade Teacher in St. Joseph's Primary School, Ambasamudram, Tirunelveli – 627 401, w.e.f., 06.03.2019, with all service benefits.

2. The case of the petitioner is that she was appointed as a Secondary Grade Teacher in the fifth respondent school in the place one Mrs.S.Maniarasi, who retired on 28.02.2019. The fifth respondent school submitted a proposal for approval of appointment of the petitioner to the Educational Authorities. However, the fourth respondent returned the said proposal stating that the petitioner has not possessed the TET qualification. Challenging the same, the petitioner has filed this writ



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petition with the aforesaid prayer.

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3. The learned Senior Counsel appearing for the petitioner would submit that the issue raised in this writ petition is no longer *res integra*. Already, the Hon'ble Apex Court in the case of ***Paramati Educational & Cultural Trust v. Union of India [2014(8) SCC 1]***, has held that application of Right of Children to Free and Compulsory Education Act, 2009(hereinafter referred to as the Act), will not applicable in respect of the minority institutions, in paragraph No.45, the the Hon'ble Apex Court had categorically held that under [Article 30\(1\)](#) of the Constitution, all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. Religious and linguistic minorities, therefore, have a special constitutional right to establish and administer educational schools of their choice and this Court has repeatedly held that the State has no power to interfere with the administration of minority institutions and can make only regulatory measures and has no power to force admission of students from amongst non-minority communities, particularly in



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minority schools, so as to affect the minority character of the institutions.

However, G.O(Ms)No.181 School Education(C2) Department, dated 15.11.2011, was issued to impose a condition that the persons, who possessed TET qualification are entitled to be appointed in the minority institution and the said G.O(Ms)No.181, was challenged before this Court in W.A.No.213 of 2016[(2016) 7 MLJ 155], wherein following the decision of the Hon'ble Supreme Court, the Division Bench has held that the Act, 2009 is not applicable to the minority institution and the decision of the Hon'ble Division Bench of this Court consistently followed by the Division Bench of this Court in W.A(MD)No.859 of 2019 and accordingly prayed for allowing of this writ petition.

4. The learned Senior Counsel appearing for the respondents submitted that the issue as against the order passed by the Division Bench of this Court with regard to qualification of TET, is necessary or not for the Teachers, who were appointed in the minority institution, is pending before the Hon'ble Supreme Court. In view of the same, the impugned order is subject to the result of the S.L.P., pending before the Hon'ble Supreme Court.



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5. The learned Government Advocate appearing for the official respondents, has not disputed the fact submitted by the learned Senior Counsel appearing for the petitioner.

6. Heard the learned Senior Counsel appearing for the petitioner, learned Government Advocate appearing for the official respondents and perused the materials available on record.

7. Admittedly, the fifth respondent appointed the petitioner as a Secondary Grade Teacher on 06.03.2019 and the school sent a proposal for approval of the Educational Authorities. However, the fourth respondent returned the proposal stating that the petitioner has not qualified the Teachers Eligibility Test. As rightly contended by the learned Senior Counsel appearing for the petitioner, the issue arises in the present case is no longer *res integra* in view of the decision rendered in W.A.No.213 of 2016[(2016) 7 MLJ 155]. The said ratio was followed by several Division Benches of this Court. Particularly, in the decision made in W.A(MD)No.859 of 2019, dated 26.09.2019, it has been held as follows:



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“5.This issue came up for consideration before several Division Benches of this Court and it has been held that the department cannot mandatorily insists the teachers working in minority institution to have TET qualification. One of the recent decision of the Division Bench is in ***P.Savarimuthu Maria George v. The District Elementary Educational Officer, Virudhunagar District & Others [2018 0 Supreme (Mad) 4017] (W.A.(MD) No. 948 of 2018)***, wherein the Division Bench noted all the decisions on this issue and allowed the appeal filed by the Teacher. It will be beneficial to refer to the following portions of the order.

“4. Shortly after the disposal of the Writ Petition which is the subject matter of this appeal, a Division Bench of this Court in ***Secretary to Government, Government of Tamil Nadu, Chennai -vs- S. Jeyalakshmi [(2016) 5 CTC 639]***, held in paragraph



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nos. 39 and 40, as follows:-

*“39.In the decision relied upon by the Learned Senior Counsel for the Petitioners in **Ashwini Thanappan -vs- Director of Education** [(2014) 8 SCC 272], the issue that arose for consideration related to the interpretation of Article 27. The matter was referred to the Bench of appropriate strength for further examination. Since the Learned Counsel submitted that the Judgment in **Pramati Educational and Cultural Trust** is inconsistent with the Judgment of the Constitution Bench in **P.A. Inamdar -vs- State of Maharashtra** [(2005) 6 SCC 537]. The matter is pending consideration.*

40. In view of the above, the



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*contention of the Learned Additional Advocate General that the order of the Learned Single Judge directing the release of salary is not sustainable, in view of the reference of **Ashwini Thanappan** case to the Bench of appropriate strength, cannot be accepted, since the issue in **P.A. Inamdar** is with respect quota of admission of students in the unaided professional institutions, entrance test and fee structure. Therefore, the outcome of **Ashwini Thanappan** has nothing to do with the case on hand.”*

It would also be relevant to refer the following paragraphs in that Judgment of the Division Bench of this Court:-

“52. However, the Government, before issuing G.O. Ms.No. 181 dated 15.11.2011, lost sight of one important fact, namely imposition of a condition



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on the Teachers, who were appointed prior to the issue of G.O., in non minority Schools, both aided and unaided, to qualify themselves with TET within a period of five years, in order to continue in service, would cause great hardship to them. Moreover, if the Teachers who have put in more number of years of service, could not pass TET within five years, their contribution in service would be in jeopardy. Further, it is seen that the percentage of pass in the TET examination conducted in 2012 and 2013 was very minimal.

56. We are, therefore, of the considered view that the Government may seek a clarification from the NCTE, in the light of what is stated in the preceding paragraph, whether the prescription of minimum qualification of TET can be made applicable



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prospectively for the Teachers who were appointed subsequent to the date of issue of G.O., in both non minority and minority institutions and not retrospectively as the same would cause undue hardship to the Teachers who have been serving for a quite a long time.

58. In our opinion, non qualifying in TET by the Teachers already in service should not defeat the object of the Government to provide quality and standard education and therefore, the Government may, in the alternative, conduct a refresher course and also some interactive sessions during annual vacation, in order to ensure and enhance the quality of education.

60. In the light of the above, we are of the view that the Government cannot insist upon the minority



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institution, both aided or unaided, to abide by any Regulation framed under the provisions of the RTE Act. Therefore, we hold that G.O. Ms. No. 181, School Education (C2) Department dated 15.11.2011 issued by the Government of Tamil Nadu, is not applicable to the minority institutions.

62. However, keeping in mind the larger interest in which the Government has issued the above G.O.s, this Court feels that the minority institutions may also consider conducting a refresher course and also some interactive sessions to all the Teachers during annual vacation, in order to ensure and improve the quality of Teachers.” The resultant effect of that decision is that it is not necessary for teachers in schools run by aided minority institutions to



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secure a pass in Teacher Eligibility Test for approving their appointment. The said view has been reiterated by the subsequent decisions of the Division Benches of this Court in **K. Solomon Jeyaraj -vs- Secretary, Department of School Education** (Judgment dated 25.11.2016 in W.A. (MD) No. 1437 of 2016), **Y. Kanagaraj -vs- State of Tamil Nadu** (Judgment dated 16.06.2017 in W.A. (MD) No.724 of 2017) and **K. Anita -vs- State of Tamil Nadu** (Judgment dated 26.02.2018 in W.A. (MD) No. 1090 of 2017)”

8. For the above said reason, the impugned order passed by the fourth respondent, dated 09.05.2019, is hereby set aside and the fourth respondent is directed to approve the appointment of the petitioner from the date of appointment. However, the said appointment is subject to the



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result of the S.L.P. Pending before the Hon'ble Supreme Court.

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9. This Writ Petition is allowed in the above terms. No Costs.

Consequently, connected miscellaneous petitions are closed.

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pm

Index:Yes/No

NCC:Yes/No

To

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- 2.The Director of Elementary Education,
DPI Campus,
College Road, Chennai – 6.
- 3.The District Elementary Educational Officer,
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4. The Block Educational Officer,
Ambasamuthram Block,
Ambasamuthram,
Tirunelveli.

M.DHANDAPANI,J.

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