



W.A.(MD)No.1865 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)No.1865 of 2021
and C.M.P. (MD) No.8151 of 2021

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

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

... Appellants/Respondents 1 & 2

Vs.

1.R.Jhansi Rani,
B.T. Assistant (Tamil),
St. Mary's Higher Secondary School,
Rajakembiram,
Sivagangai District.

... 1st Respondent/Writ Petitioner

2.The Correspondent,
St. Marys Higher Secondary School,
Rajakembiram-630 609,
Sivagangai District.

... 2nd Respondent/3rd Respondent

PRAYER: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 16.03.2021 made in W.P.(MD)No.5832 of 2021 on the file of this Court.



W.A.(MD)No.1865 of 2021

For Appellants : Mr.A.Kannan
Additional Government Pleader

For Respondents : Ms.A.Amala

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 16.03.2021 made in W.P.(MD) No.5832 of 2021.

2. The first respondent teacher was appointed as as a B.T. Assistant (Tamil) in the second respondent School, which is a minority school. The said appointment was made on 06.06.2012 and subsequently, the appointment was approved by the competent authority in the year 2017 with effect from 06.06.2012, accordingly, the teacher has been continuously working.

3. It is to be noted that the teacher did not possess the TET qualification and without such qualification the appointment has been made. Whiles, when the teacher asked for annual increment, that was not given and it was denied. Challenging the same, Writ Petition was filed in



W.A.(MD)No.1865 of 2021

W.P(MD) No.5832 of 2021, which was considered by a learned Judge and he passed orders in the said Writ Petition dated 16.03.2021 to reconsider the issue, in the light of the earlier orders passed in this regard. Aggrieved over the same, the present appeal has been directed.

4. Heard Mr.A.Kannan, learned Additional Government Pleader appearing for the appellants and Ms.A.Amala, learned counsel appearing the first respondent teacher.

5. The issue as to whether a teacher, who is appointed as a Secondary Grade Teacher or B.T. Assistant in a minority run school without possessing the qualification of TET whether can continue in the school or in other words, for the appointment to the said post in a minor school whether the teacher can be insisted upon to acquire the qualification of TET had already been considered by the Hon'ble Supreme Court in a Constitution Bench decision in *Pramati Educational and Cultural Trust & Ors. v. Union of India* reported in (2014) 8 SCC 1. Under the said judgment, it has been declared categorically that, in minority run institutions, the teacher to be appointed cannot be insisted upon to hold the qualification of TET.



W.A.(MD)No.1865 of 2021

6. Though the issue subsequently had been referred to a Larger Bench, as stated by the learned counsel appearing for the teacher concerned, as of now, the law holding the field is ***Pramati Educational and Cultural Trust's*** case (cited supra).

7. In this context, it is to be noted that, the larger issue as to whether the insistent of TET qualification for the teachers who are appointed prior to cut of date viz., 27.09.2011, whether to be approved or not or the teachers who have been appointed subsequent to that cut of date, if they did not qualify themselves to have the TET qualification, whether can be permitted to continue the post, are all the matters, that were referred to a Division Bench of this Court, where a common judgment was passed by a Division Bench in the Principal Seat on 02.06.2023 ***in Writ Appeal No. 313 of 2022 etc., batch*** in the matter of ***the Director of School Education and others v. M.Velayutham and another.***

8. In the said judgment, set of law have been declared by the Division Bench in para 74, which reads thus:-

“CONCLUSION



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W.A.(MD)No.1865 of 2021

74. For the sake of clarity and ease of reference, the upshot of the above discussion is as under:

(a) Any teacher appointed as Secondary Grade Teacher or Graduate Teacher/BT Assistant prior to 29.07.2011 shall continue in service and also receive increments and incentives, even if they do not possess/acquire a pass in TET. At the same time, for future promotional prospects like promotion from secondary grade teacher to B.T. Assistant as well as for promotion to Headmasters, etc., irrespective of their dates of original appointment, they must necessarily possess TET, failing which they will not be eligible for promotion.

(b) Any appointment made to the post of Secondary Grade Teacher after 29.07.2011 must necessarily possess TET.

(c) Any appointment made to Graduate Teacher/BT Assistant, after 29.07.2011, whether by direct recruitment or promotion from the post of Secondary Grade Teacher, or transfer, must necessarily possess TET.

(d) The Special Rules for the Tamil Nadu School Educational Subordinate Service issued in GO (Ms.) No.13 School Education (S.E3(1)) Department dated 30.01.2020 insofar as it prescribes “a pass in Teacher Eligibility Test (TET)” only for direct recruitment for the post of BT Assistant and not for promotion thereto in Annexure-I (referred to in Rule 6) is struck down, thereby meaning that TET is mandatory/essential eligibility criterion for appointment to the



W.A.(MD)No.1865 of 2021

post of BT Assistant even by promotion from Secondary Grade Teachers.

(e) The language employed in G.O. (Ms) No. 181 dated 15.11.2011 is to be read and understood to the effect that for continuance in service without promotional prospects, TET is not mandatory.”

9. The said judgment has been subsequently clarified in a particular point by order dated 14.06.2023 i.e., yesterday, where in view of the ***Pramati Educational and Cultural Trust's*** case (cited supra), whether the directions given in the judgement, especially, para 74 would be made applicable to minority run institutions also as it would run contra to the law already declared by the Hon'ble Supreme Court in the ***Pramati Educational and Cultural Trust's*** case (cited supra). This position has already been clarified by the Court by order dated 14.06.2023, where the Division Bench has held as follows:-

“2.The learned Additional Advocate General submitted that in respect of WA.Nos.19, 31, 32 and 36 of 2023 connected with the minority institutions, a pass in TET has to be taken into consideration as a required qualification for grant of approval for appointment of teachers and hence, this has to



W.A.(MD)No.1865 of 2021

be clarified by this court, in the common judgment dated 02.06.2023 passed in the aforesaid batch of cases.

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



WEB COPY



W.A.(MD)No.1865 of 2021

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 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



W.A.(MD)No.1865 of 2021

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 WA.No.313 of 2022 etc. batch and upload the corrected judgment."



W.A.(MD)No.1865 of 2021

10. Therefore, it has become clear by the clarificatory order that has been made by the Division Bench yesterday to the said judgment in W.A.No.313 of 2022 etc., batch cases dated 02.06.2023 that, minority run institutions can appoint the teachers without TET qualification. Therefore, that kind of insistent to the teacher to have TET qualification may not be justifiable so long as the ***Pramati Educational and Cultural Trust's*** case (cited supra) case holds the field.

11. In the present case also, the teacher concerned was appointed by the second respondent school, which is admittedly a minority school, therefore, the said benefits, as has been discussed hereinabove, can very well be extended to the teacher concerned. Hence, the direction to that effect given by the learned Judge through the impugned order directing the appellant Department for considering the request of the teacher for grant of annual increment is fully justified and therefore, the said judgment, which is impugned herein, does not warrant any interference from this Court.

12. In the result, the Writ Appeal fails, and it is dismissed. The order passed by the learned Single Judge, which is impugned herein, shall



W.A.(MD)No.1865 of 2021

be complied with by the appellant Department within a period of 8 weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(R.S.K., J.) & (K.K.R.K, J.)
15.06.2023

NCC : Yes
Index : Yes
Internet : Yes
SJ

To

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W.A.(MD)No.1865 of 2021

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