



W.P.(MD)No.29190 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 12.12.2023

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THE HONOURABLE MR.JUSTICE **R.VIJAYAKUMAR**

W.P.(MD)No.29190 of 2023

and

W.M.P.(MD)No.25253 of 2023

Correspondent,
St.Mary's Higher Secondary School,
Vickramasingapuram – 627 425,
Tirunelveli District.

... Petitioner

vs.

1.The State of Tamil Nadu,
Rep by its Secretary,
Department of School Education,
Fort St.George, Chennai - 600 009.

2.The Director of School Education,
College Road, Chennai - 600 009.

3.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.

4.The District Educational Officer (Secondary),
Tirunelveli, Tirunelveli District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned proceeding issued by the 4th respondent District Educational Officer in Na.Ka.No.4198/a3/2022 dated 30.10.2023 quash the same and further direct the 3rd respondent Chief Educational Officer herein to approve forthwith the appointment of Br.A.Innasi Inigo as PG Assistant Maths in the petitioner's school w.e.f., 18.11.2022 and disburse the grant-in-aid towards his salary and allowances w.e.f., the said date with all attendant benefits.

For Petitioner :Ms.A.Amala
For Respondents :Mr.V.Om Prakash
Government Advocate

ORDER

The present Writ Petition has been filed by an aided minority institution challenging the order passed by the fourth respondent, wherein, the promotion of one Br.A.Innasi Inigo as PG Assistant Maths from the post of B.T.Assistant has been rejected on the ground that the concerned candidate did not possess TET qualification.

2.According to the learned Counsel for the petitioner, the concerned candidate, namely, Br.A.Innasi Inigo was appointed as



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B.T.Assistant Teacher Maths on 07.06.2017. His appointment was also approved by the authorities. A vacancy arose for the post of P.G.Assistant Maths in a different school falling within the same management. The concerned candidate was promoted as P.G.Assistant Maths on 18.11.2022 and this promotion order was sent for approval. Under the impugned order, the fourth respondent has rejected the same on the sole ground that the concerned candidate has not passed the TET examination and hence, not eligible to be promoted. The said order is under challenge in the present Writ Petition.

3.According to the learned Counsel for the petitioner, the petitioner management is a minority institution and therefore, any appointment to the teaching post does not require a TET qualification. That apart, for P.G.Assistant Maths, TET qualification is not necessary. Hence, she prayed for setting aside the impugned order.

4.Per contra, the learned Government Advocate appearing for the respondents had contended that at the time of approval of the concerned candidate as B.T.Assistant, the said approval was subject to the condition



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that the concerned candidate should possess TET examination.

Therefore, the concerned candidate having not acquired TET qualification, cannot be considered for promotion as P.G.Assistant.

Hence, he sustained the order passed by the authorities.

5.I have carefully considered the submissions made on either side and perused the material records.

6.The Hon'ble Division Bench of our High Court in W.A.No.313 of 2022 and batch cases in order dated 02.06.2023 and in clarificatory order dated 14.06.2023, in paragraph 71.5 has held as follows:

“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 ultravires the Constitution, meaning thereby that the 2009 Act will not apply to minority schools, the eligibility of



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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

7.In view of the judgment of the Hon'ble Division Bench, it is clear that a pass in TET examination is not mandatory for being appointed as teaching faculty in a minority institution. That apart, for the post of P.G.Assistant, the question of TET qualification is not required for any candidates, whether in a minority institution or in a non minority institution.

8.In view of the judgment of Hon'ble Division Bench, the order impugned in the Writ Petition is set aside and the respondent authorities are directed to approve the promotion of Br.A.Innasi Inigo as PG Assistant Maths with effect from 18.11.2022 with all attendant benefits within a period of twelve weeks from the date of receipt of a copy of this order.



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WEB COPY 9.The Writ Petition is allowed to the extent stated above. No costs.

Consequently, connected miscellaneous petition is closed.

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

12.12.2023

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To

1.The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St.George, Chennai - 600 009.

2.The Director of School Education,
College Road, Chennai - 600 009.

3.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.

4.The District Educational Officer (Secondary),
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R.VIJAYAKUMAR, J.

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