



W.P.Nos.2963 & 2965 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

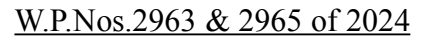
W.P.Nos.2963 & 2965 of 2024

S.B.Hena Gomathi Priyanka
K.Arun Prakash

...Petitioner in W.P.No.2963 of 2024
...Petitioner in W.P.No.2965 of 2024

-Vs-

- 1.The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.
- 2.The Chief Educational Officer,
Thiruvannamalai,
Thiruvannamalai District-606 601
3. The District Educational Officer (Secondary),
Thiruvannamalai,
Thiruvannamalai District-606 604.
4. The Correspondent,
ALC Higher Secondary School,
Saron, Thiruvannamalai District-606 601 ...Respondents in both W.P.s'



Prayer in W.P.No.2965 of 2024: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the Proceedings issued by the 3rd respondent by proceeding Na.Ka.No.7611/B2/2023 dated 19.01.2024 and to quash the same and consequently directing the respondents to approve the appointment of the petitioner in the post of B.T.Assistant (Maths) in the 4th respondent school, from the date of appointment on 01.08.2023, with all consequential and attendant benefits including the payment of salary from the date of appointment along with interest, within a time frame to be fixed by this Hon'ble Court.

: Mrs.Mythraye Chandru
Special Government Pleader



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COMMON ORDER

These writ petitions have been filed challenging the orders dated 18.01.2024 & 19.01.2024 passed by the 3rd respondent thereby rejected the proposal sent by the 4th respondent for the approval of the appointment of the petitioners in the post of B.T.Assistant (Science) and B.T.Assistant (Maths) in the 4th respondent school.

2. In pursuant to the retirement of one Mrs.D.Jayanthi and transfer of one Mrs.D.Daisy Vimalakumari, the petitioners were appointed in the said place as B.T.Assistant (Science) and B.T.Assistant (Maths) in the 4th respondent's school on 08.02.2023 and 01.08.2023 respectively. The 4th respondent school is a religious minority school. The petitioners have been appointed in the sanctioned post. Therefore, the 4th respondent had sent a proposal to the 3rd respondent on 14.07.2023 and 18.11.2023 for the approval of the appointment of the petitioners as B.T.Assistant (Science) and B.T.Assistant (Maths). The 3rd respondent by its communication dated 18.01.2024 & 19.01.2024 rejected the proposal sent by the 4th respondent for approval of the appointment of the petitioners as B.T.Assistant (Science)



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and B.T.Assistant (Maths) stating that as per the vacancies to the teaching post in aided school cannot be filled up till the surplus teacher working in other schools within the Union/Education District are deployed to the needy post. The petitioners did not qualify to be appointed as teacher since the petitioners failed to qualify in the Teachers Eligibility Test. Further, without verifying the surplus teachers position in the 4th respondent school, the petitioners were appointed as B.T.Assistants.

3. On perusal of records revealed that there is no surplus teachers working in the 4th respondent's school which remains to be a single management minority school. Further, as per the order passed by the Hon'ble Division Bench of this Court in W.A.(MD).No.76 of 2019 etc., cases dated 31.03.2021 held that insofar as aided minority institutions are concerned, if it is a standalone institution, their right of appointing a teacher in a vacancy within the sanctioned strength shall not be affected because of identification of excess teachers working in the other schools, as per which G.O.Ms.No.165 dated 17.09.2019 has been declared as inoperative and unenforceable. Insofar as the requirement of Teachers Eligibility Test is



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concerned, it is not required in the case of minority institutions. Since the minority institutions have the right to establish and administer educational qualification of their choice and that the notification prescribing TET as an essential qualification for Teachers, is not applicable to minority schools. The Hon'ble Division Bench of this Court also held in batch of writ appeals as follows:

"Whether TET is a necessary mandate for Teachers appointed in Minority Schools:

*7.1.1. 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 judgement of the Constitution Bench of the Hon'ble Supreme Court in *Pramati Educational and Cultural Trust & Ors. Vs Union of India*, (2014) 8 & SCC 1, wherein it was held that 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 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*



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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."

4. The learned counsel for the respondents also submitted that the 4th respondents school is not a standalone institution and it is a Corporate Management.

5. Thus, the Teacher Eligibility Test required for appointment of teachers in non-minority schools will not apply to minority schools. Further, the learned counsel submitted that as against the order in both the Writ Appeals, they filed SLP before the Hon'ble Supreme Court of India and it is pending. In view of the same, the impugned orders passed by the 3rd respondent dated 18.01.2024 & 19.01.2024 are quashed. The 4th respondent is directed to submit fresh proposal for approval of the appointment of the petitioners as B.T.Assistant (Science) and B.T.Assistant (Maths) forthwith. On receipt of the same, the 3rd respondent is directed to



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approve the appointment of the petitioners, if otherwise in order, subject to the result of the SLP pending before the Hon'ble Supreme Court of India.

6. With the above direction, these writ petitions are disposed of.

No costs.

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Index : Yes/No
Internet: Yes/No
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G.K.ILANTHIRAIYAN,J.
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To

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