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W.P.No. 5680 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.5680 of 2024

and

W.M.P.No.6287 of 2024

Madrasa-E-Azam Govt.Aided Primary School,
Rep. by its Manager & Correspondent,
Fort Mosque Street,
Fort Vaniyambadi – 635 751,
Thirupattur District.

.... Petitioner

Vs

1. The Director of Elementary Education,
DPI Compound, College Road,
Nungambakkam, Chennai – 600 006.

2. The District Educational Officer (Elementary),
Thirupattur, Thirupattur District – 635 752.

3. The Block Educational Officer,
Natarampalli,
Thirupattur District – 635 852.

.... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order passed by the second respondent in Na.Ka.No.2146/Aa4/2023 dated 21.11.2023, sent by post on 07.12.2023 and received by the School on 09.12.2023 and quash the



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same and consequent direct the respondent to approve the appointment of Mrs.M.K.Hajira, as Secondary Grade Teacher (Urdu) in the petitioner School, w.e.f. 01.02.2022 with all consequential monetary benefits.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mrs.S.Mythreye Chandru
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the order passed by the second respondent dated 21.11.2023, thereby rejected the proposal sent for approval of appointment of one M.K.Hajira, as Secondary Grade Teacher in the petitioner's School with effect from 01.02.2022.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioner's School is an Aided Religious Minority Institution. It is recognised by the Government with minority status. The strength of the petitioner's School was 120 students for Class I to V. The petitioner's School is running with sanctioned teachers with one Head Master, three Secondary Grade Teachers (Urdu) and one Regional, 7 Language Teachers (Tamil). The petitioner's School is receiving grant-



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in-aid from the Government and the medium of instruction is in Urdu medium.

4. While being so, the vacancy arose for the post of Secondary Grade Teacher (Urdu), due to superannuation of one R.Jameeludin on 31.12.2019. The said Secondary Grade Teacher was re-employed till the end of the Academic Year 2019-2020 i.e., till 30.04.2020. In the said sanctioned permanent post, the petitioner's School had selected and appointed one M.K.Hajira, who is qualified with D.T.Ed., by an order dated 26.01.2022. After her appointment, the same was duly communicated to the Educational Authorities. Pursuant to her appointment, the petitioner's School had sent a proposal on 24.08.2022 to the second respondent for approval through the third respondent. It was challenged before this Court in W.P.No.23423 of 2023 and this Court, by an order dated 10.08.2023, directed the petitioner to resubmit the proposal and the same may be considered on merits and in accordance with law and pass orders.

5. Once again, the proposal was sent by the petitioner and the same was rejected on the ground that the petitioner had appointed one



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M.K.Hajira in surplus post and it is against the G.O.Ms.No.165, dated 17.09.2019. Further, the petitioner failed to appoint the candidature who qualified with TET. As far as G.O.Ms.No.165, School Education Department, dated 17.09.2019 is concerned, the Hon'ble Division Bench of this Court, had already held that the GO itself became inoperative. So far as the applicability of TET to the petitioner's School is concerned, the Hon'ble Division Bench of this Court in the case of ***The Secretary to Government Vs. S.Jayalakshmi and another***, reported in **2016 (4) CTC 841**, held as follows :

“59. Insofar as minority institutions are concerned, the contention of the learned senior counsel appearing for the minority Schools is that when Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 received the assent of the President of India and it is still in force, it cannot be supplanted by an Executive Order, namely by G.O.Ms.No.181, dated 15.11.2011. Further, the Apex Court has clearly held in Pramati Educational & Cultural Trust that RTE Act, 2009 is not applicable to the minority institutions. Therefore, we have no hesitation to hold that the right conferred under Article 30(1) of the Constitution cannot be abrogated. Consequently, G.O.Ms.No.181, dated 15.11.2011, which was issued pursuant to the



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directions of NCTE, cannot be made applicable to the minority institutions.”

6. Therefore, 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. In lieu of the order passed by the Hon'ble Supreme Court of India, the Hon'ble Division Bench of this Court had already in a batch of writ appeals in W.A.Nos.313 of 2022 etc batch, held as follows :-

“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 that effect, in the common judgment dated 02.06.2023 passed in these batch of cases, which reads as follows :



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“C. W.A.Nos.19, 31, 32, 36 of 2023

WHETHER TET IS A NECESSARY MANDATE.

FOR TEACHERS APPOINTMENT 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 issued 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 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*



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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”

7. Therefore, 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 TET pass as required for appointment of teachers in non-minority schools, will not apply to minority schools. Therefore, 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.

8. In view of the above, the impugned order passed by the second respondent in Na.Ka.No.2146/Aa4/2023, dated 21.11.2023, cannot be sustained and it is liable to be set aside. Accordingly, it is set



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aside. The second respondent is directed to approve the appointment of M.K.Hajira, as Secondary Grade Teacher in the petitioner's School with effect from 01.02.2022, within a period of eight weeks from the date of receipt of a copy of this order.

9. With the above direction, the Writ Petition stands allowed.

Consequently, connected miscellaneous petition is closed. No costs.

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Index: Yes/No
Speaking Order: Yes
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To

1. The Director of Elementary Education,
DPI Compound, College Road,
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