



WEB COPY



W.P.Nos.7535, 7537 & 7541 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.7535, 7537 & 7541 of 2024

and

W.M.P.Nos.8451, 8452, 8455, 8456, 8458 & 8459 of 2024

- | | |
|--------------------|-----------------------------------|
| 1. A.Sagaya Sheela | ...Petitioner in W.P.7535 of 2024 |
| 2. J.Clemence | ...Petitioner in W.P.7537 of 2024 |
| 3. N.Barathirajan | ...Petitioner in W.P.7541 of 2024 |

-Vs-

- | | |
|---|------------------------------|
| 1.The Director of School Education (Secondary)
DPI Campus
Chennai 600 006. | |
| 2.The Chief Educational Officer
Villupuram Taluk
Villupuram. | |
| 3.The District Educational Officer (Secondary)
Tindivanam Taluk
Villupuram. | |
| 4.The Correspondent
Lorudu Annai Higher Secondary School
Kanakankuppam
Gingee Taluk, Villupuram. | ... Respondents in all W.Ps' |



W.P.Nos.7535, 7537 & 7541 of 2024

Common Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent in Moo.Moo No.4291/A1/2023 dated 26.02.2024 and quash the same and consequently direct the respondents to grant approval to the petitioner to the post of BT Assistant (BT History), B.T.Assistant (BT Science) and B.T. Assistant (BT Maths) with effect from 03.06.2019, 04.06.2019 & 01.07.2019 with all service and monetary benefits.

(In all W.Ps')

For petitioners : Mrs.Dakshayani Reddy
Senior Counsel
for M/s.S.Suneetha

For respondents 1 to 3 : Mrs.S.Mythreye Chandru
Special Government Pleader

COMMON ORDER

These writ petitions have been filed challenging the order passed by the 3rd respondent dated 26.02.2024 thereby rejected the proposal sent by the 4th respondent for approval of the appointment of the petitioners to the post of BT Assistant (BT History), B.T.Assistant (BT Science) and B.T. Assistant (BT Maths) with effect from 03.06.2019, 04.06.2019 & 01.07.2019 respectively.



W.P.Nos.7535, 7537 & 7541 of 2024

2. The petitioners were appointed as BT Assistant (BT History), B.T. Assistant (BT Science) and B.T. Assistant (BT Maths) with effect from 03.06.2019, 04.06.2019 & 01.07.2019 respectively. The vacancy which arose in the 4th respondent's school due to the incumbents A.Anthonysamy Chezhiyan, S.Maria Louis and A.Charles promotion and retirement. The 4th respondent's school is a minority aided school. The petitioners were appointed in the sanctioned vacancy as B.T. Assistant (History), B.T.Assistant (Science) and B.T. Assistant (Maths) respectively. Thereafter, the 4th respondent had sent a proposal for the approval of the appointment of the petitioners. That part, the 4th respondent school had sanctioned strength and there is no surplus teachers. However, the third respondent rejected the proposal sent by the 4th respondent on two grounds that there are excess teachers in other schools and that the deployment is going to be done as per G.O.Ms.No.165 dated 17.09.2019. Further, the petitioners have not passed Teachers Eligibility Test.

3. Mrs.Dakshayani Reddy, the learned Senior Counsel appearing



W.P.Nos.7535, 7537 & 7541 of 2024

on behalf of the petitioner pointed out that insofar as the G.O.Ms.No.165 dated 17.09.2019 is concerned, the said government order was already declared as inoperative by the Hon'ble Division Bench of this Court. Insofar as the eligibility criteria of Teachers Eligibility Test in the minority school is pending before the Hon'ble Supreme Court of India. In view of the interim order passed by the Hon'ble Division Bench of this Court in W.A.(MD).No. 76 of 2019 dated 09.04.2019 with regards to staff fixation thereby the government shall not approve any appointment made by the private aided schools, till the surplus teachers in other schools coming under the same Management are exhausted. However, the final order passed by the Hon'ble Division Bench of this Court in W.A.(MD).No.76 of 2019 dated 31.03.2021 declared the said G.O.Ms.No.165 dated 17.09.2019 has become inoperative. That part, the surplus teachers in other schools can never be cited for rejection. The said Government Order in G.O.Ms.No.165 dated 17.09.2019 was issued and it was prospective in nature and it cannot be cited as reason for judgment. Insofar as the clarification of Teachers Eligibility Test is concerned, the 4th respondent's school is a minority educational institution. Therefore, the eligibility of Teachers Eligibility Test can never be insisted



W.P.Nos.7535, 7537 & 7541 of 2024

upon as per the settled law as laid down by the Hon'ble Division Bench of this Court. It is relevant to extract the judgement passed by the Division Bench of this Court in W.A.No.179 of 2024 dated 22.01.2024.

*"The Judgement passed by this Bench earlier in **The Director of School Education D.P.I. Campus, College Road, Chennai vs M. Velayutham (W.A.No.313 of 2022 etc., batch decided on 02.06.2023. The key issues for determination and also the resultant portion of the said judgement, read as under:***

"1. The key issues that arise for determination in these batch of writ appeals and writ petitions are:

(i) whether passing of the Teacher Eligibility Test (TET) is mandatory for promotion to the post of B.T. Assistant/Graduate Teacher, from the cadre of Secondary Grade Teacher (already in service).

(ii) whether non-possession/non-acquisition of a pass in TET by a teacher appointed prior to 29.07.2011 would affect his/her continuance in service and drawal of increment, without seeking for further promotion to the post of BT Assistant/Graduate Teacher."

WHETHER TET IS A NECESSARY MANDATE FOR TEACHERS APPOINTED IN MINORITY SCHOOLS



W.P.Nos.7535, 7537 & 7541 of 2024

WEB COPY

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 judgement 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 RTI 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*



W.P.Nos.7535, 7537 & 7541 of 2024

the Supreme Court in Pramati Educational and Cultural Trust, cited supra, holds the filed 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.

"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.



W.P.Nos.7535, 7537 & 7541 of 2024

(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. The principles laid down in this judgement will not have application to minority schools both aided and unaided as explained in paragraph no.71.1.

(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 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."



W.P.Nos.7535, 7537 & 7541 of 2024

WEB COPY

Thus it is clear that 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. However, the same will not have application to minority schools both aided and unaided.

4. The fourth respondent is directed to submit fresh proposal for the approval of the petitioners appointment for the post of BT Assistant (BT History), B.T.Assistant (BT Science) and B.T. Assistant (BT Maths) with effect from 03.06.2019, 04.06.2019 & 01.07.2019 respectively. On receipt of the same, the third respondent is directed to consider and pass appropriate orders on merits in accordance with law within a period of four weeks from the date of proposal to be sent by the 4th respondent's school. It is also made clear that such approval is subject to the result of the SLP which is pending before the Hon'ble Supreme Court of India in respect of the applicability of qualification of passing Teachers Eligibility Test for minority school teachers both aided and unaided.



W.P.Nos.7535, 7537 & 7541 of 2024

WEB COPY

5. Therefore, the reasons stated for rejection of approval of the petitioners appointment cannot be sustained and it is liable to be quashed. Accordingly, the impugned order passed by the third respondent dated 26.02.2024 is quashed. Hence, these writ petitions are allowed. Consequently, connected miscellaneous petitions are closed. No costs.

20.03.2024

Index : Yes/No
Speaking/Non-Speaking-Order
Neutral Citation : Yes/No
gvn



W.P.Nos.7535, 7537 & 7541 of 2024

To
WEB COPY

- 1.The Director of School Education (Secondary)
DPI Campus
Chennai 600 006.
- 2.The Chief Educational Officer
Villupuram Taluk
Villupuram.
- 3.The District Educational Officer (Secondary)
Tindivanam Taluk
Villupuram.
- 4.The Correspondent
Lorudu Annai Higher Secondary School
Kanakankuppam
Gingee Taluk, Villupuram.



WEB COPY



W.P.Nos.7535, 7537 & 7541 of 2024

G.K.ILANTHIRAIYAN,J.
gvn

W.P.Nos.7535, 7537, 7541 of 2024

20.03.2024