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W.A.No.179 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.01.2024

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.179 of 2024
and C.M.P.No.1053 of 2024

1.The Government of Tamil Nadu
represented by its Additional Chief Secretary,
The Department of School Education (C2),
Fort St.George, Chennai – 600 009.

2.The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.

3.The Chief Educational Officer,
The Chief Educational Office,
Dharmapuri.

4.The District Educational Officer,
The District Educational Office,
Dharmapuri.

.. Appellants

Vs.

1.T.Selvarani,
St.John's High School,
Koviloor, Nallampalli,
Dharmapuri – 636 807.



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2.The Correspondent,
St.John's High School,
Koviloor, Nallampalli,
Dharmapuri – 636 807.

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 26.08.2021 passed by the learned Judge in W.P.No.17888 of 2021.

For Appellants : Mr.S.Silambannan,
Additional Advocate General
assisted by Mr.S.Yashwanth
Additional Government Pleader

JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

Challenging the order dated 26.08.2021 passed by the learned Judge in W.P.No.17888 of 2021, the State has preferred this writ appeal.

2. According to the appellants, the first respondent was appointed as B.T. Assistant (Tamil) on 15.10.2011 against the vacancy that had arisen as on 01.06.2012, due to transfer of one S.Edward Sahayaraj in St.John's High School, Koviloor, Dharmapuri District, which is a aided minority institution, and her appointment was duly approved by the District Educational Officer,



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Dharmapuri, by orders dated 29.10.2012 and 30.10.2012, subject to conditions that the first respondent has to pass the Teachers Eligibility Test within a period of 5 years with reference to G.O.(Ms).No.181, School Education (C2) Department dated 15.11.2011 and genuineness of her all educational certificates should be obtained immediately. Thereafter, the District Educational Officer, Dharmapuri, cancelled the approval for appointment granted to the first respondent based on the guidelines given by the Director of School Education, Chennai, *vide* proceedings Rc.No.34116/D1/E4/2013 dated 07.11.2013, as she is not eligible to get appointment as B.T. Assistant without a pass in TET. Feeling aggrieved, the first respondent preferred W.P.No.17888 of 2021 to quash the said orders and direct the appellants to approve her service and monetary benefits. The learned Judge allowed the said writ petition, by the order impugned herein. Therefore, the appellants are before this court with the present appeal.

3. Today, when the matter was taken up for consideration, the learned Additional Advocate General appearing for the appellants fairly submitted that the issue involved herein is covered by a common judgment passed by this Bench earlier in *The Director of School Education D.P.I. Campus, College*



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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 judgment, 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

*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 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 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*



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writ petitions is affirmed and the above four writ appeals are dismissed.

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"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. **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.***

(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."

4. The above judgment makes it 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



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minority schools both aided and unaided as explained in paragraph no.71.1, as referred to above.

5. Applying the aforesaid ratio to the facts of the present case, wherein, it is an admitted fact that the second respondent school is a minority institution, this court is of the view that the order of the learned Judge does not require any interference. Accordingly, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
22.01.2024

Internet : Yes
nsd

To

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