



W.P.(MD).Nos.1535 & 1536 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).Nos.1535 & 1536 of 2024
and WMP(MD) Nos.1541 & 1543 of 2024

St. Johns Higher Secondary School,
Rep. by its Correspondent, B.Mangayarkarasi.

... Petitioner

Vs

1. The Commissioner of School Education,
O/o.Commissioner of School Education,
DPI Complex, Nungambakkam,
Chennai.
2. The Chief Educational Officer,
Tirunelveli District, Tirunelveli.
3. The District Educational Officer (Secondary),
O/o.The District Educational Officer (Secondary),
Tirunelveli, Tirunelveli District.

... Respondents

Prayer in WP(MD) No.1535 of 2024: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 3rd respondent vide his proceedings in O.Mu.No.875/A1/2022, dated 31.10.2023 and quash the same as illegal and consequentially to direct the



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respondents to approve the appointment of J.J.Delinda Lifney as B.T.Assistant (Science) with effect from 02.08.2021 and disburse the arrears of salary within the period that may be stipulated by this Court.

Prayer in WP(MD) No.1536 of 2024: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 3rd respondent vide his proceedings in O.Mu.No.874/A1/2022, dated 31.10.2023 and quash the same as illegal and consequentially to direct the respondents to approve the appointment of R.K.Lujayinnisa as B.T.Assistant (English) with effect from 01.09.2021 and disburse the arrears of salary within the period that may be stipulated by this Court.

In both petitions:

For Petitioner : Mr. H.Mohammed Imran
for M/s.Ajmal Associates

For Respondents : Mr.M.Sarangan
Additional Government Pleader

COMMON ORDER

The present writ petitions have been filed challenging the impugned order of the 3rd respondent, dated 31.10.2023 and consequentially, direct the respondents to approve the appointment of R.K.Lujayinnisa as B.T.Assistant (English) with effect from 01.09.2021 and J.J.Delinda Lifney as



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B.T.Assistant (Science) with effect from 02.08.2021 and disburse their arrears of salary within the period that may be stipulated by this Court.

2.(i).The petitioner in both the writ petitions are one and the same.

The petitioner school is a minority Aided Institution. In the petitioner school, three sanctioned vacancies in the post of Secondary Grade Teachers had arisen. While so, the post of Secondary Grade Teacher, which fell vacant on account of the retirement of the erstwhile incumbent one Dulsipriskilal was converted to the post of B.T Assistant (English). Thereafter, one Mrs. R. K. Lujayinnisa was appointed as B.T Assistant (English) on 01.09.2021 in the aforesaid post. Yet another post of Secondary Grade Teacher, which had fell vacant was converted to the post of B.T Assistant (Science) and one Mrs. J. J.Delinda Lifney was appointed by the petitioner school as B.T Assistant (Science) on 2.8.2001. Mrs. R. K. Lujayinnisa joined duty on 1.9.2021 and is discharging her duties as B.T Assistant, till date. Similarly, Mrs. J. J. Delinda Lifney joined duty on 02.08.2021 and she is also discharging her duties as B.T Assistant (Science) till date.

(ii).Thereafter, the petitioner school submitted two proposals on 22.04.2022 with respect to the appointment of Mrs. R. K. Lujayinnisa and Mrs.



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J. J. Delinda Lifney seeking approval of their appointment as B.T Assistant in English and B.T Assistant in Science respectively and for disbursement of grant in aid. However, the third respondent, vide impugned proceedings in O.Mu.No.874/A1/2022, dated 31.10.2023 has returned the proposal of Mrs. R. K. Lujayinnisa citing three discrepancies. Similarly, the third respondent, vide impugned proceedings in O.Mu.No.875/A1/2022, dated 31.10.2023 has returned the proposal with respect to Mrs. J. J.Delinda Lifney citing three discrepancies. The Clause No. 1 of the said order insisted that the school ought to have produced TET certificate of the appointed candidate. The second Clause sought the permission order of conversion, if any obtained from the second respondent. The third reason cited in the impugned order is G.O.Ms. No. 165, dated 17.09.2019. Challenging the said proceedings, dated 31.10.2023, these two writ petitions came to be filed.

3.(i).The learned counsel for the petitioner submitted that as far as the first Clause is concerned, it is a trait in law that the Right to Education Act, 2009 in so far as the applicability of the same to minority schools aided or unaided covered under Article 30(1) is *ultra vires* the Constitution meaning thereby that 2009 Act will not apply to minority schools. Hence, the eligibility



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of TET pass as required for appointment of teachers in non minority schools will not apply.

(ii).With respect to the second Clause, the learned counsel for the petitioner submitted that the conversion of the post of B.T Assistant, from Secondary Grade Teacher is governed by Para 4(iv) of G.O.Ms. No. 244, School Education Department, dated 22.09.2007. Para 4.4 of the aforesaid GO states that instead of giving priority in appointment of B.Ed., teachers for standard 6 to 8 possessing B.Ed in future, priority shall be given for the appointment in subjects of English (Science) and Mathematics for standards 6 to 8.

(iii).Subsequently, the Government issued G.O.Ms. No. 144, School Education Department, dated 04.07.2008 with respect to conversion of Secondary Grade Teacher post that fell vacant permanently treating standards 6 to 10 as one unit in aided schools. The said G.O.Ms. No.144 gave power of conversion to the post of B.T Assistant, if any of the post of secondary grade fell vacant. He further submitted that the second respondent without application of mind that, the issue with regard to the surplus teachers contemplated under G.O.Ms. No. 165 has been made inoperative by virtue of the judgment of the Division Bench in WA No.76 of 2019 etc batch, dated



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31.03.2021 has relied upon the said GO for rejecting the proposals sent by the petitioner school. On that basis, the learned petitioner's counsel pressed for allowing both the writ petitions.

4.(i).Per contra the respondent has filed a counter affidavit and the learned Additional Government Pleader Mr. Sarangan submitted that, TET is a qualification and at no stretch of imagination, it could be contended that it interferes with the right of minority to establish or administer educational institutions. In other words, it will never violate Article 30 of the Indian Constitution in any way and even in the qualification prescribed under Rule 28(6)(4) of the Tamil Nadu Private Schools Regulation Rules, 2023, TET has been included and the same cannot be dispensed with for the teachers working even in minority schools. Further submitted that it is mandatory for conversion of sanctioned post of Secondary Grade Teacher as B.T Assistant, in a particular subject, the school must get prior permission. As per needs of the school, the post of Secondary Grade Teacher whenever needed to be upgraded as B.T Assistant, in the required subject, the prior permission ought to have been obtained by the petitioner school without which, the said conversion could not



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be accepted for the sole reason that the school management had miserably failed to follow the procedure contemplated in this regard.

(ii).Further submitted that the Department following the directions of the Division Bench in W.A(MD) No.76 of 2019 batch has taken diligent steps to arrive staff strength for each school and has suitably instructed the corporate managements to deploy surplus teaching and non teaching staffs to the needy places in other schools coming under the management. Since they did not co-operate for the same, the said process is getting delayed and finally, the Department after hectic effort has decided to deploy surplus teachers working in the respective schools to needy places within the educational district. At this stage, entertaining fresh proposals would ultimately affect the process of deployment of surplus teachers to needy places and hence in that basis also the proposals came to be rejected and the same need not be interfered and pressed for dismissal of the petitions.

5.Heard the rival contentions submitted by both the rival parties and anxiously perused the materials available on record.



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6. Time and again this Court has held in more than one occasion that the teachers working in minority institutions need not pass TET examination. Teachers already in service without TET qualification will not defeat the object of the Government to provide quality and standard education in the absence of TET qualification. Hence, the Government in alternative may conduct refresher course or some other vacation course in order to ensure and enhance the quality of education. This has already been decided by the Hon'ble Division Bench of this Court in W.A numbers 213 and 572 of 2016 etc., batch vide order, dated 24.08.2006 and the relevant portion of which is extracted as follows:

“60. In the light of the above, we are of the view that the Government cannot insist upon the minority institution, both aided or unaided, to abide by any Regulation framed under the provisions of the RTE Act. Therefore, we hold that 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. Similarly, G.O.Ms.No.76 dated 18.3.2015 issued by the Government of Puducherry, is also not applicable to the minority institutions.

61. Though the intention of the Government is that there should not be any discrimination among the Teachers



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working in non-minority Schools and minority Schools with respect to qualification and that there should be uniformity in the teaching imparted to the children, in view of the decision of the Apex Court in Pramati Educational & Cultural Trust, the Government cannot take shelter under the guise of discrimination to impose restrictions on minority institutions.

62. However, keeping in mind the larger interest in which the Government has issued the above G.Os., this Court feels that the minority institutions may also consider conducting a refresher course and also some interactive sessions to all the Teachers during annual vacation, in order to ensure and improve the quality of Teachers.”

In yet another case, the Hon'ble Division Bench of this Court in W.A(MD)No.859 of 2019 has passed favourable order to a teacher on 26.09.2019 and the relevant portion of which is extracted as follows:

“6.The learned Special Government Pleader appearing for the respondents 1 and 2 placing reliance on the decision of the Hon'ble Supreme Court in TMA Pai Foundation v. State of Karnataka [2005 (5) CTC 201 (SC)] would submit that the respondent State being the controlling authority sanctioning aid for the minority institutions can always prescribe qualifications, salaries as well as experience and



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other conditions bearing on the merits of an individual for being appointed as a teacher of an educational institution. Further, it is submitted by the learned Special Government Pleader that if the contention advanced by the learned counsel appearing for the appellant is accepted and TET is not made applicable to the minority institutions, then it is a clear discrimination among the teachers because one set of teachers, who are working in the non-minority institutions, are under the threat of losing their jobs for not possessing TET and the other set of teachers, who do not have TET, who are working at aided minority institutions, are safe and the same would be in violation of Article 14 of Constitution of India.

*7. In our considered view, various Division Benches have taken consistent stand as regards the legal position and in doing so reference has been made to the decision of the Constitutional Bench of the Hon'ble Supreme Court in *Paramati Educational & Cultural Trust v. Union of India* [2014(8) SCC 1], and a decision has been rendered. This Court does not find any ground to take a different view.*



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“The respondents have filed Special Leave Petition as against the said order of the Hon'ble Division Bench and the same is still pending. However, the Hon'ble Apex Court was not pleased to grant any interim orders in the said SLP. In a similar batch of writ appeals in W.A. (MD)Nos.642 and 643 of 2020 etc., batch, the Hon'ble Division Bench on 27.08.2020 passed favourable orders and the relevant portion of which is extracted as follows:

“8.Though it is the vehement and forceful submission of the learned Special Government Pleader appearing for the appellants/official respondents as to the mandatory nature of passing of TET by the Teachers employed in the respondent's/writ petitioner's Religious Aided Minority Institution, in the considered opinion of this Court, in the light of the ratio laid down by the Constitution Bench of the Honourable Supreme Court in Pramati Educational and Cultural Trust and others v. Union of India (cited supra), followed by the Division Bench of this Court in Secretary to Government v. S.Jeyalakshmi (cited supra), passing of TET is not necessary to the Teachers appointed in the Minority Institutions and that apart, the Teachers in question have been appointed on 15.09.2010 and 01.02.2011 respectively, i.e., prior to the date



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of issuance of the Government Order in G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011. The learned Judge has rightly reached the conclusion that G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011, has no application to the respondent/writ petitioner/Minority Institution.

10. This Court, on an independent application of mind to the entire materials placed on record, is of the considered view that there is no error apparent and infirmity in the reasons assigned by the learned Judge for allowing the writ petitions and finds no merit in these writ appeals.”

12. This Court in yet another case in W.P(MD)No. 7888 of 2019 vide order, dated 22.1.2020 has passed favourable orders and the relevant portion of which is extracted as follows:

“4. On perusal of the aforesaid judgment, it appears that the Teachers, who are working in the Minority Institution are not required to qualify the TET examination. Therefore, the issue is no more res integra. 5. Accordingly, this Writ Petition is allowed and the impugned order passed by the



*second respondent dated 08.01.2019 is
quashed.....”*

7.On that basis, the first limb of rejection of the proposals with respect to the appointment of two teachers by the petitioner School made by the respondent goes.

8.As far as the second limb of rejection of the petitioner's proposal is with respect to the absence of prior permission for the purpose of conversion of the post of Secondary Grade Teacher to the post of B.T Assistant (Science) and B.T Assistant (English) respectively. However, the third respondent without considering the fact that the Government order in G.O.Ms. No.144, dated 07.08.2008 provides for conversion of the post of Secondary Grade Teacher, whenever it falls vacant into the post of B.T Assistants, has passed the impugned order. Consequent to the said GO., yet another GO in G.O.Ms. No. 100, dated 27.06.2003 came to be issued. According to the said GO., in future from 01.06.2003, whenever Secondary Grade Teacher post arises due to retirement, resignation, death etc., those posts would be converted as B.T Assistants, and the said exercise is automatic.



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9.The motive behind the said GOs is that quality teaching cannot be restricted to one or few subjects alone, but the same should be provided to all subjects namely Tamil (English), Maths (Science) and Social Science. The students should have the benefit of getting best teaching by qualified teachers in all subjects. Hence, with a view to ensure that teachers are available to provide teaching in all subjects in standards 6 to 8 subjects roster is prescribed. The objective behind prescribing subject roster is that students are not denied the opportunity of learning any subject for want of qualified teachers. Hence, the subject roster scheme is subject oriented and not at all person oriented. If the choice of selecting the subjects is given to the managements, there may be more than one teacher available for one and the same subjects, whereas, there may not be any teacher available to teach another subject. By fixing this subject roster based on the need and merit in a school in terms of G.O.Ms. No.144, dated 04.07.2008, the students get the valuable benefit of learning all the subjects. Hence, the management has every right to appoint a conversion post of B.T Assistant, for the welfare of students.

10.In view of the same, the petitioner school has converted two vacancies of Secondary Grade Teacher into B.T Assistant (English) and B.T



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Assistant (Science) respectively and thereafter, appointed two B.T Assistant (Science) and English teachers respectively in the said vacancies. Interfering with the said decision of the school would amount to interfering with the internal administration of the petitioner religious Minority Institution and the same is violative of Article 29 and 30 of the Constitution of India. That apart, both the appointments have been made in already sanctioned vacancies. The conversion has been effected only to the sanctioned posts of secondary grade vacancies. Rule 6(2) of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977 does not stipulate that appointments can be made only after getting prior approval from the concerned authorities. It only says that for the eligibility of grant to a Minority Institution, all appointment made by the Minority Institution will have to be approved by the concerned authorities. Hence, I have no hesitation to observe that there is no necessity to obtain prior permission from the concerned Statutory Authorities for conversion of the Secondary Grade post to B.T.Assistant post, before making appointments to the B.T.Assistant post.

11.As far as the third limb of rejection relying upon the G.O.Ms. No.165, School Education Department, dated 17.09.2019, the respondents are



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not justified in contending that fresh appointments cannot be made in private aided schools till surplus teachers in other schools coming under the same management are exhausted relying upon the said GO. It is the priority of a minority aided institution to make appointments in an already sanctioned vacancy. If at all, any surplus identified in the school, in which, the appointments has been made the only way out for the respondent is to direct the petitioner school to exhaust the surplus teachers to any other needy school under the same corporate management. However, on that premise the right of the appointment of the petitioner school in sanctioned vacancy should not be denied. On approving the appointments made in the approved vacancy, thereafter, the respondents can deploy the junior most teacher in the said school to any other needy school under the same corporate management.

12.As far as the qualification of TET is concerned, in view of the various orders and judgments passed by this Court and the Division Bench of this Court and on considering the fact that the Special Leave Petition in this regard in S.L.P No.2691 of 2022 is still pending before the Hon'ble Apex Court without any interim orders, I have no hesitation to hold that the pendency will not deter the respondents from approving the proposal of appointment, which



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has been forwarded by the petitioner school, subject to the outcome of the said S.L.P.

13. In view of the same, the rejection made by the respondents rejecting the proposals seeking approval of two teachers in a post converted into B.T Assistant (Science) and B.T Assistant (English) respectively converting the post of Secondary Grade Teachers is not sustainable in view of the above discussion *supra*. Hence, this Court hereby quash the impugned proceedings of the third respondent bearing Nos. O.Mu.No.875/A1/2022 and O.Mu.No.874/A1/2022, dated 31.10.2023. Consequently, the petitioner school is directed to resubmit the proposals with respect to the appointment of Mrs. J. J. Delinda Lifney and Mrs. R. K. Lujayinnisa in the converted post of B.T Assistant (Science) and B.T Assistant (English) respectively forthwith and on receipt of the same, the third respondent is directed to approve the appointments made by the petitioner school within a period of six (6) weeks from the date of receipt of proposal through proper channel. However, I make it clear that the said approval could be granted subject to the outcome of the in S.L.P No.2691 of 2022, which is pending before the Hon'ble Apex Court.



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14. Accordingly both the petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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

To

1. The Commissioner of School Education,
O/o. Commissioner of School Education,
DPI Complex, Nungambakkam,
Chennai.
2. The Chief Educational Officer,
Tirunelveli District, Tirunelveli.
3. The District Educational Officer (Secondary),
O/o. The District Educational Officer (Secondary),
Tirunelveli, Tirunelveli District.



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L.VICTORIA GOWRI, J.

PNM

**COMMON ORDER IN
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and WMP(MD) Nos.1541 & 1543 of 2024**

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