

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.04.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.5135 of 2024
and
WMP(MD)Nos.4917 & 8145 of 2024

C.Jeyarani

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.

2. The Accountant General,
Office of the Accountant General,
261, Annasalai, Chennai-600 018.

3. The Director of School Education,
College Road,
Chennai-600 006.

4. The District Educational Officer
(Elementary Education),
Thoothukudi,
Thoothukudi District.

5. The Block Educational Officer,
Thiruchandur,
Tuticorin District.

6. The Correspondent,
Sathana Sama Middle School,
Madathuvilai,
Arumuganeri,
Thoothukudi District-628 202.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 4th respondent District Educational Officer (then DEO) in Na.Ka.No.115/Aa2/2016 dated 25.09.2017 and the proceedings of the DEO in Na.Ka.No.616/Aa5/2023 dated 13.04.2023, and quash the same, and further direct the 4th respondent to approve forthwith the petitioner as BT Assistant (Science) in the 6th respondent school w.e.f., the date of her appointment viz., 01.07.2012, with all attendant benefits including arrears of salary and retirement benefits.

(Prayer amended by order of this Court dated 16.04.2024 in W.M.P.(MD)No.8144 of 2024 in W.P.(MD)No.5135 of 2024)

For Petitioner : Ms.M.F.Rooshi Maas
for M/s.Issac Chambers

For Respondents : Mr.M.Siddharthan
Additional Government Pleader
for R1 to R5

ORDER

The petitioner has been appointed as BT Assistant by the 6th respondent School on 11.07.2012. Since the 4th respondent do not approve the above appointment, this writ petition has been filed by the petitioner.

2. Heard Ms.M.F.Rooshi Maas, learned counsel appearing for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader appearing for the respondents 1 to 5.

3. This Court vide order dated 14.07.2016, passed the order in a batch of writ petitions in W.P(MD)Nos.10750 of 2014 batch., wherein in paragraph No.7, it is observed as under:

“7. It may be mentioned herein that the petitioners no doubt were appointed in a sanctioned posts arising out of the retirement of vacancies. However, as the issue as to whether the provisions of the Right of Children to Free and Compulsory Education Act, 2009, would not be applicable to a minority institution, is pending consideration in Aswinithanappan v. Director of Education and another- (2014) 8 SCC 272, following the above said order passed by

the Hon'ble Division Bench in W.A.No.1299 of 2015 dated 14.09.2015, these writ petitions are disposed of with the following directions:

*The petitioners shall be given salary in the course of their employment within a period of four weeks from the date of receipt of a copy of this order and no steps to remove them from service shall be taken. However, it is made clear that this order is subject to the final outcome of the case pending before the Supreme Court in **Aswini Thanappan v. Director of Education and another** - (2014) 8 SCC 272. It is further made clear that the petitioners shall not claim any equity on account of this order, without prejudice to the rights and contentions of the parties. No Costs. Consequently, connected miscellaneous petitions are closed.”*

4. The writ appeal filed by the Government challenging the above order also got dismissed.

5. Subsequent to the direction of this Court given in the earlier writ petition, order has been passed on 25.09.2017 by granting approval, however the approval has been given from 01.04.2016. But the petitioner has been appointed

on 11.07.2012 and the approval has to be given from 11.07.2012 itself. However, the petitioner has given a subsequent representation on which an order has been passed on 13.04.2023 stating that the petitioner has not cleared the Teacher Eligibility Test and hence, her services prior to the clearance of the Teacher Eligibility Test can only be considered as an unqualified service.

6. Mr.M.F.Rooshi Maas, learned counsel appearing for the petitioner submitted that the 6th respondent School is a minority institution for which TET is not applicable and the issue on this has already been settled in the earlier batch of writ petitions wherein the respondents have also conceded that there is no necessity for those teachers, who are appointed by minority institutions, to clear Teacher Eligibility Test. Having taken the said stand, the respondents seems to have turn around once again and passed the impugned order stating that the petitioner is not qualified by passing the Teacher Eligibility Test.

7. Mr.M.Siddharthan, learned Additional Government Pleader for the respondents 1 to 5 submitted that the legal position on the applicability of Teacher Eligibility Test requirement to minority institutions has not yet been settled.

However, the learned counsel for the petitioner cited the judgment of this Court dated 02.06.2023, passed by the Division Bench of this Court in W.A.No.313 of 2022 etc., batch, wherein it is held as under:

“C. W.A.Nos.19, 31, 32, 36 of 2023:

**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 RTE Act, 2009 insofar as it applies to minority schools, aided or unaided, covered under Article 30(1) is *ultra vires* 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 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.”

It has been made crystal clear with the above judgment that approval of the appointment of teachers by the minority schools (both aided and unaided), does not require the Teacher Eligibility Test clearance.

8. Even the subsequent judgment of the Division Bench of this Court dated 21.01.2023 cited by the learned Additional Government Pleader in W.A(MD)No. 2176 of 2023, this Court has not taken any different stand from the earlier orders passed in the W.A.Nos.313 of 2022 etc., batch. As on today, there is no conflict of opinion on the point that TET qualification is not required for minority Schools.

9. In view of the same, the order passed by the then DEO in Na.Ka.No. 115/Aa2/2016 dated 25.09.2017 and the order of the DEO in Na.Ka.No. 616/Aa5/2023 dated 13.04.2023 are quashed to that portion of giving effect to the date of approval alone. Accordingly, this writ petition is disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

16.04.2024
(2/2)

Index : Yes / No
Internet : Yes / No

PJL/*mbi*

To

1. The Secretary,
State of Tamil Nadu,
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Chennai-600 009.

2. The Accountant General,
Office of the Accountant General,
261, Annasalai, Chennai-600 018.

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WP(MD) No.5135 of 2024

R.N.MANJULA, J.

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(2/2)**