



W.P.(MD)No.5754 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.5754 of 2024 &
W.M.P.(MD)No.5433 of 2024

J.Avila Theresa

... Petitioner

vs.

1.The Chief Educational Officer,
Sivagangai District.

2.The District Educational Officer (Secondary)
Sivagangai District.

3.The Correspondent,
Brito Higher Secondary School,
Kallal,
Sivagangai District

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the second respondent in his proceedings in Na.Ka.No. 1187/A1/2022 dated 24.04.2023 and the consequential order in Oo.Mu.No. 1187/A1/2022 dated 16.10.2023, quash the same and consequently direct the second respondent to approve the appointment of the petitioner as B.T. Assistant (Maths) with effect from 01.07.2022 with all the consequential monetary benefits.



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For Petitioner : Mr.V.Panneer Selvam

For Respondents : Mr.T.Amjadkhan
Government Advocate
for R1 and R2

ORDER

Heard Mr.V.Panneer Selvam, learned counsel appearing for the petitioner and Mr.T.Amjadkhan, learned Government Advocate appearing for the respondents 1 and 2.

2. The petitioner has filed this writ petition seeking to quash the order of the second respondent in Na.Ka.No.1187/A1/2022 dated 24.04.2023 and the consequential order in Oo.Mu.No.1187/A1/2022 dated 16.10.2023 and to direct the second respondent to approve her appointment as B.T. Assistant (Maths) in the third respondent School with effect from 01.07.2022 with all the consequential monetary benefits.

3. The petitioner has been appointed as B.T. Assistant (Maths) in the third respondent School on 01.07.2022 in the vacancy that arose due to the retirement of M.A.Selvi, B.T. Assistant (Maths) on 30.06.2022.



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The third respondent School, which is a minority institution has submitted a proposal in this regard to the respondents on 08.02.2023. However, the second respondent vide the impugned order dated 24.04.2023 communicated the third respondent School to enclose the TET eligibility Certificate of the petitioner, proof for the fact that the School does not have any surplus posts according to the Government Order in G.O.Ms.No. 165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019 and the present staff fixation report. Immediately, the third respondent School sent a reply stating that TET eligibility is not required for the minority institution; the Government Order in G.O.Ms.No.165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019 was already declared to be inoperative and the staff fixation report has to be issued by the first respondent. However, the second respondent without considering the same, returned the proposal by order dated 16.10.2023 by confirming the proceedings dated 24.04.2023. Hence, the petition.

4. The legal issue whether a pass in Teacher Eligibility Test is mandatory for approval of appointment in minority schools has already



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been dealt elaborately by the Hon'ble Division Bench of the Principal Seat of this Court in W.A.No.313 of 2022 etc., batch by order dated 02.06.2023, wherein in paragraph no.71.1, it is held as follows.

“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 ultravires the Constitution, meaning thereby that the 2009 Act will not apply to minority*



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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.”

5. In the instant case, the petitioner, who was appointed in the third respondent minority school, was denied the approval citing one of the reasons that she has not cleared Teacher Eligibility Test. However, in the above Judgment, it is made crystal clear that Teacher Eligibility Test clearance is not required for granting approval to appointment of teachers in the minority schools (both aided and unaided).

6. The Government Order in G.O.Ms.No.165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019 has already been declared to



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be inoperative in *W.A.(MD).No.76 of 2019 batch dated 31.03.2021* in the case of *The Secretary to Government Government of Tamil Nadu School Education Department, Fort St. George, Chennai – 9 vs. Iruthaya Amali*. The relevant portion of the order is extracted hereunder.

“95. In view of the aforesaid discussions, we are inclined to pass the following orders in this batch of cases :

....

(o) In view of the aforesaid, the G.O.Ms.No.165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019 is hereby declared to be inoperative.”

7. Since the Government Order in G.O.Ms.No.165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019 was itself declared to be inoperative, directing the third respondent School to submit a proof for non availability of surplus posts based on that Government Order cannot be legally sustainable.

8. In view of the above observations, the writ petition is **disposed of** and the order of the second respondent in Na.Ka.No.



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1187/A1/2022 dated 24.04.2023 and Oo.Mu.No.1187/A1/2022 dated 16.10.2023 are set aside. The third respondent School is directed to re-submit the proposal with regard to the appointment of the petitioner, to the second respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the third respondent is directed to consider the same on merits and pass appropriate order orders in accordance with law within a period of four weeks thereon. No costs. Consequently, connected Miscellaneous Petition is closed.

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NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order

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To
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R.N.MANJULA, J.

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