



WP(MD). No.15194 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 10.07.2024

CORAM

THE HON'BLE Ms.JUSTICE R.N.MANJULA

**WP(MD). No.15194 of 2024
and
WMP(MD). No.13298 of 2024**

G.Kartheeswari

... Petitioner

Vs

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai 9.
2. The Director of School Education,
DPI Campus,
College Road, Chennai 6.
3. The Chief Educational Officer,
The Office of the Chief Educational Officer,
Tirunelveli - 627 001.
4. The District Educational Officer,
The Office of the District Educational Officer,
Tirunelveli District 627 001.
5. The Correspondent,
St. Josephs Girls Higher Secondary School,
Jawahar Nagar,
Tirunelveli 627 007.

... Respondents



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PRAYER :- Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records, pertaining to the impugned proceedings, dated 08.06.2023, in O.Mu.No. 208/AA1/2022, on the file of the fourth respondent and quash the same and consequently directing the respondents, to accord approval to the promotion of the petitioner, Sr. G. Kartheeswari, working as P.G. Assistant (English) St. Josephs Girls Higher Secondary School, Jawahar Nagar, Tirunelveli 627 007, w.e.f. 04.08.2001 and release salary with all monetary and service benefits.

For Petitioner : Mr.S.Savarimuthu
For M/s. Father Xavier Associates

For R1 to R4 : Mr.T.Amjad Khan
Government Advocate

ORDER

The petitioner has been appointed as BT Assistant by St.Michael Girls Higher Secondary School on 04.12.2017. Subsequently, she was promoted to the post of PG Assistant on 04.08.2021 in the vacancy that has arisen due to the retirement of one Jaya Mariamma on 31.12.2019. Since the 4th respondent do not approve the above appointment, this writ petition has been filed by the petitioner.



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2. Heard Mr.S.Savarimuthu, learned counsel appearing for the petitioner and Mr.T.Amjad Khan, learned Government Advocate appearing for the respondents. Since no adverse order is going to be passed against the fifth respondent, notice to the 5th respondent is dispensed with.

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:



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*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. Initially, the petitioner has filed a writ petition for granting approval for her promotion PG Assistant in WP(MD) No.18910/2022 and subsequent to the direction of this Court in the earlier writ petition, Pursuant to the said direction, the 4th respondent has passed the impugned order stating that petitioner has not cleared the Teacher Eligibility Test



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and there is no ground for giving approval of the same.

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6. Mr.Savarimuthu, learned counsel appearing for the petitioner, submitted that the 5th 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 4 submitted that the legal position on the applicability of Teacher Eligibility Test requirement to minority institutions has not yet been settled.

8. However, the learned counsel for the petitioner cited the judgment of this Court dated 02.06.2023, passed by the Division Bench



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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 ultravires the Constitution, meaning thereby that the 2009 Act will not*



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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 for approval of the appointment of teachers made by the minority schools (both aided and unaided), does not require the Teacher Eligibility Test clearance is not mandatory.

9. 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



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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 writ petition is allowed and the order passed by 4th respondent dated 08.06.2023, in O.Mu.No. 208/AA1/2022 is quashed. No Costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes/No

RR

To

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2. The Director of School Education,
DPI Campus, College Road, Chennai 6.
3. The Chief Educational Officer,
The Office of the Chief Educational Officer,
Tirunelveli - 627 001.
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R.N.MANJULA, J.

RR

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