



W.P.(MD).No.15312 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD).No.15312 of 2024

and

W.M.P.(MD).No.13422 of 2024

A.Punitha Ruby,

... Petitioner

Vs

1. The Chief Educational Officer,
Ramanathapuram,
Ramanathapuram District.

2. The District Educational Officer (Primary Education),
Ramanathapuram,
Ramanathapuram District.

3. CSI Primary School,
Rep by its Correspondent,
Ramanathapuram District,
Ramanathapuram.

... Respondents

Prayer : 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 order passed by the 2nd respondent in his proceedings in Na.Ka.No.3640/A4/2021 dated 19.02.2024 and quash the same as illegal and



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consequently direct the 2nd respondent to approve the appointment of the petitioner w.e.f. 17.06.2019 in the post of Secondary Grade Teacher in the 3rd respondent school with all attendant, service and monetary benefits within the period stipulated by this Court.

For Petitioner : Ms.H.Jasima Yasmin

For Respondents : Mr.M.Siddharthan (R1,R2)
Additional Government Pleader

ORDER

The petitioner has been appointed as BT Assistant by the 3rd respondent School on 17.06.2019. Since the 2nd respondent do not approve the above appointment, this writ petition has been filed by the petitioner.

2. Heard Ms.H.Jasima Yasmin, learned counsel appearing for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader appearing for the respondents 1 & 2.

3. The petitioner was appointed as a Secondary Grade Teacher in the 3rd respondent school on 12.06.2019, in the sanctioned vacancy falling vacant on account of transfer of the erstwhile incumbent Ms.Anthony Mary. However, the proposal sent by the 3rd respondent School for approval of



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appointment of the petitioner was rejected vide impugned order, dated 27.01.2021. Hence, the petitioner is before this Court with this writ petition.

4. The learned counsel for the petitioner submitted that earlier, the petitioner has filed a writ petition in WP(MD) No.7447 of 2021 challenging the earlier order, dated 27.01.2021, which was allowed by this Court by directing the respondents to approve the appointment of the petitioner with effect from 17.06.2019. However, challenging the said order, the respondent has filed an appeal, which was disposed of by the Division Bench, vide order, dated 20.11.2023 by remitting the matter back to the competent authorities for passing fresh orders. Pursuant to the said order, the 2nd respondent has passed the impugned order, dated 19.02.2024.

5. Further the learned counsel appearing for the petitioner submitted that the petitioner's appointment has been made on 17.06.2019, the rule of surplus is not applicable to the petitioner's appointment. Even in the staff fixation for the year 2017-2018, two posts of Secondary Grade Teachers is sanctioned to the 3rd respondent School. So far as the date of appointment is concerned, it assumes relevance in view of the judgment in **WA(MD) No.**



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76/2019 (The Secretary to Government, Government of Tamil Nadu, v. Irudhaya Amali and another). Further, the 3rd 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 said stand, the respondents seems to have turned around once again and passed the impugned order stating that the petitioner is not qualified by passing the Teacher Eligibility Test.

6.The issue raised in this Writ Petition has been elaborately discussed and covered in the earlier judgment passed in the Writ Petition in ***W.P.No.1142 of 2021 dated 09.01.2024*** in the case of ***P.Paul Andrews Vs. The Director of School Education, DPI Campus, College Road, Chennai 600 006***, wherein the order has been analysed as under:

“Since the fourth respondent school is a minority institution, the question of prior permission would not arise in their case. So far as the applicability of the excess or deployment, G.O.Ms.No.165, School Education Department dated 17.09.2019 can be applicable only to the appointments made subsequent to the said Government Order. Even with regard to the subsequent appointment, the Government Order has held to



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*be inoperative in view of the reasons stated in W.A.(MD) No.76 of 2019 etc., batch dated 31.03.2019 and the same has been followed in the subsequent case of **B.Kurinjimalaron Vs. State of Tamil Nadu, Represented by tis Secretary, Education Department, Fort St. George, Chennai 600 009**, and in the said order, the following observations has been made:*

"5. The learned counsel appearing for the petitioners would submit that the G.O.Ms.No.165 dated 17.9.2019 as well as the judgment passed by the Division Bench of this Court in a Batch of Writ Appeals in W.A.(MD) No.76 of 2019 are prospective in nature. In the present cases, the appointment was made prior to the Government order passed in G.O.Ms.No.165 issued by School Education Department, dated 17.9.2019. Therefore, there is no legal impediment for approving the appointment made by the School Management to the aforesaid posts in the light of the existing Rules thereunder.

6. The learned Additional Advocate General submitted that as against the judgment passed by the Division Bench of this Court in a Batch of Writ Appeals in W.A.(MD) No.76 of 2019, etc., the State Government has preferred an appeal before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.15702 of 2021. It is further submitted that the Hon'ble Supreme Court stayed the judgment only in respect of Clause (i) of paragraph 95 of the said judgment. Further, it is also brought to the notice of this Court that the Division Bench in paragraph 6 of the said judgment, has observed that, "no fresh appointment



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even in the sanctioned vacancy shall be made by any school which are managed by the Corporate Management.

7. The learned counsel appearing for the petitioners would submit that in the instant case, no appointment was made by the School Management pursuant to the judgment passed by the Division Bench of this Court. All the appointments were made prior to the issuance of G.O.Ms.No.165 dated 17.9.2019 and the proposals were also sent to the educational authorities prior to the said G.O.Ms.No.165 dated 17.9.2019. Thus, G.O.Ms.No.165 dated 17.9.2019 and the Division Bench judgment will not bind over the appointment made by the School Management in the instant writ petitions. Therefore, the learned counsel appearing for the petitioners seeks to quash the impugned orders and consequently, direct the educational authorities to accord approval to the appointment to the post of B.T. Assistant and Secondary Grade Teacher, made by the School Management in the instant writ petitions.

8. According to the learned Additional Advocate General, the State Government has preferred an appeal before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.15702 of 2021 as against the judgment passed by the Division Bench of this Court in the Batch of Writ Appeals in W.A.(MD) No.76 of 2019, etc. and obtained stay insofar as Clause (i) of paragraph 95 of the said judgment. Except the aforesaid clause (i) of paragraph 95, there was no stay in respect of remaining portion of the judgment. It is agreed by the learned Additional Advocate



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General that the writ petitioners were appointed prior to the G.O.Ms.No.165 dated 17.9.2019 and therefore, it can be considered and an appropriate order may be passed.

9. On perusal of the judgment of the Division Bench of this Court in the aforesaid Batch of cases and also the G.O.Ms.No.165 issued by the School Education Department, dated 17.9.2019, both the judgment as well as G.O.Ms.No.165 are prospective in nature. The appointments made by the School Management in the instant writ petitions are prior to the issuance of G.O.Ms.No.165 dated 17.9.2019 and proposals for the said appointment were also forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.9.2019. Therefore, there is no legal impediments for the respondents to accord approval to the appointment made by the School Management in the instant writ petitions.

10. Having regard to the rival submissions of the parties, taking note of the judgment passed by the Division Bench of this Court in a Batch of Writ Appeals in W.A.(MD) No.76 of 2019, etc., G.O.Ms.No.165 issued by the School Education department, dated 17.9.2019 will not prohibit the educational authorities to approve the appointment made by the School Management in the instant writ petitions since the proposals for approval of appointment made by the School Management were forwarded to the educational authorities prior to the issuance of G.O.Ms.No.165 dated 17.9.2019. Therefore, this Court is of the view that the respondent department without considering the G.O.Ms.No.



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165 dated 17.9.2019 in proper perspective and passed the impugned order rejecting the proposals submitted by the School Management. Therefore, the impugned orders passed by the respondent department are liable to be quashed."

8. Since the matter in issue has already been covered by the above judgment, this Writ Petition is allowed and the proceedings issued by the second respondent in Na.Ka.No.12466/Aa5/2019 dated 28.12.2020 is set aside and the respondents 1 to 3 are directed to approve the appointment of the petitioner in the sanctioned post of Physical Education Teacher in the 4th respondent school based on the proposal forwarded by the fourth respondent school dated 06.05.2020 with all consequential and other attendant benefits. No costs. Consequently, connected miscellaneous petitions are closed."

7.The Division Bench of this Court has already dealt with the issue whether TET is mandatory for the teachers appointed in minority schools in W.A.No.313 of 2022 etc., batch, dated 02.06.2023, 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



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for refusal for grant of appointment approval, nor was it an issued 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 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.”

8.The position in the issue to pass in TET has been crystalised and settled in the above judgment that for approval of the appointment of teachers



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made by the minority schools (both aided and unaided), Teacher Eligibility Test clearance is not mandatory.

9. Following the decisions cited *supra*, this Writ Petition is allowed and the impugned order of the 2nd respondent in Na.Ka.No. 3640/A4/2021 dated 19.02.2024 is set aside. The 2nd respondent is directed to approve the appointment of the petitioner w.e.f. 17.06.2019 in the post of Secondary Grade Teacher in the 3rd respondent school with all attendant, service and monetary benefits within the period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is closed.

10.07.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

PNM

To

1. The Chief Educational Officer,
Ramanathapuram,
Ramanathapuram District.

2. The District Educational Officer (Primary Education),
Ramanathapuram,
Ramanathapuram District.



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R.N.MANJULA, J.

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ORDER IN
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