



W.P.(MD)No.16792 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.16792 of 2024
and WMP(MD)Nos.14506, 14507 & 14508 of 2024

M.S.Aboobacker Siddiq

... Petitioner

Vs.

1. The Chief Educational Officer,
Office of the Chief Educational Officer,
Tuticorin,
Tuticorin District.

2. The District Educational Officer (Secondary),
Office of the District Educational Officer,
Tuticorin,
Tuticorin District.

3. The Correspondent,
L.K.Higher Secondary School,
Kayalpattinam,
Tuticorin 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



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records relating to the impugned order passed by the 2nd respondent in his proceedings in O.Mu.No.3824/Aa1/2022 dated 21.09.2022 and quash the same as illegal and consequentially to direct the respondents 1 and 2 to approve the appointment of the petitioner as B.T.Assistant (Science) w.e.f.01.07.2022 without insisting TET in terms of order made in W.A. (MD).No.354 of 2020 dated 22.06.2023 and pay arrears of salary with all consequential benefits arising thereon within the period that may be stipulated by this Court.

For Petitioner : Mr.A.Nawazkhan
for M/s.Ajmal Associates

For Respondents : Mr.M.Siddharthan
Additional Government Pleader
for R1 & R2

ORDER

Heard Mr.A.Nawazkhan, learned counsel appearing for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader appearing for the respondents 1&2.



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2. The petitioner has filed this writ petition for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the 2nd respondent in his proceedings in O.Mu.No.3824/Aa1/2022 dated 21.09.2022 and further to direct the respondents 1 and 2 to approve the appointment of the petitioner as B.T.Assistant (Science) with effect from 01.07.2022 without insisting TET and pay arrears of salary with all monetary attendant benefits.

3. The petitioner was appointed as a BT Assistant (Science) in the 3rd respondent school on 01.07.2022, in the sanctioned vacancy arose due to the retirement of the erstwhile incumbent Mr.S.Chidambaram. However the proposal sent by the 3rd respondent School for approval of appointment of the petitioner was returned vide impugned order, dated 21.09.2022 stating that surplus teachers are available in the District and further the petitioner had not passed the Teacher Eligibility Test. Hence, the petitioner is before this Court with this writ petition.



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4. The learned counsel for the petitioner submitted that the third respondent is a minority stand alone institution and as on date, there is no surplus in the third respondent school. Hence, being a stand alone institution with no surplus, the third respondent School cannot be faulted in appointing the petitioner in the sanctioned vacancy as BT Assistant (Science). He further submitted that the third respondent School is a minority institution for which TET is not applicable and the issue on this has already been settled in the earlier judicial pronouncements.

5. Similar issue has already been dealt by this Court in ***W.P. (MD)No.5135 of 2024 dated 16.04.2024***, wherein the following observation has been made:

“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



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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



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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.”



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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.

6. In the instant case, the third respondent School is a Minority Institution for which TET is not applicable and the issue on hand has



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already been settled in the earlier batch of Writ Petitions. Since the third respondent school is a stand alone minority institution, the respondents cannot decline the approval of the appointment due to the reasons of TET eligibility or the deployment of the alleged surplus.

7. In view of the above stated reasons, this Writ Petition is allowed and the impugned proceedings in O.Mu.No.3824/Aa1/2022 dated 21.09.2022 is set aside. The respondents are directed to approve the appointment of the petitioner in the post of B.T.Assistant (Science), in the third respondent School, w.e.f., 01.07.2022, with all service benefits, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

24.07.2024

NCC: Yes/No
Index : Yes/No
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R.N.MANJULA, J.

PJL

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