



WP(MD) No.17140 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.07.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) No.17140 of 2024

and

W.M.P(MD)Nos.14782 & 14785 of 2024

The Manager & Correspondent
C.M.High School,
T.R.Naidu Street,
Tuticorin – 628 002,
Tuticorin District.

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by its Secretary,
Department of School Education,
Fort St.George,
Chennai - 600009.

2. The Director of School Education,
College Road,
Chennai - 600006.



WP(MD) No.17140 of 2024

3. The Chief Educational Officer,
Tuticorin -628002,
Tuticorin District.

4. The District Educational Officer,
Tuticorin,
Tuticorin District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the impugned proceedings of the 4th respondent DEO in Oo.Mu.No.470/A3/2023 dated 05.10.2023 quash the same and further direct the 3rd respondent CEO and the 4th respondent DEO to approve forthwith the appointment of A.Sweetlin Jeba as BT Assistant (English) in the petitioner School with effect from her dated of appointment viz., 02.01.2023.

For Petitioner : Mr.K.Ragatheesh Kumar
for M/s.Isaac Chambers

For Respondents : Mr.M.Siddharthan
Additional Government Pleader



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WP(MD) No.17140 of 2024

ORDER

The present writ petition has been filed seeking a Writ of Certiorari to quash the impugned proceedings dated 05.10.2023 of the 4th respondent and further direct the 3rd respondent/CEO and the 4th respondent/DEO to approve forthwith the appointment of A.Sweetlin Jeba as BT Assistant (English) in the petitioner School with effect from her dated of appointment viz., 02.01.2023.

2. Heard Mr.K.Ragatheesh Kumar, learned counsel appearing for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader appearing for the respondents.

3. By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

4. The petitioner school which is a minority institution, has appointed one Sweetlin Jeba as B.T. Assistant English on 02.01.2023. The vacancy arises due to the retirement of Secondary Grade Teacher by name Antonyammal on 31.12.2022. When the appointment proposal of



WP(MD) No.17140 of 2024

Sweetlin Jeba was sent to the third respondent for approval, the approval was rejected by assigning the reason that the BT Assistant post as per the staff fixation 2022-2023 is surplus and one post in Secondary Grade Teacher also surplus but subject to the pending litigation and that the appointee did not have TET eligibility.

5. The learned counsel for the petitioner submitted that so far as the staff fixation is concerned, the writ petition has been filed in W.P.(MD)No.3901 of 2024 and in the said writ petition, interim order has been given for staying the order of the third respondent to declare one Secondary Grade Teacher post in the petitioner school as surplus.

6. So far as the post of BT Assistant is concerned, the same has been rectified subsequently on the representation of the petitioner and hence, that issue will not arise and TET requirement is concerned the position of law is well settled.

7. In the mean while, the legal position as to whether TET qualification is mandate for the Teachers appointed in the minority



WP(MD) No.17140 of 2024

institutions have been settled by the Division Bench of this Court in W.A.No.313 of 2022 etc., batch, by its order dated 02.06.2023. In the said judgment, the following legal position have been crystallized under paragraph Nos.71.1, 72 and 73 as to whether TET is mandatory for the Teachers in minority school. The same is extracted hereunder:

**“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 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*



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WP(MD) No.17140 of 2024

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.

72. In the light of the above narration, taking note of the factual background, the legal provisions spelling out the intention of the legislature and the effect of the subordinate legislation pursuant thereto, the inescapable conclusion of this court would be that every teacher whether Secondary Grade or BT Assistant, whether appointed by direct recruitment or promotion in the case of BT Assistant, after the coming into force of the RTE Act and the NCTE notifications must necessarily possess/acquire the eligibility of a pass in TET. Therefore, the claim that Secondary Grade Teachers appointed prior to the commencement of the Act and notifications will now be eligible for promotion to the post of BT Assistant without passing TET, cannot be countenanced. For any fresh appointments, whether by direct recruitment in the case of Secondary Grade Teachers, or by either direct recruitment or promotion or transfer in the Graduate Assistants/BT Assistants, a pass in TET is an essential eligibility criteria to be fulfilled.

73. Further, it is made clear that all those appointed prior to 29.07.2011 are exempt from passing TET only for the purpose of continuance in the post of secondary grade teacher or BT Assistant without promotional prospects. Any appointments whether by direct recruitment or promotion or transfer made after 29.07.2011, will have to necessarily adhere to the minimum eligibility criteria of passing TET."



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WP(MD) No.17140 of 2024

8. Since the petitioner school is a minority institution, it is unnecessary to expect that the appointee to possess TET eligibility and hence, the objection on that ground cannot hold good.

9. It is further submitted that the retired post of secondary grade teacher has not been upgraded to B.T Assistant (English) and hence, the fact remains that in view of the G.O.Ms.No.79, dated 14.06.2002 all the secondary grade teacher posts will be upgraded to the post of BT Assistant. So far as the teacher who is holding the post of Secondary Grade Assistant retires then the new appointee will be appointed only as BT Assistant and not as a Secondary Grade Teacher. However, the above exercise should be subjected to the approval of the third respondent. Since the petitioner has already appointed one Sweetlin Jeba, the petitioner school shall explain the situation compelling immediate appointment before getting approval and seek for ratification along with the approval.

10. In view the same, the writ petition is **allowed** and the impugned order, dated 05.10.2023 of the fifth respondent is set aside.



WP(MD) No.17140 of 2024

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The respondents are directed to pass appropriate order within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

26.07.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
RM



WP(MD) No.17140 of 2024

To
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WP(MD) No.17140 of 2024

R.N.MANJULA, J.

RM

Order made in
W.P.(MD)No.17140 of 2024

26.07.2024