



W.P.No.3940 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2025

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.3940 of 2025

The Correspondent,
Athar Jamath High School,
MCR Nagar, Muthu Colony,
Karumbukkada,ai,
Coimbatore District.

... Petitioner

Vs.

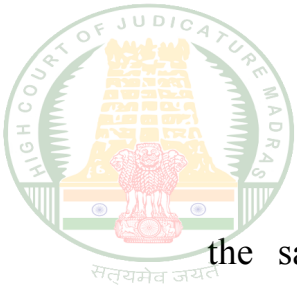
1.The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.

2.The Chief Educational Officer,
Coimbatore,
Coimbatore District.

3.The District Educational Officer (Secondary),
Coimbatore,
Coimbatore District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings issued by the second respondent by proceeding in O.Mu.No.8139/A4/2024 dated 10.09.2024 and to quash



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the same and consequently, direct the respondents to approve the appointment of the petitioner in the post of B.T.Assistant (English) in the petitioner's School, from the date of appointment on 01.06.2018 with all consequential and attendant benefits including the payment of salary from the date of appointment along with interest within a time frame to be fixed by this Court.

For Petitioner : Ms.M.Kaviya

For Respondents : Mrs.P.Rajarajeswari, Govt. Advocate

ORDER

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings issued by the second respondent by proceeding in O.Mu.No.8139/A4/2024 dated 10.09.2024 and to quash the same and consequently, direct the respondents to approve the appointment of the individual in the post of B.T.Assistant (English) in the petitioner's School, from the date of appointment on 01.06.2018 with all consequential and attendant benefits including the payment of salary from the date of appointment along with interest within a time frame to be fixed by this Court.



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2. Heard Ms.M.Kaviya, learned counsel for the petitioner, Mrs.P.Rajarajeswari, learned Government Advocate for the respondents and perused the materials available on record.

3. The petitioner School is a religious minority institution and it is the Government Aided School. One Mr.A.L.Abdul Rahim has been appointed to the post of B.T.Assistant (English) in the petitioner School and the proposal for his appointment has been sent to the second respondent through the third respondent for getting approval. But the approval was rejected by citing the reason that the appointee is not qualified by passing the Teacher Eligibility Test.

4. Time and again it has been held in several of the earlier judicial pronouncements that passing of Teacher Eligibility Test is not a mandatory requirement for appointments made in the minority institutions. The very same issue is surfacing repeatedly before the Courts. The position of law on this issue has been well settled by the



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Division Bench of this Court in W.A.No.313 of 2022 and batch. And the same is followed in various judgments. In this regard, it is also appropriate to refer the judgment of this Court held in ***W.P. (MD) Nos.8928 & 8929 of 2024 dated 17.04.2024*** and in which, the following orders have been passed:

"5. Therefore, the petitioners and others had challenged the order made in W.P(MD)No.2527 of 2022 and preferred an appeal in W.A(MD)No.1177 of 2023 and the same is pending. In the meanwhile, the legal position as to whether TET qualification is mandate for the Teachers appointed by the minority institutions have been settled by the Division Bench of this Court in W.A.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*



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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 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



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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



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29.07.2011, will have to necessarily adhere to the minimum eligibility criteria of passing TET."

6. Though it is held in the above judgment that pass in TET is an essential eligibility for the direct recruitment to the post of Secondary Grade Teachers and BT Assistants, the said mandate is not applicable to minority schools both aided and unaided schools. It is in view of the special status and privilege given to the minority institutions under Article 30 of the Constitution of India. Since the pass in TET for minority institutions has been held to be not necessary, the respondents need not wait for the outcome of the W.A(MD)No.1177 of 2023 filed by the petitioners. Even the petitioners have filed an appeal and the same is pending, the respondent cannot deny the applicability of the advantage of the Division Bench order dated 02.06.2023 held in W.A.No.313 of 2022 etc., batch.

7. The law has been settled in W.A.No.313 of 2022 etc., batch and hence the 4th respondent ought to have passed an order not only granting the monetary benefits other than the salary which was withheld earlier for want of TET pass and also to accommodate the approval



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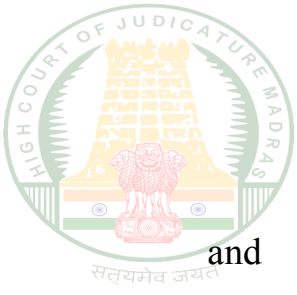


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for appointing the petitioners for the post of PG Assistant on promotion. Even though the Government has challenged the order passed in W.A.No.313 of 2022 etc., batch by filing SLP.No.45649 of 2023, the subject matter of the challenge is not in respect of excluding the minority institutions from the mandate of pass in TET but for making the pass in TET as a mandate for the promotion to the post of PG Assistant/Headmasters in the Government and aided Schools.

8. In view of the above stated reasons the impugned orders passed by the 4th respondent/District Educational officer in Na.Ka.No.3435/A3/2023 dated 20.07.2023 and Na.Ka.No. 2071/A3/2022 dated 30.06.2023 are hereby set aside. The fourth respondent is directed to pass appropriate order within a period of eight weeks from the date of receipt of a copy of this order."

5. In view of the above stated reasons, this Writ Petition is allowed



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and the order passed by the second respondent in

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O.Mu.No.8139/A4/2024 dated 10.09.2024 is set aside and the second respondent is directed to pass a positive order in the light of the earlier judicial pronouncements as observed above and grant an order of approval to the petitioner School within a period of four weeks from the date of receipt of a copy of this order. No costs.

Index : Yes

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Speaking

Neutral Citation : Yes

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R.N.MANJULA, J.

gsk

To

- 1.The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.
- 2.The Chief Educational Officer,
Coimbatore,
Coimbatore District.
- 3.The District Educational Officer (Secondary),
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