



W.A(MD)No.2592 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2025

CORAM:

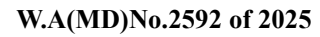
THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

W.A(MD)No.2592 of 2025
and
C.M.P(MD)No.14765 of 2025

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St George,
Chennai - 600 009.
 - 2.The Director of School Education,
College Road, Chennai - 600 006.
 - 3.The Chief Educational Officer,
Madurai District at Madurai.
 - 4.The District Educational Officer (Secondary),
Madurai,
Madurai District.
- ...Appellants

Vs.

1.S.Rathnabala



...Respondents

For Appellants : Mr.J.Ashok
Additional Government Pleader

For R – 1 : Mr.S.Xavier Rajini

For R – 2 : No appearance

(Judgment of the Court was made by **DR.ANITA SUMANTH, J.**)

2.R1 is the writ petitioner and she had sought a writ of Certiorari and Mandamus, challenging the denial of approval of her appointment. She had also sought a consequential direction to the appellants to approve her appointment as B.T Assistant (English) with effect from 09.08.2017, date of her joining the school, the Tamil Evangelical Lutheran Church (TELC) Girls Higher Secondary School,



W.A(MD)No.2592 of 2025

Usilampatti. A direction was also sought against the State to disburse grant-in-aid towards salary and other monetary benefits.

3.The Writ Petition came to be allowed. The learned Judge applied the ratio laid down by the Division Benches in the case of *The Chief Educational Officer, Tirunelveli and another Vs. S.Josephin Vijaya and another*¹ and in the case of the *Government of Tamil Nadu, represented by the Secretary to Government, Department of School Education Vs. J.Remila and others*². In those cases, this Court had applied the directives under G.O.Ms.No.79, School Education Department, dated 14.06.2002.

4.The above Government Order, as noted by the learned Single Judge, provided for an automatic upgradation of R1's appointment from B.T Assistant (English) to Middle School Graduate Teacher as and when vacancies arose and in light of the aforesaid G.O., a direction was issued to the State to approve her appointment. Consequently, impugned order dated 29.07.2024 was set aside and all consequential benefits were granted.

¹ W.A(MD)No.1497 of 2017, dated 14.12.2017

² 2018 (1) WLR 410



W.A(MD)No.2592 of 2025

5.The second limb of rejection pertained to the fact that R1 had not completed the Teachers Eligibility Test (TET). In defence, it was the stand of R1 before the writ Court that, being a minority institution, there is no embargo upon the staff members to have completed TET. This aspect of the matter has however not been referred to or adjudicated upon by the learned Judge in the impugned order.

6.We have heard the detailed submissions of both Mr.J.Ashok, learned Additional Government Pleader appearing for the appellants and Mr.S.Xavier Rajini, learned counsel appearing for R1. The School is not represented.

7.The first issue, relating to upgradation has been decided by the Division Benches in the two decisions relied upon by the writ Court in favour of the teachers and the ratio laid down in those decisions has attained finality.

8.Hence, the position that upgradation of post from B.T Assistant to Graduate level, (Middle Grade Graduate teacher posts) as and when vacancies arise, as per G.O.Ms.No.79, School Education



W.A(MD)No.2592 of 2025

Department, dated 14.06.2002, is automatic, cannot be questioned now.

Our attention has been specifically drawn to Clause (iv) of para 2 of the aforesaid G.O., which mentions that sanction is to be obtained from the State prior to upgradation.

9.However, the interpretation of that G.O by this Court has been to the effect that no such separate sanction is required once the vacancy arises and this interpretation has been accepted by the State as well. It is therefore too late in the day for the State to attempt this argument now. This issue stands decided in favour of R1 and adverse to the State.

10.As far as the issue of TET eligibility is concerned, the present position in law is that no faculty member in a minority institution is required to undergo the rigour of the TET, as per the Judgment of the Supreme Court in *Pramati Educational and Cultural Trust Vs. Union of India*³ consistently followed by various Courts, including this Court. The operative portion of the Judgment is as follows:

³ (2014) 8 SCC 1



“55. When we look at the 2009 Act, we find that Section 12(1)(b) read with Section 2(n) (iii) provides that an aided school receiving aid and grants, whole or part, of its expenses from the appropriate Government or the local authority has to provide free and compulsory education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent. Thus, a minority aided school is put under a legal obligation to provide free and compulsory elementary education to children who need not be children of members of the minority community which has established the school. We also find that under Section 12(1)(c) read with Section 2(n)(iv), an unaided school has to admit into twenty-five per cent of the strength of class I children belonging to weaker sections and disadvantaged groups in the neighbourhood. Hence, unaided minority schools will have a legal obligation to admit children belonging to weaker sections and disadvantaged groups in the neighbourhood who need not be children of the members of the minority community which has established the school. While discussing the validity of clause (5) of Article 15 of the Constitution, we have held that members of communities other than the minority community which has established the school cannot be forced upon a minority institution because that may destroy the minority character of the school. In our view, if the 2009 Act is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Therefore, the 2009 Act insofar it is made applicable to minority schools referred in clause (1) of Article 30 of the Constitution is ultra vires the Constitution. We are thus of the view that the majority



W.A(MD)No.2592 of 2025

judgment of this Court in Society for Unaided Private Schools of Rajasthan v. Union of India & Anr. (supra) insofar as it holds that the 2009 Act is applicable to aided minority schools is not correct.

56. In the result, we hold that the Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution and the Constitution (Eighty-Sixth Amendment) Act, 2002 inserting Article 21A of the Constitution do not alter the basic structure or framework of the Constitution and are constitutionally valid. We also hold that the 2009 Act is not ultra vires Article 19(1)(g) of the Constitution. We, however, hold that the 2009 Act insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution. Accordingly, Writ Petition (C) No.1081 of 2013 filed on behalf of Muslim Minority Schools Managers' Association is allowed and Writ Petition (C) Nos.416 of 2012, 152 of 2013, 60 of 2014, 95 of 2014, 106 of 2014, 128 of 2014, 144 of 2014, 145 of 2014, 160 of 2014 and 136 of 2014 filed on behalf of non-minority private unaided educational institutions are dismissed. All I.As. stand disposed of. The parties, however, shall bear their own costs."

11.Mr.Ashok would cite a recent judgment of the Supreme Court in *Anjuman Ishaat-E-Taleem Trust Vs. the State of Maharastra and others*⁴ that dealt with a batch of appeals and raised, among other issues, the question of whether TET is mandatory for faculty members of

⁴ (2025 INSC 104)



W.A(MD)No.2592 of 2025

minority institutions. The Bench has expressed a doubt as to whether the blanket exemption granted to minority institutions in *Pramati's case* (*cited supra*) is correct. Paras 177 & 186 to 191 are relevant and are extracted below:

'177. We, therefore, have serious doubts as to whether Pramati Educational and Cultural Trust (supra) was justified in granting a blanket exemption to minority institutions falling under Article 30(1) from the applicability of the RTE Act. In our considered opinion, the RTE Act ought to apply to all minority institutions, whether aided or unaided. As discussed, its implementation does not erode—let alone annihilate—the minority character protected under Article 30(1). On the contrary, applying the RTE Act aligns with the purposive interpretation of Article 30(1), which was never meant to shield institutions from reasonable regulation in pursuit of constitutional goals. There is no inherent conflict between Article 21A and Article 30(1); both can and must co-exist mutually.

On applicability of Section 12(1)(c), RTE Act to minority institutions.

.....

186. Article 21A postulates primary education to be a 'public good' that must be accessible and available to all. The RTE Act is the State's legislative enforcement of this fundamental right.

187. The Court in Pramati Educational and Cultural Trust (supra) focused on Section 12(1)(c) of the RTE Act and no other section and held the entirety of the RTE Act to be inapplicable to an entire section of society. Thereby, such section, so to say, has been totally excluded



from the idea and notion of nation building by providing education to children at the grassroot level. Even if one were to accept that Section 12(1)(c) violated Article 30, the same could have been read down by including at least the children of the particular minority community who also belong to weaker section and disadvantaged group in the neighbourhood. To hold that the entirety of the RTE Act is inapplicable, with due respect, does not appeal to us to be reasonable and proportionate.

188. Pramati Educational and Cultural Trust (supra), ruling that RTE Act would not apply to minority institutions, in effect would offend the Article 21A right of students admitted in such institutions. They would stand denied of the various statutory entitlements and benefits that the RTE Act affords to all children between 6 and 14 years of age.

189. The RTE Act does not alter the minority character of institutions set up under Article 30. The decision in Pramati Educational and Cultural Trust (supra) seems to us to be doubtful on various counts, in holding so. The decisions in T.M.A. Pai Foundation (supra), and P. A. Inamdar (supra) hold that even the inclusion of non-minority students in a minority institution would not dilute the institution's minority character. Pertinently, none of these decisions interpret Article 21A, which is inserted subsequently, or pertain to institutions imparting primary education.

190. Regulation in the form of norms and standards to ensure quality of education, does not dilute the minority character of an institution, and in fact is a necessary feature of the right to education, as understood both domestically, and internationally.

191. In a scenario where the TET is held to be inapplicable to minority institutions, this would



W.A(MD)No.2592 of 2025

additionally result in a violation of Article 14 as differential eligibility criteria based on religious or linguistic character would be an impermissible classification, and a violation of the general right guaranteed under Article 21A.'

12. The Registry has been directed to place the matter before the Hon'ble The Chief Justice for constitution of a larger Bench. In such an event, learned AGP would urge that the matter must await the decision of the larger Bench, once constituted, as according to him, the law is now in a flux. The question is, is there a vacuum created in law by reason of the reference, requiring us to await a further pronouncement of a larger Bench of the Hon'ble Supreme Court. The answer is in the negative, and has been settled in a series of judgements. In *Ashok Sadarangani and another Vs. Union of India and others*⁵ the Supreme Court was concerned with the same question, answering in para 29, as follows:

'29.As was indicated in Harbhajan Singh case, the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Glan Singh case need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field.'

⁵ (2012) 11 SCC 321



W.A(MD)No.2592 of 2025

WEB COPY

13. The same view has been taken in *Rajnish Kumar Rai Vs. Union of India and Others*⁶. The Bench holds, at paragraph 4, as follows:

4. Learned counsel appearing for the petitioner has brought to our notice a coordinate Bench decision of this Court in the case of Union of India vs. Sanjiv Chaturvedi [(2023) 2 SCR 59] in which the point of law laid down in the earlier judgment passed by this Court in the case of Alapan Bandyopadhyay (supra) has been referred to a larger Bench. But so far as this Bench is concerned, we do not think judicial propriety permits ignoring the ratio laid down by the coordinate Bench in the case of Alapan Bandyopadhyay (supra) as no decision has come as yet from the larger Bench on the point of territorial jurisdiction of the High Court in a similar context. If we were to take a different view, the only course open for us would have been to refer the petition to the Hon'ble the Chief Justice for being adjudicated by a larger Bench, as has been done in the case of Sanjiv Chaturvedi (supra). No argument has been raised before us that the decision in the case of Alapan Bandyopadhyay (supra) is per incurium.

14. Thus, the prevailing view in *Pramati's* case continues to apply until modified in any way, and no legal vacuum is created as the State would urge. In the present case as well, the issue must be considered in light of the existing binding precedent and this issue is also concluded affirming the decision of the writ court.

⁶ (2023) 14 SCC 782



W.A(MD)No.2592 of 2025

15. Incidentally, the State has made reference to the *Tamil Nadu Private School Regulation Rules 2023*, stating that only those appointments made prior to 13.01.2023 are proposed to be approved, and that too subject to the outcome of the reference made to the larger Bench. The appointment made in the present case is prior to the cut-off date and hence the aforesaid caveats expressed by the State would, in any event, not apply.

16. Even otherwise, we have our reservations on whether at all there could be any caveats put in place in this regard, in light of the binding legal position that obtains as on date. We reserve a detailed examination of this issue in a more appropriate matter, one that involves an appointment made prior to the date of Notification of the 2023 Rules.

17. In light of the above discussion, this Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

[A.S.M.J.,] & [C.K.J.,]
10.09.2025

NCC :Yes/No
Index :Yes
ps

12/14



W.A(MD)No.2592 of 2025

WEB COPY

To

- 1.The Secretary,
Represented by the State of Tamil Nadu,
Department of School Education,
Fort St George,
Chennai - 600 009.
- 2.The Director of School Education,
College Road, Chennai - 600 006.
- 3.The Chief Educational Officer,
Madurai District at Madurai.
- 4.The District Educational Officer (Secondary),
Madurai,
Madurai District.



WEB COPY



W.A(MD)No.2592 of 2025

DR.ANITA SUMANTH, J.
AND
C.KUMARAPPAN, J.

ps

W.A(MD)No.2592 of 2025

10.09.2025