



ORDER RESERVED ON : 22.12.2016
ORDER DELIVERED ON: 17.11.2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 17.11.2017

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P(MD) .Nos.16133 and 16134 of 2013

Deva Priya. A .. Petitioner in W.P.No.16133/13
J.EstherRani .. Petitioner in W.P.No.16134/13

Vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Department of School Education,
Fort St.George, Chennai-09.

2.The Director of School Education,
Chennai-06.

3.The Chief Educational Officer,
Dindigul District.

4.The District Educational Officer,
Dindigul, Dindigul District.

5.The Chairman,
Teachers Recruitment Board,
EVK Sampath Maligai,
DPI Compound, College Road,
Chennai-06.

... Respondents in both WPs

COMMON PRAYER:

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents No.1-3 to exempt the petitioner from passing the Teacher Eligibility Test (TET) as per clause 5 of the Notification dated 23.08.2010 issued by the NCTE.



For Petitioners : Mr.T.Lajapathi Roy

For Respondents : Mr.V.Muruganatham A.G.P

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COMMON ORDER

Since in both these writ petitions, the issues are same and the prayer sought for by both the writ petitioners are one and the same, these two writ petitions are disposed of by this common order, with the consent of the learned counsel appearing for the parties.

W.P (MD) .NO.16133/13:

2. The prayer sought for in this writ petition is for a writ of mandamus directing the respondents 1 to 3 to exempt the petitioner from passing the Teacher Eligibility Test (TET) as per clause 5 of the notification, dated 23.8.2010 issued by the NCTE.

3. The short facts which are required to be noticed for the disposal of this writ petition are as follows:

(i) The petitioner, since has been qualified to be appointed as BT Assistant, her name had been sponsored by the employment exchange on the request of the fifth respondent, pursuant to the vacancies sanctioned / notified by the Government through G.O (Ms.No).64, School Education C2, department, dated 15.3.2010. Pursuant to the sponsoring of the name of the petitioner, the fifth respondent called the petitioner for certificate verification by its communication dated 30.4.2010. Accordingly, the petitioner attended the certificate verification and produced all the certificates on 12.5.2010.

(ii) Though the certificate verification was completed, the respondent, especially the fifth respondent did not immediately announce the list of selected candidates, the reason being for such delay in publishing the selected list of candidates is the intervention of the general election. However subsequently, by communication dated 25.2.2011, the fifth respondent had communicated that, the petitioner had been provisionally selected for the appointment to the post of Graduate Assistant, on the basis of employment registration seniority, by duly observing communal rotation. The said communication further stated that, regarding the appointment, further communication would be sent by the Director of School Education, i.e., the second respondent, herein.

(iii) Pursuant to the said selection made by the fifth respondent, the second respondent issued an order of appointment on 15.9.2011, appointing the petitioner as graduate teacher at Government Highschool, Velayudhampatti, Dindigul District and the petitioner was directed to join duty at the school, where she was



appointed, within 7 days. Accordingly, the petitioner joined duty at the school and had been continuously working.

(iv) In the meanwhile, pursuant to the provisions of Right of Children to Free and Compulsory Education Act, 2009 (in short, the Act), the Central Government appointed the National Council for Teacher Education (in short, the NCTE) as academic authority. The Central Government in exercise of the powers conferred by sub section 1 of Section 23 of the Act, by notification dated 31.3.2010, authorized the NCTE as the "academic authority" to lay down the minimum qualifications for a person to be eligible for appointment as teacher. (v) Pursuant to the said authorization given to the NCTE to act as a academic authority, the NCTE issued a notification dated 23.8.2010 prescribing minimum qualification for a person to be eligible for appointment as a teacher. In the said notification under clause 5, some exemptions had been given to those whose recruitment process started or commenced by the appropriate Government or local authority or school, prior to the date of the notification, i.e., 23.8.2010. Accordingly, those candidates shall not be subjected to the new academic norms prescribed by the NCTE. However, they can be proceeded to be appointed as per the NCTE Regulations, 2001. The relevant portion of clause 5 of NCTE notification dated 23.8.2010 is extracted hereunder for easy reference:

"5. Teacher appointed after the date of this Notification in certain cases.- Where an appropriate Government or local authority or a school has issued an advertisement to initiate the process of appointment of teachers prior to the date of this Notification, such appointments may be made in accordance with the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time)."

(vi) Subsequently, the NCTE had issued a further notification dated 29.7.2011, whereby the NCTE made certain amendments to the earlier notification dated 23.8.2010. Insofar as the present issue is concerned, the amendment required to be noticed is under clause IV, where the following amendment has been made:

"IV For para 5 of the Principal Notification, the following shall be substituted, namely:-

5.(a) Teacher appointed after the date of this notification in certain cases:- Where an appropriate Government or local authority or a school has issued an advertisement to initiate the process of appointment of teachers prior to the date of this Notification, such appointments may be made in accordance with the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time).



(b) The minimum qualification norms referred to in this Notification apply to teachers of Languages, Social Studies, Mathematics, Science, etc. In respect of teachers for Physical Education, the minimum qualification norms for Physical Education teachers referred to in NCTE Regulation dated 3rd November, 2001 (as amended from time to time) shall be applicable. For teachers of Art Education, Craft Education, Home Science, Work Education, etc, the existing eligibility norms prescribed by the State Governments and other school management shall be applicable till such time the NCTE lays down the minimum qualifications in respect of such teachers."

(vii) Though such amendment has been made to clause 5 of the original notification, the import of giving exemption to the candidate, whose selection process already been commenced by the concerned Government, local authority or school, prior to the date of notification i.e., 23.8.2010, has not been changed or amended. In other words, the exemption clause for those persons, whose selection process commenced prior to the original notification, has been permitted to be intact.

(viii) Subsequent upon the said developments, Government issued G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 whereby the fifth respondent i.e, Teachers Recruitment Board, have been designated as the Nodal agency for conducting the TET (Teacher Eligibility Test) which was the main eligibility criteria fixed by the NCTE, i.e., the academic authority, authorized by the Central Government under Section 23(1) of the Act.

(ix) Consequent upon the issuance of G.O.Ms.No.181, dated 15.11.2011, several writ petitions were filed before this Court as during this period, recruitment process went on, whereby thousands of teachers were appointed by the State Government by adopting the earlier or erstwhile method of direct recruitment by getting candidates sponsored by the employment exchange, based on the state wide seniority, in the respective category, by following communal rotation.

(x) Some of the candidates, who had been called for certificate verification at various point of time, but not appointed, had approached this Court by filing writ petitions, at various point of time, seeking exemptions for them, to get selected and appointed to the post of secondary grade teacher or graduate teacher as the case may be, without insisting upon them to undergo and pass the TET as has been envisaged under the NCTE's notification, followed by G.O.Ms.No.181, dated 15.11.2011 as stated supra.

<https://hcservices.ecourts.gov.in/hcservices/> In this regard, judicial orders were passed by this Court, where, the claim of the candidates, who have not been appointed, though their selection process already commenced prior

to the cut off date i.e., 23.8.2010, to give exemptions from writing TET, had been negated. However, it is claimed by the petitioner herein that, those who had been selected and appointed, of course, pursuant to the selection process commenced prior to the cut off date, had been given exemption from writing TET.

(xii) In that circumstances, the petitioner had sent a representation on 05.09.2013 to the respondents 1 to 3 herein, stating that since number of candidates, who had been selected and appointed, pursuant to the selection process commenced prior to the cut off date, i.e., 23.8.2010, had been given exemptions from writing TET exam, the very same exemption has to be given or extended to the petitioner also.

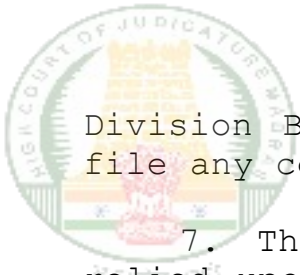
(xiii) Though such a request had been made by the petitioner, since no written communication or order was forthcoming from the respondents, giving such exemption for the petitioner, aggrieved by the inaction on the part of the respondents, the petitioner has approached this Court by filing the present writ petition, with the aforesaid prayer.

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4. In this case also, as per the contents which are made in the affidavit filed in support of this petition, the facts are almost similar to the case of the petitioner in the other writ petition. In this case also, the petitioner's name was sponsored by the employment exchange, pursuant to the notification of sanctioning of vacancies by the first respondent through G.O.Ms.No.64, School Education, Department, dated 15.3.2010. In this case also, the petitioner was selected after certificate verification and the communication to that effect, selecting the petitioner was issued by the fifth respondent on 25.2.2011. Thereafter, the second respondent by appointment order dated 15.9.2011, appointed the petitioner as graduate teacher at the very same school, i.e, the Government HighSchool, Velayudhampatti, Dindigul District, where the other petitioner also had been appointed, and the petitioner had been directed to join duty within 7 days. Accordingly, the petitioner joined duty and had been working. Here also, this petitioner had given similar representations on 5.9.2013 to the respondents 1 to 3 seeking exemption for her from writing TET examination, in view of the exemption clause given by the academic authority, namely NCTE under Clause 5 of the notification, dated 23.8.2010, as referred to above. Since the said representation having not been responded by the respondents 1 to 3, aggrieved by the same, the petitioner has filed this writ petition with the aforesaid prayer.

5. I have heard Mr.T.Lajapathi Roy, the learned counsel of the petitioner and Mr.V.Muruganantham, the learned Additional Government Pleader appearing for the respondents.

<https://hcservices.courts.gov.in/hcservices> The issue raised in these writ petitions is in a very narrow compass and also the fact that the issue raised herein has already been settled by this Court, atleast in one Judgment of the



Division Bench of this Court, the respondents has not chosen to file any counter.

7. The learned counsel appearing for the petitioners have relied upon a Judgment of the Division Bench of this Court dated 3.11.2015 made in W.P. No. 4827 of 2012 and W.A No. 1926 of 2013 etc., batch. If we peruse the said Judgment of the Division Bench the following facts can be culled out:

(i) It seems that after issuance of G.O.(Ms). No 181, School Education (C2) Department, dated 15.11.2011 insisting on pass in TET as a minimum qualification for appointment to the post of Graduate Assistant in class 6 to 10 in the schools coming under the Directorate of School Education and Elementary Education, some of the candidates claimed to have completed certificate verification, but not had been appointed, approached this Court by filing writ petitions, seeking exemption for them from writing TET, on the basis of the exemption granted by NCTE under clause 5 of the notification dated 23.8.2010.

(ii) It seems that the said cases were dismissed by the writ court. Thereafter, writ appeals were preferred, where also the cases of the said candidates were dismissed, as against which review was filed, where certain positive directions were given in favour of the candidates. Therefore aggrieved by the same, it seems that the Government preferred SLP before the Hon'ble Supreme Court.

(iii) The Hon'ble Supreme Court after considering the rival claims remanded the matter back to the High Court to decide 5 questions which were framed by the Hon'ble Supreme Court. Accordingly, the following 5 questions were framed and were posted before a Division Bench of this Court to answer:

" The questions which were framed by the Hon'ble Supreme Court to be adjudicated are:-

(i) whether the advertisement mentioned specific number of posts;

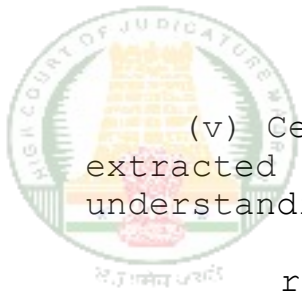
(ii) whether the posts mentioned have already been filled up;

(iii) whether the procedure of merit has been appositely followed;

(iv) whether the respondents despite being more meritorious have been left out and less meritorious candidates have been appointed; and

(v) whether assuming the advertisement did not mention the number of posts, the respondents still could claim a right in perpetuity to have the appointment."

(iv) In that context, the claim made by the candidates who filed those writ petitions and other connected writ petitions as <https://hccs.cas.go.in/hccsweb/> appeals were grouped together and were heard by a Division Bench and decided, by the said decision dated 3.11.2015.



(v) Certain paragraphs of the said Division Bench Judgment are extracted here under for easy reference and for better understanding of the issue.

"10. The contentions advanced by the respondent could be summaries as follows:

(i) That the employment exchange sponsors candidates in the ratio 1:5, the Government vide G.O.Ms.Nos.145 and 146, permitted TRB to fill up 6665 posts of Graduate Assistants (B.T. Assistants) for the year 2009-10. In the ratio of 1:5, the Government sponsored 31190 candidates;

(ii) The TRB selected 6532 candidates for the period 2009-10 out of 6665 and balance 133 is backlog vacancies;

(iii) The Government vide G.O.Ms.Nos.64, 152 and 153, sanctioned 1200, 2852 and 1766 posts of Graduate Assistants respectively and total number of posts permitted to be filled up through direct recruitment by the Government is 5818 including carry forward posts numbering 133;

(iv) The remaining 158 posts were not filled up for non availability of suitable candidates;

(v) NCTE issued regulations on 23.08.2010. If advertisements to initiate process of appointment of Teachers prior to the date of this notification, such appointments were directed to be made in accordance with NCTE Regulations 2001, by letter dated February, 2011;

(vi) G.O.Ms.No.181, dated 15.11.2011, was issued prescribing TET as criteria for appointment as Secondary Grade Teachers and Graduate Assistants;

(vii) The petitioners filed the Writ Petition to forbear the respondents from applying G.O.Ms.No.181 and insisting on pass in Teacher Eligibility Test;

(ix) G.O.Ms.No.90 was issued bringing a change of policy for recruitment of B.T. Assistant, Secondary Grade Teacher on the basis of direct recruitment by giving weightage mark in each category namely Higher Secondary, Degree, B.Ed., for B.T. Assistants.



(x) With regard to the five questions, which were framed by the Hon'ble Supreme Court, the respondents would state as follows:-"

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(vi) In answering to question No 5, the Division Bench has given the following answer:

"v) In the notification dated 29.07.2011, paragraph No.5 of the notification dated 23.08.2010, was substituted by a new paragraph No.5 consisting of two sub-paragraphs viz. 5(a) and 5(b). Paragraph 5(a) of the new notification dated 29.7.2011, is in para materia with paragraph 5 of the original notification dated 23.08.2010.

(vi) The sheet anchor of the petitioners contention is that in their cases, the Government has notified the number of vacancies under various Government Orders and the process of recruitment has commenced prior to 23.08.2010 and therefore, they are not required to pass TET.

(vii) We are unable to accept the contentions raised by the learned counsels for the petitioners as it would amount to misreading of the notifications dated 23.08.2010/27.09.2011. Paragraph 5 / 5(a) of the notification makes it abundantly clear that the exemption carved out is in respect of such appointments made, pursuant to recruitment process initiated prior to the date of the notification. Therefore, the emphasis is on the expression "such appointment as contained in paragraph 5/5(a) of the notification. Therefore, the benefit of the notification would enure in favour of those candidates who participated in the recruitment process initiated prior to 23.08.2010 and appointed against the posts advertised or as notified in the instant case. Therefore, it is only those appointments which would fall within the expression "such appointment" as contained in the notification issued by the NCTE.

(viii) In the light of the above conclusion that the benefit of the exemption in terms of the notification, dated 23.08.2010/27.09.2011, would not enure to the benefit of the candidates such as the petitioners. In the light of such conclusion, there would not be a necessity to examine the other aspects as regards the number



of vacancies, which were notified by the Government, those which have been filled up and those which remain unfilled. One more reason to arrive at such a conclusion is that unless and until the petitioners had been appointed as against the notified vacancies then alone the benefit of the exemption under the notification issued by the NCTE would apply.

.....

(xv) A contention was raised by the learned Senior counsel that the respondents are not justified in taking umbrage that actual appointments were made only in 2012 though notification was issued in 2010. The petitioners' case is founded on the exemption granted by NCTE in respect of certain cases. The exemption would benefit only those appointees, appointed before the date of the notification, thus it is immaterial as to when the actual appointments were made. The relevant date would be the date of the notification issued by NCTE. These issues cannot be canvassed by the petitioners in the absence of any challenge to the notification or the Government Orders. We agree with the submission of the learned Advocate General that the petitioners have no right to challenge the subsequent requirement made by TRB under the new recruitment policy and the petitioners will not acquire any indefeasible right to be appointed though there is unfilled vacancy."

(vii) Ultimately, the 5 questions were answered by the Division Bench which reads thus :

"18. In the result, the questions framed by the Hon'ble Supreme Court are answered as follows:-

(i) The petitioners/appellants concede that there was no advertisement and the posts were notified by various Government orders, and the question is answered accordingly;

(ii) The petitioners/appellants do not dispute that the posts have been filled up and there is no challenge to the select list;

(iii) The petitioners/appellants concede that the selection was based on State wide seniority in the employment exchange coupled with communal rotation and not based on interse merit.



11. Moreover, in the appointment order, dated 15.9.2011 given to these petitioners, there were 15 conditions imposed to be complied with by the petitioners, but nowhere, the respondents, especially, the second respondent, who issued the appointment order, has stated that these petitioners should also write the TET examination and pass out the same. Therefore, from the said appointment order, it becomes quite clear that, it is the decision of the appointing authority to appoint these petitioners as that of the appointments made to thousands of candidates similarly placed like the petitioners on the basis of their academic qualification and the employment seniority and not based on any interse merit arising out of the TET examination. Therefore, this Court is of the considered view that, the petitioners' request made through their representations, dated 5.9.2013 shall be considered by the respondents and the said exemption as they have sought for, has to be given.

12. In the result, the following orders are passed in these writ petitions:

"That the petitioners have made out a case to issue a writ of mandamus. Accordingly, the respondents especially, the second respondent, is directed to pass orders on the representation of the petitioners dated 5.9.2013, for giving exemption to the petitioners from requiring them to write and pass out the Teacher Eligibility Test, (TET) to be conducted by the 5th respondent, and accordingly, necessary orders as indicated above shall be passed by the respondents, especially the 2nd respondent, within a period of two months from the date of receipt of the copy of this order."

13. With these directions, these writ petitions are allowed. No costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai-09.

<https://hc.mysore.judges.org.in/hc-services/>
2. The Director of School Education,
Chennai-06.



3.The Chief Educational Officer,
Dindigul District.

4.The District Educational Officer,
Dindigul, Dindigul District.

5.The Chairman,
Teachers Recruitment Board,
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ORDER IN

W.P (MD) .Nos.16133 and 16134 of 2013

17.11.2017