

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.32552 of 2014, 33944 of 2014, 12307, 12311, 16092,
12325 & 12326 and 33003 of 2017,

and

M.P.Nos.1 of 2014

and

W.M.P.Nos.13079, 13082, 17379, 13091 & 13092 of 2017 & 36368
of 2017

1. J.KOILDOSS JEYAKUMAR

2. S.DHACHANA MOORTHY

3. A.KANNAGI

4. P.SELVAMANGAI

5. S.JEYA PRAKASH RAJASEELI

6. R.SADAGOPAL ... PETITIONERS IN W.P.No.32552 of 2014

V.SRIDHARA ... PETITIONER in WP No.33944 of 2014

M.CHITRA ... PETITIONER in WP No.12307 of 2017

S.MUTHURAJ ... PETITIONER in WP No.12311 of 2017

S.SARAVANAN ... PETITIONER in WP No.16092 of 2017

A.STEPHEN RAJADURAI ... PETITIONER in WP No.12325 of 2017

S.MADASAMY ... PETITIONER in WP No.12326 of 2017

V.ALMAS FATHIMA ... PETITIONER in WP NO.33003 OF 2017

VERSUS

1.THE STATE OF TAMIL NADU,
REP BY ITS SECRETARY TO GOVERNMENT,
SCHOOL EDUCATION DEPARTMENT,
FORT ST.GEORGE,
CHENNAI - 600 009.

..1ST RESPONDENT IN

W.P.NO.12307/2017,12311/2017,
16092/2017, 12325/2017, 33003/2017

2.THE DIRECTOR,
SCHOOL EDUCATION,
4TH FLOOR, EVK SAMPATH MAALIGAI,
DPI CAMPUS, COLLEGE ROAD,
CHENNAI - 600 006.

3.TEACHERS RECRUITMENT BOARD,
REPRESENTED BY ITS MEMBER SECRETARY,
4TH FLOOR, EVK SAMPATH MAALIGAI,
DPI COMPOUND, COLLEGE ROAD,
CHENNAI - 600 006. ..1ST RESPONDENT IN W.P.NO.33944/2014.
 ..RESPONDENTS IN W.P.NO.32552/2014.

THE DIRECTOR OF SCHOOL
EDUCATION DPI CAMPUS COLLEGE ROAD
CHENNAI-6. ..2ND RESPONDENT IN W.P.NO.33944/14,
 12307/2017, 12311/2017, 16092/2017,
 12325/2011, 33003/2017.

THE CHIEF EDUCATIONAL OFFICER
VELLORE, VELLORE DISTRICT 632 004.

THE DISTRICT ELEMENTARY EDUCATIONAL OFFICER
VELLORE, VELLORE DISTRICT 632 004.

THE ADDITIONAL ASSISTANT ELEMENTARY EDUCATIONAL OFFICER
ARCOT, VELLORE DISTRICT 632 503.

THE CORRESPONDENT
ISLAMIAH GIRLS PRIMARY SCHOOL MELVISHARAM
WALAJA TALUK VELLORE DISTRICT-632 509.
 ..RESPONDENTS IN W.P.NO.33003/2017.

Prayer in W.P.No.32552/2014: Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, Forbearing the 3rd respondent from applying G.O.Ms.No.181, School Education (C2) Department dated 15.11.2011 to the petitioners and insisting on Teacher Eligibility Test as a minimum qualification for appointment to the posts of Secondary Grade Teachers in Classes I to V in the schools coming under the Directorate of School Education and Elementary Education and to appoint the petitioners who have completed certificate verification between 30.05.2009 to 03.06.2009 and 14.05.2010 to the post of Secondary Grade Teachers in Classes I to V in the schools coming under the Directorate of School Education and Elementary Education in the future vacancies without insisting on Teachers Eligibility Test qualification in view of Clause 5 of the National Council for Teacher Education (NCTE) dated 23.08.2010.

WP No.33944 of 2014

Pleaded to issue a Writ, order, or direction more particularly a Writ in the nature of Writ of Mandamus or any other appropriate Writ , order (or) direction in the nature of Writ directing the respondents to consider the petitioner for selection and appointment to the post of BT Assistant in Science (Physics)(Kannada) based on his qualification and the marks secured in Paper II Teachers Eligibility Test common for Mathematics and Science and the weightage marks awarded during Certificate Verification and on merits, within a time frame to be fixed by this Honourable Court.

WP No.12307 of 2017 & 12311/2017, 12325/2017:

Pleaded to issue a Writ of Mandamus or any other appropriate Writ , order (or) direction in the nature of Writ Directing the respondents to grant extension of period to acquire the qualification of passing the Teachers Eligibility Test (TET) based on the amendment to the provisions of Right to Children to Free Compulsory Education Act, 2009 approved by the Government of India by considering the representation dated 3.5.2017 submitted by the petitioner.

WP No.16092 of 2017

Pleaded to issue a Writ of Mandamus or any other appropriate Writ , order (or) direction directing the respondents to grant extension of period to acquire the qualification of passing the Teachers Eligibility Test (TET) based on the amendment to the Provisions of Right to children to Free and Compulsory Education Act, 2009 approved by the Government of India by considering the representation dated 15.06.2017 submitted by the petitioner.

WP No.33003 of 2017

Pleaded to issue a Writ of certiorarified Mandamus or any other appropriate Writ or direction of likenature by calling for the records of the 5th respondent pertaining to the proceedings in Na.Ka. No.283A3/2016 dated 13.05.2016 quash the same, and also to direct the respondents 1 to 5 to grant approval of the petitioners appointment as Secondary Grade Assistant Teacher (Urdu) in the sixth respondents Minority Aided School together with salary, arrears of salary, other attendant service benefits and to pass such further other orders that may be necessary in the interest of Justice.

In W.P.No.32552 of 2014:

For Petitioners: Mr.C.Uma

For Respondents: Mr.K.Karthikeyan, Government Advocate

In W.P.No.33944 of 2014:

For Petitioner : Mr.G.Sankaran
For Respondents : Mr.K.Karthikeyan, Government Advocate

In W.P.Nos.12325 & 12326 of 2017

For Petitioners in both WPs : Mr.E.Naveen
For Respondents in both WPs : Mr.K.Karthikeyan,
Government Advocate

In W.P.No.16092 of 2017

For Petitioner : Mr.R.Kamaraj
For Respondents : Mr.K.Karthikeyan, Government Advocate

In W.P.No.12311 of 2017

For Petitioner : Mr.L.Chandrakumar
For Respondents : Mr.K.Karthikeyan, Government Advocate

In W.P.No.12307 of 2017

For Petitioner : Mr.R.Kamaraj
For Respondents : Mr.K.Karthikeyan, Government Advocate

In W.P.No.33003 of 2017

For Petitioner : Mr.V.Raghupathi
For Respondents : Mr.K.Karthikeyan, Government Advocate
for R1 to R5

C O M M O N O R D E R

All these Batch of Writ Petitions are moved mainly for the relief to declare that passing of Teachers Eligibility Test (TET) is not required for Teachers appointed prior to the issuance of the Government orders and further, a direction is sought for to forbear the respondents from insisting the Teachers to pass the Teachers Eligibility Test (TET).

2.The learned Senior Counsel as well as the learned counsels appearing on behalf of the writ petitioners made submissions that the writ petitioners are fully qualified and eligible for the appointment to the Teaching Posts. In spite of that, the respondents are insisting passing of the Teachers Eligibility Test (TET) even in some exempted cases. Thus, the writ petitioners are constrained to move the present writ petitions.

3.The learned Government Advocate informed this Court that after filing of all these writ petitions, number of Government orders were passed and the National Council for Teachers Education(NCTE) also issued certain guidelines to be followed across the Country under the National Education Policy and under the provisions of the Right to Education Act. Now, the prescription of minimum educational qualification is within the purview of the National Council for Teachers Education (NCTE), which is constituted under the Act of Parliament and the same is to be followed by all concerned scrupulously. The State also issued orders to that effect and the same is to be followed uniformly to all whenever and appointment to the Teaching posts are undertaken.

4.The Government of India effected publication under the provisions of the Right of Children to Free and Compulsory Education(Amendment) Act, 2017. The following Notifications are issued, which is extracted hereunder:

"1.(1) This Act may be called the Right of Children to Free and Compulsory Education(Amendment) Act, 2017.

(2) It shall be deemed to have come into force on the 1st day of April, 2015.

2.In the Right of Children to Free and Compulsory Education Act, 2009, in section 23, in sub-section(2), after the proviso, the following proviso shall be inserted, namely:-

"Provided further that every teacher appointed or in position as on the 31st March, 2015, who does not possess minimum qualifications as laid down under sub-section(1), shall acquire such minimum qualification within a period of four year from the date of commencement of the Right of Children to Free and Compulsory Education(Amendment) Act, 2017."

5.The Notification cited supra unambiguously enumerates that every Teacher appointed or in position as on, has to acquire the qualifications of Teachers Eligibility Test (TET). Thus, there cannot be any absolute exemption contrary to the provisions of the said Act, Rules, Regulations and guidelines issued in this regard by the National Council for Teachers Education (NCTE).

6.The learned counsel for the petitioners states that the Government has issued orders, granting exemptions in respect of certain category of Teachers and those orders are also to be considered at the time of implementing the provisions of the Act, Rules, Regulations and guidelines issued by the National Council for Teachers Education (NCTE).

7. In view of the developments took place on account of the establishment of National Education Policy, this Court is of an opinion that the cases of the writ petitioners are to be considered based on the individual facts and circumstances aroused on account of their respective appointments. It is needless to state that the Right to Education Act and the Notifications issued by the National Council for Teachers Education (NCTE) and subsequent guidelines issued in this regard are to be taken note of and a decision is to be taken in this regard by the respondents namely, the Principal Secretary to Government, School Education Department, Fort St. George, Chennai and the Director of School Education, College Road, Chennai - 6.

8. In this view of the matter, the State Education Departments officials are directed to consider the cases of all these writ petitioners in the batch of writ petitions on merits and in accordance with law, taking note of the provisions of the Act, Rules, Guidelines and the Government orders issued in this regard and pass orders within a period of four months from the date of receipt of a copy of this order. The writ petitioners are at liberty to submit their respective fresh representations to the respective competent authorities and the relevant documents, enabling the competent authorities to consider their cases on merits and in accordance with law.

9. With these directions, all these writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CO)

True Copy

Sub-Assistant Registrar

sk
To

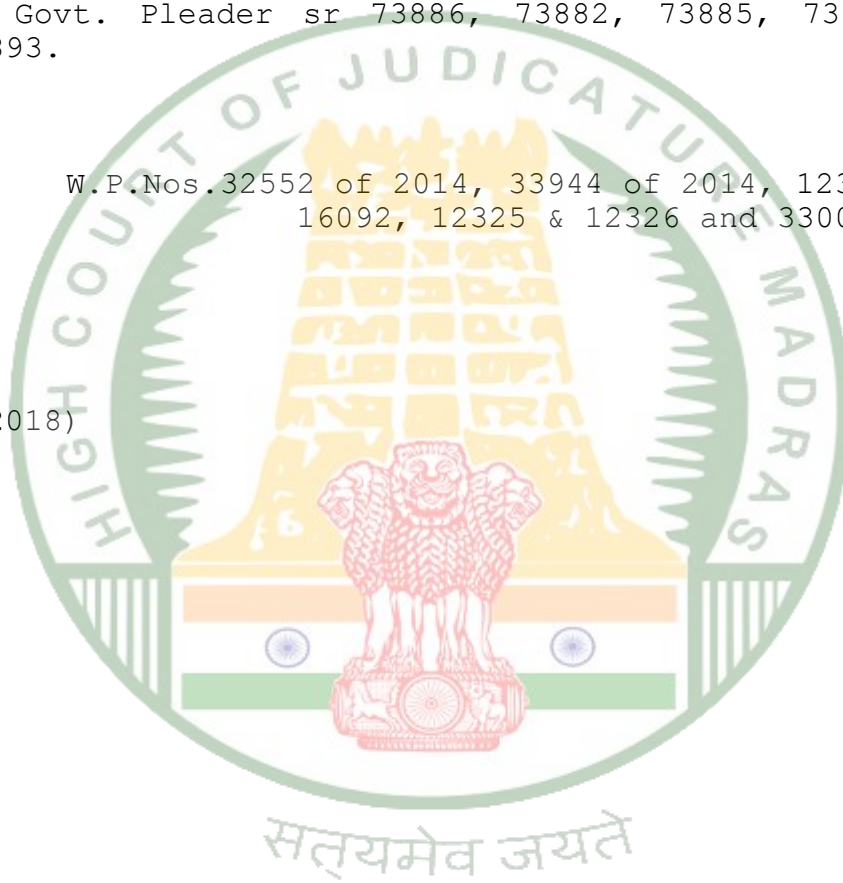
1. The Secretary to Government,
School Education Department,
Fort St. George,
Chennai - 600 009.
2. The Director,
School Education,
4th floor, EVK Sampath Maaligai,
DPI Campus, College Road,
Chennai - 600 006.

3.The Member Secretary,
Teachers Recruitment Board,
4th floor, EVK Sampath Maaligai,
DPI Compound, College Road,
Chennai - 600 006.

+1 CC to Mr.G.Sankaran, Advocate sr 73260
+1 CC to Mr.V.Raghupathi, Advocate sr 73691.
+1 CC to Mr.R.Kamaraj, Advocate sr 73374.
+3 Ccs to Mr.E.Naveen, Advocate sr 73377, 73376, 73373.
+1 CC to Mr.L.Chandrakumar, Advocate sr 73375.
+1 CC to Govt. Pleader sr 73886, 73882, 73885, 73881, 73884,
73883, 73893.

W.P.Nos.32552 of 2014, 33944 of 2014, 12307, 12311,
16092, 12325 & 12326 and 33003 of 2017,

AD(CO)
SP(19/12/2018)



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