

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.10.2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11306 to 11311 of 2017
and M.P.Nos.12237 to 12247 of 2017

1. P.Anusha Petitioner in WP.11306/2017
2. K.Dhanalakshmi Petitioner in WP.11307/2017
3. S.Kavitha Petitioner in WP.11308/2017
4. K.Sujini Petitioner in WP.11309/2017
5. T.Kavithamini Petitioner in WP.11310/2017
6. T.Dhanalakshmi Petitioner in WP.11311/2017

Versus

- 1.The State represented by its Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St.George, Chennai - 600 009.
... R1 to R2 in WP.No.11309/2017 and 11311/2017
2. The Director of School Education,
College Road,
Chennai - 600 006.
... Respondents 1 to 3 in WP.11306 to 11308,
WP.11310/2017 R1 to R3
3. The District Education Officer,
Thiruppur, Thiruppur District.
... Respondent 4 in WP.11309/17 and WP.11311/2017
4. The District Education Officer,
Coimbatore, Coimbatore District.

Common Prayer in W.P.Nos.11306 & 11307 of 2017: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the 3rd respondent's impugned proceedings Na.Ka.No.1300/A4/2017 dated 08.03.2017 and quash the same in

consequence to that direct the respondents not to insist to produce TET pass certificate and permit her to function peacefully as B.T.Assistant at Sri Visalakshi Girls Higher Secondary School at S.V.Mill Post, Udumalpet 642 128.

Prayer in W.P.No.11308 of 2017: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 3rd respondent in connection with proceedings in Na.Ka.No.1300/A4/2017 dated 08.03.2017 and quash the same consequently direct the respondents to declare that the passing of Teacher Eligibility Test is not necessary for the petitioner who is appointed as B.T.Assistant prior to 15.11.2011 and permit her to function peacefully at Sri Visalakshi Girls Higher Secondary School at , Udumalaipettai.

Common Prayer in W.P.Nos.11309 & 11311 of 2017: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the 3rd respondent's impugned proceedings Na.Ka.No.5478/B2/2016 dated Nil.03.2017 and quash the same in consequence to that direct the respondents not to insist to produce TET pass certificate and permit her to function peacefully as B.T.Assistant at Thambu Higher Secondary School, Press Colony, Coimbatore.

Prayer in W.P.No.11310 of 2017: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the 3rd respondent's impugned proceedings Na.Ka.No.1300/A4/2017 dated 08.03.2017 and quash the same in consequence to that direct the respondents not to insist to produce TET pass certificate and permit her to function peacefully as B.T.Assistant at Sri Kanniga Parameshwari Higher Secondary School, Udumalaipet.

For Petitioners : M/s.K.Anbarasan
(in all writ petitions)

For Respondents (1 to 4): Mr.K.Karthikeyan for R1 to R3
Government Advocate
(in all writ petitions)

COMMON ORDER

All these 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 counsel 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.

Sd/-

Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

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To

1.The Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St.George, Chennai - 600 009.

2.The Principal Secretary to Government,
School Education Department,
Fort St.George,
Chennai-600 009

3. The Director of School Education,
College Road,
Chennai - 600 006.

4. The Distance Education Officer,
Thiruppur, Thiruppur District.

5. The Distance Education Officer,
Coimbatore, Coimbatore District.

+1cc to Government Pleader in sr.no.70119

W.P.No.11306 to 11311 of 2017

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nr 01/11/2018



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