



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. (MD) No.11201 of 2013
and M.P. (MD) .No.1 of 2013

M.Johny

... Petitioner

vs .

1. The Government of Tamilnadu,
Represented by its Principal Secretary,
Department of Elementary School Education,
Fort St. George, Chennai 600 009.
2. The Director of Elementary School Education,
College Road, D.P.I. Campus, Chennai 600 006.
3. The District Elementary School Education Officer,
Thoothukudi, Thoothukudi District.
4. The Assistant Elementary Education Officer,
Vilathikulam Taluk,
Thoothukudi District.
5. The Secretary,
Hindu Nadar Primary School,
Perilovanpatti,
Vilathikulam Taluk,
Thoothukudi District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to give temporary approval of the appointment of the petitioner with effect from 27.04.2012 and release the grant-in-aid towards his salary along with arrears of salary and all attendant consequential benefits.

For Petitioner : Mr.K.Prabhu
for M/s.Isaac Chambers
For Respondents : Mrs.S.Srimathy
Special Government Pleader

ORDER



appointment of the petitioner with effect from 27.04.2012 and release the grant-in-aid towards his salary along with arrears of salary and all attendant consequential benefits.

2. The petitioner was employed by the 5th respondent's school with effect from 27.04.2012. The petitioner holds a qualification in Diploma in Teacher Education. However, by that time, (Eighty Sixth Amendment) Act, 2002 inserted Article 21-A, under the constitution of India providing Free and Compulsory Education of all children in the age group of 6 to 14 as Fundamental Right. Under these circumstances, the Right of Children to Free and Compulsory Education Act, 2009 came to be passed with effect from 01.04.2010. As per Section 23 of the said Act only person, who possesses minimum qualifications prescribed by the Academic Authority, shall be eligible for appointment as a teacher. Proviso to Sub-Section (2) of Section 23 provides that where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) and the state does not have sufficient numbers of such qualified teacher, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification. The proviso further mandates that a teacher who, at the commencement of this Act, do not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualification within a period of five years.

3. The Central Government by notification dated 23.08.2010 has already prescribed the said qualification. As per the said notification, the passing of the Teachers Eligibility Test (TET) is the minimum qualification of appointment of teachers upto Standard VIII.

4. As per the powers conferred under Section 38(1) of the Act, the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011 have been framed. By issuing G.O.(Ms).No.181 (School Education-C2), dated 15.11.2011, it is compulsory for every candidates to pass test (TET) within a period of five years for being appointed as Secondary Grade Teachers or BT Assistants. After the petitioner joined in service of the 5th respondent school, the Government of Tamil Nadu as conducted Teachers Eligibility Test on 12.07.2012, which however did not yield the desired result. Only 1% of the candidates qualified in the said Exam. Therefore, the State Government conducted supplementary Examination on 14.10.2012. Again, only marginal percent of candidates were successful. The second TET Exam was held on 17.08.2013, where again only 4% of the candidates who appeared cleared the exam. These led to filing of several writ petitions including the writ appeal before this Court.



approve the appointment of those candidates who did not possess requisite qualification as per the deadline set on or before 31.03.2015. The petitioner has also made an attempt vide W.P.(MD). No.9290 of 2013, which came to be dismissed with liberty to approach the authorities to work out the remedies. On 30.04.2017, once again, the third TET Exam was conducted. Again like many other, the petitioner was also unsuccessful.

6. The learned counsel for the petitioner would submit that all over India, around 11 Lakhs teachers, who attempted the TET Exam, could not pass the Exam and therefore, considering the gravity of the situation, parliament has amended the Right of Children to Free and Compulsory Education (Amendment) Act, 2017). The said amendment inserted the following proviso to Section 23 of the Act which reads as under:-

"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 qualifications within period of four years from the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017."

7. The learned counsel for the petitioner further submits that while dealing with an identical situation, the Hon'ble Division Bench of this court reported in (2018) 1LW, Page 187 [**D.Arul Singh Gnana Selvaraj Vs. The State of Tamil Nadu, Rep. by its Secretary**] granted the relief to similarly placed persons as a result of the above amendment by declaring that the period for obtaining the requisite qualification has been extended from 31.03.2015 to 31.03.2019.

8. In **State of Tamil Nadu Vs. R.Arivazhagan and another** reported in (2017) 3 MLJ 243, it was held that non qualifying in TET by the Teachers already in service should not defeat the object of the Government to provide quality and standard education and therefore, the Government may, in the alternative, conduct a refresher course and also some interactive sessions during annual vacation, in order to ensure and enhance the quality of education.

9. The learned counsel for the petitioner submits that even though he was appointed as early as on 27.04.2012, he has not been given salary as he has also not qualified in the TET Exam and therefore the respondents to give temporary approval of the appointment of the petitioner with effect from 27.04.2012 and release the grant-in-aid towards his salary along with arrears of salary and all attendant consequential benefits. The respondents have however not filed their counter. Therefore, the prayer for a grant-in-aid towards salary along with arrears with consequential benefits cannot be granted straight away unless established, whether the petitioner has worked without salary with the 5th respondent. It



has to be established in a manner known to law.

10. Therefore, there shall be an order only to direct the respondents to release salary post-facto with effect from the month of November 2018, if the petitioner is still in service of the 5th respondent. As far as the past is concerned the petitioner will have to establish his entitlement based on records available with the 5th respondent. If really the petitioner had worked from 27.04.2012, the petitioner shall produce records before 3rd respondent who shall thereafter allow the arrears.

11. In view of the above observation, the Writ Petition stands partly allowed. The respondents are directed to comply with the directions of this Court within a period of six weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-I)

To:

1. The Principal Secretary,
Government of Tamilnadu,
Department of Elementary School Education,
Fort St. George, Chennai 600 009.
2. The Director of Elementary School Education,
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Thoothukudi District.
5. The Secretary,
Hindu Nadar Primary School,
Perilovanpatti,
Vilathikulam Taluk, Thoothukudi District.

+ 1 CC TO M/s.ISAAC CHAMBERS, IN SR No. 95429

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 95431

SJI

TE/SKN/SAR-1 : 13/12/2018 : 4P/8C