

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.04.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.13306, 13314, 13318 & 13323 of 2019
and

W.M.P.Nos.13412, 13420, 13426 & 13430 of 2019

P.Indira Gandhi ..Petitioner in W.P.No.13306/2019
K.Indra ..Petitioner in W.P.No.13314/2019
C.Jothi ..Petitioner in W.P.No.13318/2019
S.Kavitha ..Petitioner in W.P.No.13323/2019

vs

- 1.The Principal Secretary/The State Project Director,
Sarva Shiksha Abiyan(SSA),
Chennai - 600 006
- 2.The Additional Chief Educational Officer, (SSA)
Thiruvannamalai,
Thiruvannamalai District.
- 3.The Secretary,
SPHEED Charitable Trust,
Kasthurba Gandhi Baliga Vidyalaya Residential School,
Rayandapuram Road,
Perungalathur, Thandrapet Union,
Thiruvannamalai District. .. Respondents in all W.Ps

Prayer in W.P.No.13306/2019: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the Respondents from terminating the Petitioner from her service as Teacher from the 3rd Respondents School viz., Kasthurba Gandhi Baliga Vidhyalaya Residential School, Perungulathur for the reason of not possessing Tamil Nadu Teacher Eligibility Test.

Prayer in W.P.Nos.13314, 13318 & 13323 of 2019: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the Respondents from terminating the Petitioner from her service as Teacher from the 3rd Respondents School viz., Kasthurba Gandhi Baliga Vidhyalaya Residential School, Perungulathur till the publication of result in Tamil Nadu Teacher Eligibility Test-2019.

For Petitioners : Mr.K.Thilageswaran(in all W.Ps)

For Respondents : Mr.C.Munusamy
Special Government Pleader
for R1 & R2(in all W.Ps)

C O M M O N O R D E R

W.P.No.13306 of 2019:The relief sought for in the writ petition is for a direction to forbear the Respondents from terminating the Petitioner from her service as Teacher from the 3rd Respondents School viz., Kasthurba Gandhi Baliga Vidhyala Residential School, Perungulathur for the reason of not possessing Tamil Nadu Teacher Eligibility Test.

1.1. W.P.Nos.13314, 13318 & 13323 of 2019: The relief sought for in the writ petitions is for a direction to forbear Respondents from terminating the Petitioners from their service as Teacher from the 3rd Respondents School viz., Kasthurba Gandhi Baliga Vidhyalaya Residential School, Perungulathur till the publication of result in Tamil Nadu Teacher Eligibility Test-2019.

2.W.P.No.13306/2019:The writ petitioner has completed her Master's Degree in M.Sc., Botany and B.Ed., Degree. She was appointed in the Post of B.T.Assistant(Botany) in Kasthurba Gandhi Baliga Vidyalaya Residential School, Perungulathur, Thiruvannamalai District on 05.08.2005 and working as such.

2.1.W.P.No.13314/2019:The writ petitioner has completed B.Sc., (Mathematics) and B.Ed., Degree. She was appointed in the Post of B.T.Assistant(Mathematics) in Kasthurba Gandhi Baliga Vidyalaya Residential School, Perungulathur, Thiruvannamalai District on 08.02.2013 and working as such.

2.2.W.P.No.13318/2019:The writ petitioner has completed B.A.(Tamil) and B.Ed., Degree. She was appointed in the Post of B.T.Assistant(Tamil) in Kasthurba Gandhi Baliga Vidyalaya Residential School, Perungulathur, Thiruvannamalai District on 09.01.2012 and working as such.

2.3.W.P.No.13323/2019:The writ petitioner has completed B.A.(History) and B.Ed., Degree. She was appointed in the Post of B.T.Assistant(History) in Kasthurba Gandhi Baliga Vidyalaya Residential School, Perungulathur, Thiruvannamalai District on 01.01.2013 and working as such.

3.The 3rd respondent School is being run under the Sarva Shiksha Abiyan(SSA) scheme for which 75% of the expenses is borne by the Central Government and the remaining 25% is borne

by the State Government. The Sarva Shiksha Abiyan(SSA) scheme was implemented all over the Country in India with the object of providing quality education to the children between 6 years to 14 years, without any distinction on gender. This Special scheme was implemented for the welfare of the female children between 10 years to 14 years, who are drop-out and not attending the School. The scheme is implemented in 14 Districts in Tamil Nadu and there are 61 residential schools of this nature under the Scheme.

4.The Government of Tamil Nadu under the provisions of the Right to Education Act, issued G.O.Ms.No.181, dated 15.11.2011, stating that Teacher Eligibility Test(TET) is a requisite qualification for a Teacher. The petitioners claim that at the time of their appointment, the Teacher Eligibility Test(TET) was not insisted upon and they were discharging their duties without any remarks.

5.On 14.09.2017, the 3rd respondent had given a paper advertisement in Tamil Daily and invited applications from the eligible candidates for Direct Recruitment to the Post of B.T.Assistant(Mathematics) and the writ petitioners were orally informed that they had not passed Teacher Eligibility Test(TET) and therefore, they would be terminated from service. Thus, the writ petitioners filed W.P.No.26056 of 2017 and this Court passed an order on 09.10.2017, directing the respondents not to take any adverse decision till 31.03.2019, the date on which, is fixed as cut-off date for possessing requisite qualification of Teacher Eligibility Test(TET) by the Teachers, who all are working in Schools. Accordingly, the writ petitioners are continuing in service. At the time of appointment of the writ petitioners, the qualification of Teacher Eligibility Test(TET) was not compulsory. The 2nd respondent had not conducted the Teacher Eligibility Test(TET) for about 2 ½ years and it was notified on 28.02.2019. The petitioners had applied for the Examination and at this point of time, the 3rd respondent is threatening the writ petitioners that they would be terminated from service.

6.The learned counsel for the writ petitioners urged this Court by stating that at the time of appointment of the writ petitioners, the qualification of Teacher Eligibility Test(TET) was not mandatory. Pursuant to the Enactment of Right to Education Act, the qualification of Teacher Eligibility Test (TET) was implemented. Thus, the writ petitioners should not be compelled to pass the Teacher Eligibility Test(TET) and on the ground of non-passing, they cannot be terminated from service. The writ petitioners are serving for many years and the termination will affect the livelihood of the writ petitioners.

7.The learned Special Government Pleader appearing on behalf of the respondents brought to the notice of this Court that even the Government of India in letter dated 27th February 2019, addressed to the Principal Secretary to Government, School Education Department categorically stated that the time limit for completion of the training programme for in-service untrained elementary Teachers by 31st March 2019 is mandated by the Amendment in the RTE Act by the Parliament of India. Therefore, it would not be possible to consider any request related to extension of deadline for training of untrained in-service Elementary Teachers.

8.The Government of India, Ministry of Human Resource Development, Department of School Education & Literacy in clear terms informed the State Government that there is no possibility of granting extension of time for completion of Teachers Eligibility Test(TET). It is further brought to the notice of this Court that the tests mandated by the Amendment in the RTE by the Parliament of India. Thus, there is no scope for grant of extension of time for these Teachers, who all are not qualified and not passed the Teachers Eligibility Test(TET) as per the requisite qualifications prescribed by the National Council for Teachers Education as well as the Government of Tamil Nadu.

9.In fact, the Teachers Eligibility Test(TET) are being conducted by the Government of India twice in a year. This apart, the Government of Tamil Nadu also conducted Teachers Eligibility Test(TET) during the years 2012, 2013, 2014, 2017 and now in 2019. Both the State Government as well as the Central Governments are conducting the Teachers Eligibility Test (TET) and the writ petitioners, if not interested in completing the Teachers Eligibility Test(TET), then undoubtedly, the writ petitioners are not eligible to continue in the post of Teacher. When opportunities are provided in ample and Teachers Eligibility Test(TET)Examinations are conducted both by the Central Government as well as by the Government of Tamil Nadu, there may not be any difficulty for the Teachers to clear the examinations. Thus, the ground raised in the writ petitions that the examinations were not conducted for about 3 years is incorrect and the examinations were conducted both by the Central Government as well as by the State Government.

10.The qualifications of Teachers Eligibility Test(TET) is mandatory and therefore, the Teachers, who are all not qualified are liable to be discharged from service.

11.It is brought to the notice of this Court that 60,000 fully qualified unemployed candidates are waiting for appointment to the Post of Teachers. Those 60,000 candidates have already passed Teachers Eligibility Test(TET) or National

Eligibility Test. When 60,000 unemployed youths are waiting and aspiring appointment to secure the Post of Teachers, there is no reason for the Government to retain such unqualified Teachers in the Post. In respect of the implementation of the qualifications, there cannot be any leniency or misplaced sympathy by the State Government in view of the fact that any such sympathy will be detrimental to the National Educational Policy as well as in the interest of Education to be imparted to the children of this great Nation. Thus, the authorities competent are bound to initiate appropriate action in the light of the Government of India orders as well as the minimum educational qualifications prescribed under the RTE Act as well as by the National Council for Teachers Education. The State Government has already implemented the Act as well as the Regulations and they are obligated to follow the rules strictly and without any violation.

12. This Court is of the considered opinion that even under the provisions of the Tamil Nadu Government Servants (Condition of Service) Act 2016, passing of the requisite tests are mandatory and in the event of not passing the requisite qualification prescribed for the particular post, the Appointing Authority is empowered to grant extension of Probation or terminate the services of such employees. Even after grant of extension of Probation, the employee has not qualified to become a full member of the service, then the Appointing Authority has no option, but to discharge the services on the ground of non-suitability and unqualified. Thus, the conditions of service itself stipulates that an employee must pass the requisite test and acquire all the qualifications prescribed under the Rules.

13. As far as the Teacher Eligibility Test (TET) is concerned, the Right of Children to Free and Compulsory Education Act 2009 was enacted for the purpose of improvising the educational system across the country. The Act has got a specific purpose and object and to provide Free Education to children to kindle the dropped outs for pursuing their education, the schemes were implemented. The Parliament intended to provide Free and Compulsory Education to all the Children of the age of 6 to 14 years. The Act was published in the Government Gazette of Union of India on 27th August 2009. Consequently, the Act was republished by the Government of Tamil Nadu in the Tamil Nadu Government Gazette on 24th February 2010. Accordingly, the Act came into force in the State of Tamil Nadu with effect from 1st April 2010.

14. As per Sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (RTE) [hereinafter referred to as "RTE" Act], the National Council for Teacher Education (NCTE) was constituted as the Academic

Authority by Government of India. The said Academic Authority, which was created by virtue of the Central Act has indicated to all the States across the country that the Teachers to be recruited in future for the elementary segment should have passed the Teacher Eligibility Test(TET) to be conducted by the appropriate Government in accordance with the guidelines framed by the National Council for Teacher Education for the purpose.

15. Section 23 of the said Act, unambiguously specifies that the Teachers who at the commencement of this Act, do not possess minimum qualifications as prescribed by the Academic Authority authorized by the Central Government shall acquire such minimum qualifications within a period of 5 years. Thus, the Teacher Eligibility Test(TET) would have to be conducted for recruiting Teachers for the primary and upper primary classes. The Teachers working in unaided private schools are required to pass Teacher Eligibility Test(TET) within 5 years. In the State of Tamil Nadu, Secondary Grade Teachers(those teaching classes I to V) are required to have minimum qualifications of D.T.Ed., and Graduate Assistants (BT Assistant) (those teaching classes VI to VIII) are required to have minimum qualification of B.Ed. They should also pass Teacher Eligibility Test forthwith.

16. The passing of the Teachers Eligibility Test(TET) under the RTE Act is now mandatory for all the State Governments to recruit Secondary Grade and BT Teachers only by conducting a Teacher Eligibility Test(TET).

17. The Government in consonance with the RTE Act as well as the orders of the Hon'ble Supreme Court of India in SLP(c) No.18227-18228 dated 20.08.2008 and the guidelines issued by the National Council for Teacher Education, issued the orders in respect of change of policy for recruitment of Secondary Grade and B.T.Teachers. The change of Policy for Recruitment of Secondary Grade and B.T.Assistant Teachers as stated in G.O.Ms.No.181, School Education Department dated 15.11.2011.

18. The G.O.Ms.No.181 dated 15.11.2011 was passed during the year 2011, enabling all these Teachers to pass the Teacher Eligibility Test(TET). The qualifying marks, Mode of Examination, Syllabus, Award of Teacher Eligibility Test(TET) Certificate, Monitoring and every aspect of the Tests are elaborated in the above Government order. The guidelines for conducting Teacher Eligibility Test(TET) was also issued in Annexure to G.O.(MS).No.181, School Education Department dated 15.11.2011.

19. The writ petitioners earlier filed W.P.No.26050 to 26056 of 2017 to quash the Notification dated 14.09.2017 and direct the writ petitioners to continue in Service as B.T.Assistant

upto 31st March 2019 without Teachers Eligibility Test(TET), enabling the writ petitioners to acquire Teacher Eligibility Test(TET) without such time limit. This Court also passed an order on 9th October 2017, granting the relief as such sought for by the writ petitioners along with other petitioners, stating that the Teachers are bound to pass the Teacher Eligibility Test (TET) on or before 31st March 2019 and till then, no adverse decision is to be taken by the respondents. A concession has already been shown by the Courts also. The Government also granted several extensions and the final extension was given and the last date was fixed as 31.03.2019. Though the Teacher Eligibility Test(TET) was contemplated during the year 2009, which was implemented in the State of Tamil Nadu in 2010-2011, the writ petitioners admittedly, has not passed the Teacher Eligibility Test(TET) till today for the past about 8 years from the date of implementation of the New Education Policy across the Nation.

20. Every Teacher is bound to keep in mind that there cannot be any compromise or leniency in respect of the minimum qualifications prescribed by the National Council for Teachers Education, which is the Statutory Authority constituted under the provisions of the Right to Education Act. The National Council for Teachers Education is akin to that of the University Grants Commission. The University Grants Commission Act was constituted under the University Grants Commission Act and the National Council for Teachers Education is constituted under the Right of Children to Free and Compulsory Education Act, 2009. Thus, the National Council for Teachers Education is the authority to prescribe the minimum educational qualifications for the Teachers and the conditions of appointment to be implemented by all the States across the Country. The subject of Education is in the "Concurrent List" of the Constitution. Thus, the Central Act will prevail over and in the present cases, the National Council for Teachers Education is a Statutory body constituted pursuant to the Act of the Parliament and therefore, the minimum educational qualifications prescribed are bound to be implemented by all the States. Admittedly, the State of Tamil Nadu also has implemented the qualifications prescribed. The State of Tamil Nadu has time and again extended the time limit for passing the Teacher Eligibility Test(TET). Though the Government of Tamil Nadu implemented the minimum educational qualifications in G.O.Ms.No.181 dated 15.11.2011, the time extended periodically till 31st March 2019 for about 8 years.

21. This is not only an occasion, where tests are prescribed. The tests are prescribed for many posts and such tests are to be passed even after appointments. The Service Rules for various posts stipulates passing of Departmental

examinations, completion of certain mandatory training and acquisition of certain educational qualifications. These tests, Training etc., are prescribed with an object to find out, whether the public servant is suitable for the continuance in the said public post. The performance of duties and responsibilities of a public servant is of paramount importance and it is the constitutional mandate that there cannot be any compromise in the matter of efficiency in public administration. Thus, prescription of additional qualifications, passing of Departmental tests, etc., are in consonance with the Constitutional principles and it is not alien to Service Rules. Already such Rules are very much prevailing in respect of various posts in many departments. Thus, Teachers alone cannot seek any exemption from passing the Teacher Eligibility Test (TET).

22. This Court is of the considered opinion that if a Teacher is unable to pass the Teacher Eligibility Test (TET) conducted by the authorities, in a period of 8 years, how the Court can come to the conclusion that such a Teacher is qualified to continue in the Post and teach the students. It is not the capability of a person to be considered. It is the criteria fixed for the continuance of an employee in the particular post is to be considered. Assessing the capability is a different matter, which is to be done generally and the minimum educational qualification is mandatory one and the same cannot be violated. Thus, acquisition of the minimum educational qualifications by a Teacher is to be implemented uniformly and in consonance with the Statutes and as per the guidelines issued by the National Council for Teachers Education.

23. The National Council for Teachers Education is the Statutory body and the guidelines issued in respect of minimum educational qualifications are to be implemented mandatorily. The guidelines and the Regulations issued by the National Council for Teachers Education has got a statutory force and therefore, the Teachers cannot say that such guidelines need not be implemented at all. When the guidelines issued by the National Council for Teachers Education has got a statutory enforceability, then there is no option, but to implement the same in its strict terms.

24. This Court would like to ask one question. If a student, who is not passed X Standard, will these Teachers, Management of the School, and Education Department allow such a Student to get admission to XI Standard? If a Student has not passed the X Standard, the student will not be permitted to get admission to the XI Standard. A Lawyer, who is not completed the Law Degree and passed the Bar Council Examination, will not be permitted to register as a counsel on record. A Doctor, who has completed

M.B.B.S Degree and passed the House Surgeon course alone, is entitled to register his/her name in the Medical Council of India for practising Medicine. For many such Posts and Professions, requisite qualifications are prescribed. Thus, Teachers alone cannot claim that they should be exempted from passing of the Teacher Eligibility Test(TET) and more so, the Profession of Teaching is of more important than any other posts in the public services.

25.The job of the Teacher is Nation building. The job of the Teacher is not mere teaching, but to mould the students both by imparting education and moulding them with good character. The job of the Teacher is of more responsible and accountable and the Teacher always expected to be a role model for the students. Thus, if a Teacher is refusing to pass or unable to pass such a eligibility test, then this Court has no hesitation in come to the conclusion that such Teachers are undoubtedly ineligible to continue in the profession of teaching and no Teacher, who has not passed the Teacher Eligibility Test(TET) should be allowed to continue in service as per the mandatory provisions in force issued pursuant to the Act of the Parliament.

26.It is brought to the notice of this Court that though the last date of 31.03.2019 is fixed for the passing of Teacher Eligibility Test(TET) by the Teachers who were appointed, the Government has stopped the salary for the Teachers.

27.This Court is of the considered opinion that salary for the period, in which, the Teachers have already worked cannot be stopped at all. The salary is the livelihood of an employee. Once the Teacher is allowed to work in a particular posts, the salary as applicable to the Post cannot be withheld or stopped, merely on the ground that such Teacher is not passed the Teacher Eligibility Test(TET). Thus, the salary withheld for the period, in which the Teachers had already worked is impermissible and the "State" is bound to disburse the salary for the period in which the Teachers have already served. However, the authorities competent are bound to initiate appropriate action under the Rules for discharging all these Teachers by issuing Show cause notices and setting out the reasons for such show cause notices. On receipt of the explanation from the Teachers, appropriate orders to be passed by invoking the relevant provisions of the Service Rules or Statute. These procedures are to be followed for discharging these Teachers, who all are not possessing the requisite qualification of Teacher Eligibility Test(TET). The Government itself has given extension of time and already 8 years lapsed. Thus, there is no point in granting further extension of time for the purpose of acquisition of the qualifications of the Teacher Eligibility Test(TET). If the Teachers are unable to pass the Teacher Eligibility Test(TET)

test for the past many years, then no purpose would be served by granting further extension and such further extension would amount to abuse of the provisions of law and if such leniency is shown, the same will dilute and jeopardize the very National Education Policy and the tests and the object sought to be achieved under the Right of Children to Free and Compulsory Education Act 2009 as well as the Regulations issued by the National Council for Teachers Education.

28. The power of judicial review cannot be exercised, in order to neutralise the provisions of the Enactment, wherein the minimum educational qualifications are prescribed in order to implement the National Education Policy. In the event of granting such exemptions from possessing the minimum educational qualifications, the same will not only set a wrong precedent, but the equality clause enunciated in the Constitution is violated. The equal opportunity of public employment is to be interpreted that the implementation of minimum educational qualifications in respect of selected candidates is also an integral part. In the event of allowing the unqualified persons to continue, then the same violates the equality clause in the matter of providing opportunity to secure public employment in respect of the fully qualified candidates. Thus, any such further extension or exemption is in violation of Article 14 and 16 of the Constitution of India. The power of judicial review under Article 226 of the Constitution cannot be exercised for the purpose of granting exemptions from acquiring the minimum educational qualifications prescribed under the National Education Policy. In the event of granting such relief, the same would create an imbalance in following the uniform policy, resulting violations of the Constitutional Philosophies and Ethos.

29. This being the principles to be followed, the following directions are issued:-

(1) The relief as such sought for in all the writ petitions stand rejected.

(2) The respondents are directed to pay the salary to all the Teachers, for the period, they have already worked, within a period of two (2) weeks from the date of receipt of a copy of this order.

(3) The respondents are directed to implement the minimum educational qualifications prescribed by the National Council for Teachers Education without any violation and at the time of recruiting Teachers for appointment.

(4) The respondents are directed to issue show cause notice to all the unqualified Teachers, setting out the reasons including the failure on the part of the Teachers to pass the Teachers Eligibility Test (TET) within a period of two(2) weeks from the date of receipt of a copy of this order, granting 10 days for the Teachers to submit their respective explanations and on receipt of the explanations, if any, from the Teachers, Speaking orders are directed to be issued by the competent authority strictly in accordance with the provisions of the Statutes, Service Rules, Regulations and Government orders as applicable.

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

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The Principal Secretary/The State Project Director,
Sarva Shiksha Abiyan (SSA),
Chennai - 600 006
2. The Additional Chief Educational Officer, (SSA)
Thiruvannamalai,
Thiruvannamalai District.
3. The Secretary,
SPHEED Charitable Trust,
Kasthurba Gandhi Baliga Vidyalaya Residential School,
Rayandapuram Road,
Perungalathur, Thandrapet Union,
Thiruvannamalai District.

+1cc to Government Pleader SR.No.43305

W.P.Nos.13306, 13314,
13318 & 13323 of 2019

KK (CO)
GMY (19/06/2019)