

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.1828 of 2018

and

WMP.No.2277 of 2018

S.Venkatesan

...Petitioner

Vs

1. The State of Tamil Nadu,
Rep.by its Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai - 600 009.
 2. The Director of School Education,
DPI Campus, College Road,
Chennai -600 006.
 3. The Member Secretary,
Teacher Recruitment Board,
4th floor EVK Sampath Maligai,
DPI Campus, College Road,
Chennai -600 006.
 4. The Joint Director of School Education (Personnel),
Directorate of School Education,
DPI Campus, College Road,
Chennai -600 006.
 5. The Chief Educational Officer,
Thiruvannamalai District,
Thiruvannamalai.
 6. The District Educational Officer,
Thiruvannamalai,
Thiruvannamalai District.
- ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Declaration, to declare that passing of Teacher Eligibility Test nor required for the petitioner appointed to the post of BT Assistant (English) based on the selection conducted as per G.O.Ms.No.64

School Education (C2) Department dated 15.03.2010, G.O.Ms.No.152 School Education (Va.Se.2) Department dated 03.06.2010. G.O.Ms.No.153 School Education (Va.Se.2) Department dated 03.06.2010 and consequently direct the respondents to regularize the service of petitioner with assignment of ranking by 3rd respondent and to declare the probation of the petitioner, with all consequential and other service benefits.

For Petitioner :Mr.G.Sankaran

For Respondents :Mr.P.Raja
Govt.Advocate for R1,2,4 to 6
Mr.C.Munusamy,
Spl.Govt.Pleader for R3

O R D E R

The present Writ Petition is 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 petitioner made submissions that the writ petitioner is 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 petitioner is constrained to move the present writ petition.

3.The learned Government Advocate informed this Court that after filing of all this writ petition, 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 petitioner 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 case of the writ petitioner is 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 Department officials are directed to consider the case of the writ petitioner in the present writ petition 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 petitioner is

at liberty to submit his fresh representation to the respective Competent Authorities and the relevant documents, enabling the Competent Authorities to consider the case on merits and in accordance with law.

9. With these directions, the writ petition stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Pkn

To

1. The Secretary,
State of Tamil Nadu,
School Education Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
DPI Campus, College Road, Chennai - 600 006.
3. The Member Secretary,
Teacher Recruitment Board,
4th floor EVK Sampath Maligai,
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4. The Joint Director of School Education (Personnel),
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5. The Chief Educational Officer,
Thiruvannamalai District,
Thiruvannamalai.
6. The District Educational Officer,
Thiruvannamalai, Thiruvannamalai District.

+lcc to Mr.G.Sankaran, Advocate, S.R.No. 23469

+lcc to the Government Pleader, S.R.No. 23469

W.P.No.1828 of 2018

SJ(CO)

GN(25/04/2019)