



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2019

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P (MD) No.11217 of 2015

and

M.P (MD) Nos.2 & 3 of 2015

Anitha Malathy

... Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Secretary
School Education Department,
Fort St. George,
Chennai-9.
2. The Director of School Education,
DPI Campus, Chennai-6.
3. The District Educational Officer,
Melur, Madurai District.
4. The Correspondent,
Nehru Vidyasalai Hr.Sec. School,
Vedavalli Nagar,
P & T Nagar Extension,
Kosakulam,
Madurai-17.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the third respondent in his proceedings in Na.Ka.No.2529/Aa4/2015 dated 5.5.2015 and quash the same and consequently direct the respondents 1 to 3 to approve the petitioner's appointment and to pay the monetary and service benefits from the date of the petitioner appointment within stipulated time.

For Petitioner : Mr.T.A.Ebenezer

For Respondents : Mrs.S.Srimathy,

Special Government Pleader

**ORDER**

The order dated 5.5.2015 rejecting the approval of appointment of the writ petitioner as B.T.Assistant (Science) is under challenge in the present writ petition. The approval of appointment for the writ petitioner was rejected on the ground that she has not cleared the Teachers Eligibility Test, which is mandatory qualification for appointment to the post of B.T.Assistant.

2. The writ petitioner was appointed as B.T.Assistant (Science) in the sanctioned post on 10.11.2014 in the vacancy caused on account of the death of the Teacher, who was holding the post of B.T.Assistant (Science). The fourth respondent School is a Minority Institution and accordingly, a proposal was submitted before the competent authority for grant of approval. By an order dated 5.5.2015 the said proposal was rejected on the ground that the writ petitioner has not passed the Teachers Eligibility Test.

3.The learned counsel appearing on behalf of the writ petitioner states that as far as the writ petitioner is concerned, the Teachers Eligibility Test is not mandatory, therefore, the approval of appointment is to be granted by the respondents. It is pertinent to note that the minimum educational qualification prescribed by the National Council for Teacher Education is mandatory and the State Government also passed an order accepting the minimum educational qualification prescribed by way of National policy under the provisions of right to education Act. Therefore, irrespective of the fact that whether any institution is a minority or non-minority in the matter of appointment, the minimum educational qualification prescribed by the National Council for Teachers Education is to be followed. The national policy was implemented in order to maintain the uniform standards in the matter of appointment of Teachers in the Schools across the Country. This being the settled position, the writ petitioner cannot claim that Teachers Eligibility Test is un-necessary and not mandatory.

4. The learned Special Government Pleader appearing on behalf of the respondents also reiterated that the Government of Tamil Nadu also implemented the policy and the passing of the Teachers Eligibility Test become mandatory qualification. The minimum educational qualification is to be followed scrupulously by all the recognized institutions and the minority institutions, who all are availing the grant-in-aid benefit from the Government. When the Tax payers money is being paid by way of salary to these Teachers, the minimum educational qualification fixed by the State Government must be scrupulously followed by the Administrators of the Minority Institutions also.



5. Therefore, in respect of the minimum educational qualification, there is no compromise and all the Teachers, who all are receiving the salary from the Tax payers money are bound to possess the educational qualification fixed by the State Government with reference to the Statute in this regard. Thus, the writ petitioner is not entitled to get the relief as admittedly, he has not passed the Teachers Eligibility Test, inspite of the fact that several opportunities were granted. An interim order granted in the writ petition cannot be a ground for seeking exemption from passing of the Teachers Eligibility Test. The Teachers Eligibility Test are being conducted from the year 2011 onwards. The Central Government is conducting two examinations per year and the State Government is also conducting the examinations then and there. The writ petitioner has been provided with an opportunity on several occasions right from the year 2011 and the time was also periodically extended by the Government till 11.3.2019. This being the factum, further extension as requested by the learned counsel for the petitioner cannot be granted. In respect of the minimum educational qualification, which is to be followed, this Court also considered the issues in W.P.No.13306 of 2019, dated 30.04.2019 and the relevant paragraphs are extracted hereunder:-

"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

14. 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



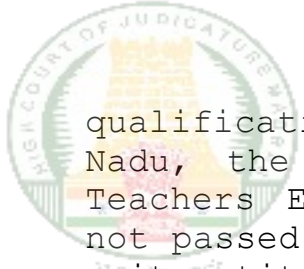
for Teachers Education.

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."

6. In view of the importance in the matter of appointment of Teachers and with reference to the minimum educational



qualification which all are prescribed by the Government of Tamil Nadu, the writ petitioner has to possess the qualification of Teachers Eligibility Test. Admittedly, the writ petitioner has not passed the Teachers Eligibility Test so far and therefore, the writ petitioner is not entitled for any relief as such sought for in the present writ petition and consequently, the impugned order stands confirmed.

7. With these observation, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Secretary
School Education Department,
Fort St. George,
Chennai-9.
2. The Director of School Education,
DPI Campus, Chennai-6.
3. The District Educational Officer,
Melur, Madurai District.

+1 CC to Special Government Pleader (SR-75454[F] dated 16/07/2019)

W.P(MD)No.11217 of 2015
15.07.2019

am

AE/(26.07.2019) 8P 5C