

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 09.07.2019****CORAM:****THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM****W.P. (MD) No.5009 of 2015****and****M.P. (MD) Nos.1 to 3 of 2015**

R.Jamuna Petchiyammal

... Petitioner

-Vs-

1.The Principal Secretary / The State

Project Director,
Sarva Shiksha Abiyan (SSA),
Chennai-600 006.2.The Additional Chief Educational Officer (SSA),
Virudhunagar-626 001,
Virudhunagar District.3.The Secretary,
Virutcham Magalir Munnetra Kalzangiam (VMMK),
No.7/13, Shanmugampillai Street,
West Car Road, Near Lysandar Hospital,
Virudhunagar District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order in R.C.No.649/B4/KGBV/SSA/2014, dated 16.06.2014 on the file of the respondent No.1 and quash the same as illegal to the extent of requiring all the teachers, without the crucial date of 23.08.2010, to pass in Teacher Eligibility Test TET.

For Petitioner : Mr.T.Lajapathi Roy

For R1 and R2 : Mrs.S.Srimathy,

Special Government Pleader.

For R3 : Mr.A.Rahul

ORDER

The circular issued by the first respondent in proceeding dated 16.06.2014 to the Additional Chief Educational Officer of various districts, is under challenge in the present Writ Petition.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner has not challenged the entire circular, however, the challenge is made in respect of the conditions imposed to terminate services of the teachers, who are not possessing requisite qualifications of Teachers Eligibility Test.

3.Right to Education Act, 2009, (hereinafter referred to as 'the Act') provides prescription of minimum educational qualifications for the teachers. In this regard, a National Council for Teachers Education was constituted under the Act and



accordingly, a national wide educational policy and the service conditions for teachers were issued by the National Council for Teachers Education. Accordingly, a teacher must possess qualification of Teachers Eligibility Test for appointment.

4. As far as the present Writ Petition is concerned, the learned Special Government Pleader appearing on behalf of the respondents 1 and 2 brought to the notice of this Court that the employees including teachers, cook, accountant, support staff etc., of the school / third respondent were appointed only by Non-Governmental Organisation (hereinafter referred to as 'NGO'), who is running school. They were not appointed either by the Education department or by the Government. The NGO pays salary and has got control over employees. The NGO has freedom to change the employees, if they are not performing according to the expected standards.

5. It is further clarified in clear terms that the writ petitioner was not appointed either by the Education Department or by the Government. The writ petitioner was appointed by a NGO Muthuramasamy Andal Trust, Sedapatti, Madurai District on 09.06.2008 as Graduate Teacher in Social Science in the school, run by the above NGO, which was in charge of the Management of the school in the year 2005 till 17.07.2013 as per MOU. The appointment of the writ petitioner by the then Managing NGO was an informal one, as they are not appointed on any regular basis. The school is running through funds approved every year by the Project Approval Board of Sarva Shiksha Abhiyan Scheme by MHRD. The appointments of persons are purely informal and the engagement of services of such person is strictly based on the satisfactory performance of duty entrusted to them and in the event of finding the discharge of duty by a person i.e., the writ petitioner herein unsatisfactory, the managing NGO is empowered to discontinue such unsatisfactory service by such persons. It is the forte of the schemes to engage the service of competent and satisfactory persons and disengage the service of incompetent and unsatisfactory persons as and when necessary for the smooth running of the schools and implementation of the Central Government schemes for the benefit of the educationally backward blocks. The funding pattern is 65% by Central Government and 35% by State Government. The fund for each school is released every month to a joint account held and operated jointly by the Supervisor, BRC and the NGO.

6. It is further stated by the learned Special Government Pleader that the core functioning of the Central Government Schemes depend upon the smooth and proper working of the staffs engaged by the NGOs and as such the nature of the service of persons is purely temporary and at the satisfaction of the management of NGO and the second respondent. The writ petitioner's service is not governed by any service rules. The writ petitioner was not appointed through any recruitment agency or through any employment exchange, but was directly appointed by the then managing NGO. As per Project



Approval Board minutes, salary is decided by State norms as per the decisions of the Executive Committee. Hence, the impugned order is valid.

7. It is also submitted by the learned Special Government Pleader that the writ petitioner was appointed by the then NGO Muthuramasamy Andal Trust, Sedapatti, Madurai District. Since the NGO was terminated on 17.07.2013 for the lapses, the date of termination of the NGO should be the date of termination of the writ petitioner. The new NGO has taken over charge on 18.02.2014. The NGOs are the employers of the particular school. The writ petitioner is the employee of the new NGO. The writ petitioner herself admitted in the affidavit filed along with the present Writ Petition that the new NGO / third respondent has taken charge of the school from 18.02.2014 onwards. As such the writ petitioner is deemed to have been appointed on 18.02.2014, the date on which the new NGO / third respondent has taken over charge. Since the writ petitioner has been appointed after the issuance of National Council Teachers Education's notification making TET mandatory, it is consequently, mandatory that the writ petitioner has also to qualify the TET. The Government Order in G.O.Ms.No.181, School Education Department, dated 15.11.2011 clearly specifies that with the passing of the Act, it is now mandatory for all State Governments to recruit Secondary Grade and B.T Teachers only by conducting a Teacher Eligibility Test. It has also been mentioned that the implementation of the Act, requires the recruitment of large number of teachers in a time bound manner. It is desirable to ensure that the quality requirements for recruitment of teachers are not diluted at any cost. As such the aversons of the writ petitioner are totally wrong and it is mandatory that the writ petitioner has to qualify the Teachers Eligibility Test.

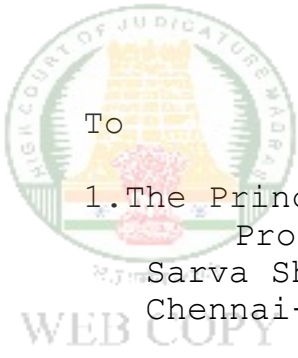
8. In view of the facts and circumstances narrated above, the writ petitioner is not an employee of the State and she was appointed by the NGO. Further, the circular issued with reference to the policy of the Government cannot be questioned, now passing of Teachers Eligibility Test is mandatory qualification and no relief can be granted by this Court, more so, in a case, where the Government is not the appointing authority.

9. Accordingly, this Writ Petition is devoid of merits and the same stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //



To

1.The Principal Secretary / The State
Project Director,
Sarva Shiksha Abiyan (SSA),
Chennai-600 006.

2.The Additional Chief Educational Officer (SSA),
Virudhunagar-626 001,
Virudhunagar District.

+1cc to M/s.Special Government Pleader,SR.No. 74737

W.P. (MD) No.5009 of 2015
09.07.2019

MYR

KK/SAR/23.07.2019/4P-4C