



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.21571 of 2019

and

W.M.P. (MD) No.18244 of 2019

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M.Avudaiappan

... Petitioner

-Vs-

1.The Chief Educational Officer
Tuticorin

2.The District Educational Officer
Kovilpatti
Tuticorin District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, forbearing the respondents from insisting the petitioner to produce Teachers Eligibility Test pass certificate and to direct the respondents to release the salary from May 2019 onwards and to pay continuously to the petitioner.

For Petitioner : Mr.V.Panneerselvam

For Respondents : Mr.A.Thiyagarajan

Government Advocate.

ORDER

This Writ Petition is filed forbearing the respondents from insisting the petitioner to produce Teachers Eligibility Test pass certificate and to direct the respondents to release the salary from May 2019 onwards and to pay continuously to the petitioner.

2. In the Nadar Higher Secondary School, Pandavarmangalam, Kovilpatti, one post of B.T. Assistant (Maths) became vacant due to resignation of one K.Sumathi on 01.07.2010. The Management submitted the proposal to the first respondent for prior permission to fill up the said post. The permission was granted by the first respondent on 09.02.2011. Thereafter, the selection process was conducted and the petitioner was appointed as B.T.Assistant(Maths), by an order dated 28.02.2011. The said appointment was approved by the second respondent on 27.09.2011. In the said proceedings, there was no whisper about the Teachers Eligibility Test and in the order dated 09.02.2011 granting permission for filling up the post also, there was no condition about the Teachers Eligibility Test. In the appointment order dated 28.02.2011, the respondents have not imposed any condition about the Teachers Eligibility Test. Accordingly, the petitioner's appointment was approved and the authorities released the salary till April 2019. Suddenly, without assigning any reason, the salary of the petitioner was stopped for the month of May 2019.



When the same was enquired, the respondents informed that the petitioner has not passed Teachers Eligibility Test. Aggrieved against the same, the petitioner made several representations to the respondents, but they have not taken any steps. Hence, the petitioner has come up with the present Writ petition.

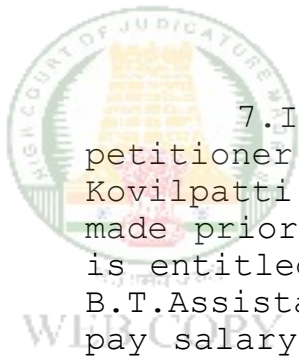
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3.The learned counsel appearing for the petitioner submitted that the condition of possessing pass in TET examination was imposed by G.O.Ms.No.181, dated 15.11.2011. But, the petitioner was appointed on 28.02.2011 and he is entitled for salary from May 2019. The Division Bench of this Court in the judgment reported in **2016 (5) CTC 639 (The Secretary to Government Vs. S.Jeyalakshmi and another)** held that the teachers employed in aided and unaided minority schools, prior 29.07.2011 need not possess TET qualification. The learned counsel further submitted that this Court by an order dated 18.03.2019 in W.P(MD).No.7108 of 2017, issued a direction to release the salary for the teachers appointed prior to 29.07.2011. The petitioner was appointed on 28.02.2011. As per the decision of this Court, the petitioner is entitled to get the salary without any condition. Hence, he prayed for allowing this Writ petition.

4.The learned Government Advocate appearing for the respondents submitted that the Right of Children to Free and Compulsory Education Act, 2009, came into force on 01.04.2010, imposing the conditions that a person possessing a certificate of pass in TET, is to be appointed as Teacher or Headmaster. However, the Government has power to relax the said condition in exceptional cases. The petitioner did not obtain any such relaxation from the Government and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents and perused the materials available on record carefully.

6.From the materials on record, it is seen that the petitioner was appointed as B.T.Assistant (Maths) on 28.02.2011, after obtaining prior permission from the first respondent to fill up the sanctioned post, by direct recruitment. Thereafter, the second respondent herein granted permission and subsequently approved the appointment. Similarly, the contention of the learned Government Advocate that as per the Right of Children to Free and Compulsory Education Act, 2009, and G.O.Ms.No.181, dated 15.11.2011, the petitioner is not entitled to be appointed as B.T.Assistant, is without merits. The Division Bench of this Court in the judgment reported in **2016 (5) CTC 639 (The Secretary to Government Vs. S.Jeyalakshmi and another)** held that the teachers employed in aided and unaided minority schools prior to 29.07.2011 need not possess TET qualification.



7. In view of the above said judgment, the appointment of the petitioner in the Nadar Higher Secondary School, Pandavarmangalam, Kovilpatti as B.T. Assistant (Maths) is valid and the appointment is made prior to the date of G.O. Ms. No. 181, therefore, the petitioner is entitled to salary from May 2019 onwards payable to the post of B.T. Assistant (Maths). Therefore, the respondents are directed to pay salary to the petitioner from May 2019 onwards and approve the appointment of the petitioner.

8. With the above direction, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD II)

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Sub Assistant Registrar (CS)

msa

To

1. The Chief Educational Officer
Tuticorin

2. The District Educational Officer
Kovilpatti
Tuticorin District

+ 1CC TO MR. V. PANNEERSELVAM, ADVOCATE, SR NO. 92377

W.P. (MD) No. 21571 of 2019

and

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