

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.26154, 26155 & 26194 of 2013

And

M.P.Nos.1, 1 & 1 of 2013

1.A.Antony Jerome
2.G.Nirmala
3.R.Logeswari

... Sl.No.1 to 3, Petitioners in
W.P.No.26154/2013

4.D.Kausalya
5.J.Gnanasekaran
6.A.G.Karthikeyan
7.R.Vadivazhagi
in W.P.No.26155/2013

... Sl.No.4 to 7, Petitioners

8.S.Arunachalam
9.P.V.Baskaran
10.S.Jeyamary
11.K.Saraswathi
12.P.Mala
13.C.Padmavathi
14.C.Sasikala
15.R.Venkatesan
16.R.Abirami
17.G.Ananthi
18.A.Periasami
19.P.V.Nedunchezian
20.R.Srinivasan
21.M.Jayanthi
22.M.Kanimozhi
23.K.Gomathi
24.M.Aanthanayaki
25.A.Sivakumar
26.N.Krishnamoorthy

... Sl.No.8 to 26, Petitioners
in W.P.No.26194/2013

Vs.

1. The State of Tamil Nadu,
Rep. By its Secretary
School Education Department,
Fort. St. George, Chennai - 9.

2. The Member Secretary
National Council for Teacher Education,
New Delhi.
3. The Chairman,
Teachers Recruitment Board,
E.V.K. Sampath Maligai, DPI Campus,
College Road, Nungambakkam,
Chennai 600 006.
4. The Director of School Education,
College Road,
Nungambakkam, Chennai - 6. Respondents in all WPs.

Common Prayer:

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to select the petitioner for appointment to the post of Secondary Grade Teacher on the basis of the Certificates Verification done by the 1st respondent on 1.6.09 as per NCTE Notification dated 23.08.2010 and on the basis of the Judgment dated 09.07.2013 of the Division Bench in Review Application No.139 of 2012, without insisting the petitioners to pass Teacher's Eligibility Test as a pre condition for appointment.

In all WPs.

For Petitioners : Ms.T.Aananthi

For Respondents : Mr.C.Munusamy for RR2 &3
Special Government Pleader
Mr.S.Suresh Kumar for RR1 & 4
Government Advocate

O R D E R

As the relief sought for in both the petitions are similar, they are disposed of by this common order.

2.The petitioners have filed these writ petitions, seeking issuance of Writ of Mandamus, to direct the respondents to select the petitioner for appointment to the post of Secondary Grade Teacher on the basis of the Certificates Verification done by the 1st respondent on 1.6.09 as per NCTE Notification dated 23.08.2010 and on the basis of the Judgement dated 09.07.2013 of the Division Bench in Review Application No.139 of 2012, without insisting the petitioners to pass Teacher's Eligibility Test as a pre condition for appointment.

3.The case of the petitioners is that after completing the requisite basic graduation/diploma courses, the petitioners registered their names with District Employment, which was renewed periodically. Based on the Employment Registration State-wide Seniority their names were sponsored for the post of Secondary Grade Teacher by the 2nd respondent in the year 2009. Pursuant to the same, the petitioners attended certificate verification for appointment to the post of Secondary Grade Teacher. However, they have not been appointed till date on the ground that they have not fulfilled the prescriptions of the NCTE Regulations issued on 23.08.2010, whereby, Teacher Eligibility Test was made as a pre-requisite for being appointed. Since they have not been appointed till date inspite of certificate verification having been done way back in the year 2000, the present petitions have been filed.

4. Learned counsel appearing for the petitioners submitted that the process for selection was initiated and in pursuance thereof, certificate verification was done on 01.06.2009. However, the NCTE Regulations were issued only on 23.8.2010. Further, it is the submission of the learned counsel for the petitioners that the petitioners cannot be compelled to write and come through the Teacher Eligibility Test, as on the date of their certificate verification and the notification for appointment, TET was not a mandatory condition. In support of the contention, learned counsel placed reliance upon the judgement of the Division Bench of this Court in Review Application No.138/2012 dated 09.07.2013, wherein, taking into account Clause 5 of Notification dated 23.08.2010, the Division Bench held that such of those appointment process, which preceded the issuance of Notification dated 23.8.10, TET cannot be made mandatory. Therefore, prayer is made for allowing the present writ petitions.

5.Per contra, learned Special Government Pleader appearing for the respondents submitted that the petitioners though had completed the certificate verification process in the year 2009, however, they were not accommodated in the posts for the reason of want of vacancies, as persons, senior to the petitioners in the State-wide seniority were accommodated in the vacancies as was existing on that date. It is the further submission of the learned Special Government Pleader that subsequently, amendment to the NCTE Regulations came into force leading to the issuance of G.O. Ms. No.181 dated 15.11.2011 whereby TET completion was made mandatory. The process of selection for the year 2009 having been completed and the petitioners, being juniors, having not been accommodated for want of vacancies, it is not open to the petitioners to come before this Court and claim that since certificate verification has been completed it is to be presumed that they have been selected. It is the submission of the

learned Special Government Pleader that mere certificate verification will not grant any special right on the petitioners for appointment, as the petitioners have to be first selected for them to be appointed. The petitioners having not come within the vacancies required, the names of the petitioners were not considered. Therefore, the decision of the Division Bench in Review Application No.138/2012 dated 09.07.2013, relied on by the petitioners would not further the cause of the petitioners. Therefore, it is prayed for dismissal of the above petitions.

6. Heard the learned counsel appearing appearing on either side and perused the materials available on record.

7. The facts in issue are not in dispute. The main ground of attack spearheaded by the learned counsel for the petitioners is that the petitioners cannot be compelled to write and come out successful in the Teacher Eligibility Test, as on the date of their certificate verification and the notification for appointment, TET was not a mandatory condition. It is pertinent to note that subsequently, amendment to the NCTE Regulations came into force leading to the issuance of G.O. Ms. No.181, dated 15.11.2011, whereby TET completion was made mandatory. The petitioners having not come within the vacancies required, the names of the petitioners were not considered. Basically the Teachers Eligibility Test, was introduced in the years 2011 - 2012 and 2012 - 2013 for the purpose of improving teachers teaching capacity. That being the case, without passing the Teachers Eligibility Test, mere certificate verification will not grant any special right on the petitioners for appointment, as the petitioners have to be first selected for them to be appointed. No right accrues on the petitioner for being appointed on mere certificate verification. It is not the case of the petitioner that persons, junior to him have been appointed to the detriment of the petitioner. The stand of the respondents is that, persons senior to the petitioners on the basis of employment exchange seniority have been appointed in all the available vacancies and there exists no vacancy for considering the case of the petitioner for appointment at the relevant point of time. It is also to be noted that when the petition was entertained, no interim order to the benefit of the petitioner was granted.

8. The candidature of the petitioners having not been considered for want of vacancy, the filling up of vacancies for the relevant period, viz., 2009-2010, having come to an end and in the absence of any interim order, the applicability of the order of the Division Bench would not arise and is of no use to the petitioners. The Division Bench has opined that only insofar as it relates to the said process of appointment in

which the petitioners had competed, the case of the said persons, whose cases have been considered on the basis of the said notification would be taken into consideration for the purpose of applicability of clause 5 of NCTE Regulation. The said order in review passed by the Division Bench on a broader interpretation has to be considered to mean that it pertains only to the vacancies existing as notified in the notification and not the vacancies that may arise in future. Giving any other interpretation than this one would make the whole recruitment process at later points of time a nullity and no recruitment process can be allowed to stand the test of legal scrutiny. In the case on hand, the recruitment process for the said appointment having come to an end and the petitioners having not been appointed for want of vacancy, the petitioner cannot derive any benefit from the order in review, passed by the Division Bench of this Court, as the recruitment for the year 2009-2010 stood completed. The petitioners having not fallen within the zone of consideration on the basis of the vacancy as existed on the date of the notification, the relief sought for by the petitioners then, as also at this distant point of time cannot be entertained.

9. There being no post earmarked and kept in pursuance to any interim order passed by this Court and in the absence of any contention on behalf of the petitioners that persons junior to him have been appointed, nearly after a lapse of nearly seven years, the relief sought for by the petitioner cannot be acceded to.

10. With the above findings, these writ petitions are dismissed. Consequently, the connected miscellaneous petitions are closed. However there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Teachers' Recruitment Board
The Chairman,
E.V.K.Sampath Maaligai,
College Road, Nungambakkam,
Chennai - 6.

2. The Director of School Education,
College Road,
Chennai - 6.
3. The Secretary to Government,
State of Tamil Nadu,
School Education Department,
Fort St. George,
Chennai-600 009.
4. The Member Secretary,
National Council for Teacher Education,
New Delhi.

+1cc to the Government Pleader Sr.No.25971

W.P.Nos.26154, 26155 & 26194 of 2013

nrl (co)
rr ii (10/09/2020)



WEB COPY