



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.02.2020**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD) Nos.1336, 13523, 13524 and 12893 of 2019

and

W.M.P(MD).Nos.10048 and 10049 of 2019

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W.P(MD).No.1336 of 2019

Banu

... Petitioner

/Vs./

1.The Secretary to Government,
Department of School Education,
St.George Fort, Chennai 600 009.

2.The Director of School Education,
DPI Compound,
College Road, Chennai.

3.The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.

4.The District Educational Officer,
Tenkasi Educational Officer,
Tenkasi.

5.The Correspondent,
The Suyambulingam Higher Secondary School,
T.N.Pudukudi, Puliangudi,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents to disburse all service and monetary benefits including yearly increment, earn leave etc., from the date of appointment (i.e., 16.03.2011).

For Petitioner : Mr.S.Chellapandian

For Respondents : Mr.M.Karuppasamy

Government Advocate (For R1 to R4)

W.P(MD).No.13523 of 2019

K.Mariappan

B.T.Assistant Teacher (Science),
The Hindu Nadar Uravinmurai Committee
Higher Secondary School,
T.N.Pudukudi, Puliangudi,
Tirunelveli District.

... Petitioner



/vs./

1.The Secretary to Government,
Department of School Education,
St.George Fort, Chennai 600 009.

2.The Director of School Education,
DPI Compound,
College Road, Chennai.

3.The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.

4.The District Educational Officer,
Sankarankovil Educational Officer,
Tirunelveli District.

5.The Correspondent,
The Hindu Nadar Uravinmurai Committee,
Higher Secondary School,
T.N.Pudukudi, Puliangudi,
Tirunelveli District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to forbear the respondents from insisting Teacher Eligibility Test as qualification for petitioner as who was appointed prior to 15.11.2011 and as the petitioner's appointment was approved by the fourth respondent w.e.f 20.12.2010 without any condition and consequently direct the respondents to disburse all service and monetary benefits including yearly increment, Medical Leave, Earn Leave etc., from the date of appointment (ie., 20.12.2020) to the petitioner.

For Petitioner : Mr.S.Chellapandian

For Respondents : Mr.M.Karuppasamy

Government Advocate (For R1 to R4)

W.P.(MD).No.13524 of 2019

T.Latha

Tamil Pandit,

The Hindu Nadar Uravinmurai Committee

Higher Secondary School,

T.N.Pudukudi, Puliangudi,

Tirunelveli District.

... Petitioner

/vs./

1.The Secretary to Government,
Department of School Education,
St.George Fort, Chennai 600 009.



2.The Director of School Education,
DPI Compound,
College Road, Chennai.

3.The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.

4.The District Educational Officer,
Sankarankovil Educational Officer,
Tirunelveli District.

5.The Correspondent,
The Hindu Nadar Uravinmuari Committee,
Higher Secondary School,
T.N.Pudukudi, Puliangudi,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to forbear the respondents from insisting Teacher Eligibility Test as qualification for petitioner as who was appointed prior to 15.11.2011 and as the petitioner's appointment was approved by the fourth respondent w.e.f 01.11.2010 without any condition and consequently direct the respondents to disburse all service and monetary benefits including yearly increment, medical leave, earn leave etc., from the date of appointment (i.e., 01.11.2010) to the petitioner.

For Petitioner : Mr.S.Chellapandian

For Respondents : Mr.M.Karuppasamy

Government Advocate (For R1 to R4)

W.P(MD).No.12893 of 2019

A.K.Sylvia Catherine

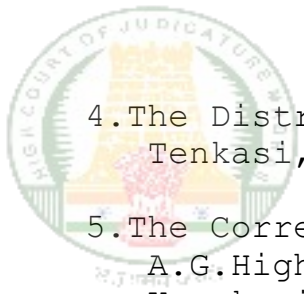
... Petitioner

/Vs./

1.The Government of Tamil Nadu,
rep., by its Secretary to Government,
School Education Department,
Secretariat, Chennai.

2.The Director of School Education,
DPI Compound, College Road,
Chennai.

3.The Chief Educational Officer,
Tirunelveli District, Tirunelveli.



4.The District Educational Officer,
Tenkasi, Tirunelveli District.

5.The Correspondent,
A.G.High School,
Kanakapilai Valasai,
Ilatur Post, Tenkasi Taluk,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pursuant to the impugned rejection order passed by the fourth respondent Aa.Thi.Mu.No.1263/M4/2018 dated 10.05.2018 quash the same and consequently direct the respondents to approve the petitioner's appointment with effect from 01.03.2012 and disburse arrears of salary & all other service and monetary benefit such as yearly increment, medical leave & earn leave etc., forthwith.

For Petitioner : Mr.S.Chellapandian

For Respondents : Mr.M.Karuppasamy
Government Advocate (For R1 to R4)

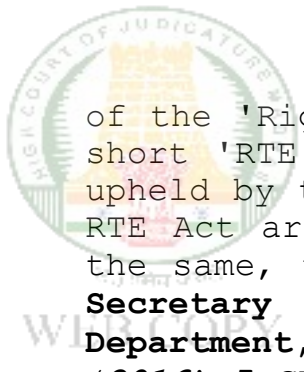
COMMON ORDER

In all these matters, the petitioners either challenge the rejection of their claim seeking for yearly increment and other service and monetary benefits from the date of their appointment or seek for a positive direction for disbursement of such monetary benefits.

2. The ground raised by the respondents in their counter affidavit is that it is mandatory for such Teachers to pass the Teachers Eligibility Test for consideration of such service and monetary benefits. In support of such contention, the learned Government Advocate would rely upon the Government Order, authorizing the National Council for Teachers Education as the academic authority, laid down the minimum qualifications and their guidelines that such teachers should have passed the Teacher Eligibility Test as one of the minimum qualifications for holding the post of Teacher.

3. The issue involved in these writ petitions pertains to Teachers, who hail from Non-Minority School. The only issue involved in these writ petitions is as to whether the Teacher Eligibility Test (TET) qualification for the Teachers is a mandatory condition for consideration of disbursement of the yearly increment as well as other monetary and service benefits.

4.The aforesaid issue is no more *res integra*. The provisions



of the 'Right of Children to Free and Compulsory Education Act' (in short 'RTE Act') was already put under challenge, which came to be upheld by the Hon'ble Apex Court holding that the provisions of the RTE Act are not applicable to the minority institution. Following the same, the Hon'ble Division Bench of this Court, in the case of **Secretary to Government, Government of Tamil Nadu, Education Department, Fort St.George, Chennai Vs., S.Jeyalakshmi** reported in (2016) 5 CTC 639 had held that the provisions of the RTE Act are not applicable to the minority Aided School, insofar as it relates to Teachers appointed prior to 15.11.2011. The Government in G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 had specified that the teachers, who do not possess the minimum qualification of pass in the TET, shall acquire the same within a period of five years. While construing G.O.Ms.No.181, a learned Single Judge of this Court, in a batch of writ petitions in W.P(MD). No.5626 of 2017 etc., dated 08.03.2019, had held that, the cut off date for acquiring the TET qualification would be the date of notification for appointment and that, the Teachers who were appointed prior to that date need not pass the TET examination. The relevant portion of the said order reads as follows:-

'10.However, there is no cut off date specified in the said G.O.Ms.No. 181, with regard to acquiring the qualification of pass TET to continue in service as B.T Assistants /Secondary Grade Teachers, who are working as such in the respondent Schools. In this regard, a cursory glance at Clause (5) of the notification dated 23.08.2010 and its amended notification dated 29.07.2011 issued by the NCTE, the contents of which are reproduced at paragraph Nos.8.2 and 8.4 above, would reveal that if the process of appointment of teachers was initiated prior to the date of notification by issuing advertisement, such appointments have to be made in accordance with NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 and the same was amended with effect from 29.07.2011. As per the said NCTE Regulations 2001, there is no qualification prescribed with regard to possession of TET certificate, for appointment to the post of B.T Assistant and Secondary Grade Teachers. The qualification of passing TET was first introduced by the notification dated 23.08.2010 and it was amended vide notification dated 27.09.2011. Thus, it could be inferred that the cut off date for acquiring the TET qualification is 27.09.2011 and the teachers, who were appointed prior to that date need not pass TET



appointed after that date, if the advertisement to initiate the process of appointment of teachers was made prior to that date, then, their appointments also can be in accordance with the NCTE Regulations 2001 and they need not acquire the TET qualification. '

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5. In the instant case, all the Teachers have been appointed prior to 15.11.2011 and by applying the ratio laid down by this Court in the aforesaid order dated 08.03.2019 and by taking into consideration that these teachers were also appointed prior to the notification of their appointments, it has to be held that, the requirement of a pass in TET examination, is not necessary. As such, denial of the service and monetary benefits on the ground that the concerned Teachers have not passed the TET examination is not sustainable. By applying the ratio laid down in the aforesaid decision, this Court is of the affirmed view that the petitioners would be entitled for disbursement of all the service and monetary benefits, without reference to their non-passing of the TET examination, from the date of their appointment.

6. In view of the above, insofar as W.P(MD).Nos.1336, 13523 and 13524 of 2019 are concerned, the respondents are directed to disburse all service and monetary benefits including yearly increment, earned leave to the petitioners from the date of their appointment within a period of twelve (12) weeks from the date of receipt of a copy of this order.

7. Insofar as W.P(MD).No.12893 of 2019 is concerned, the impugned rejection order passed by the fourth respondent in Aa.Thi.Mu.No.1263/M4/2018 dated 10.05.2018 stands quashed and consequently, the respondents are directed to disburse arrears of salary and all other service and monetary benefit such as yearly increment, medical leave & earned leave to the petitioner from the date of her appointment, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

8. In the light of the above observations, these Writ Petitions stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



To:

1.The Secretary to Government,
Department of School Education,
St.George Fort, Chennai 600 009.

2.The Director of School Education,
DPI Compound,
College Road, Chennai.

3.The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.

4.The District Educational Officer,
Tenkasi Educational Officer,
Tenkasi.

5.The District Educational Officer,
Sankarankovil Educational Officer,
Tirunelveli District.

+3 CC to M/s.S.CHELLAPANDIAN, Advocate (SR-4872 TO 4874)

+3 CC to M/s.SPL GP (SR-5143 TO 5145)

Order made in
W.P.(MD) Nos.1336, 13523, 13524 and
12893 of 2019

Dated:05.02.2020.

SMA/16/03/2020/and 14/07/2020/7P/12C