



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.09.2020**

CORAM

THE HON'BLE MR.JUSTICE **R.SURESH KUMAR**

W.P. (MD).Nos.11831 and 11834 of 2020

and

W.M.P(MD).Nos.10234 and 10238 of 2020

The Correspondent
Senaithalaivar Higher Secondary School
Vickramasingapuram 627 425
Tirunelveli District.

... Petitioner in
both petitions

-Vs-

1.The Director of School Education,
College Road, Chennai 600 006.

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

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

... Respondents in
both petitions

COMMON PRAYER: Writ Petitions are filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct the second and third respondents to release forthwith annual increment admissible to Mr.J.Thomas Swami Dass as BT Assistant (History) w.e.f 25.09.2017 and Mr.A.Amal Anthony as BT Assistant (English) w.e.f.04.01.2019 with all attendant benefits including the arrears of salary thereon.

In both petitions

For Petitioners : Mr.K.Prabhu

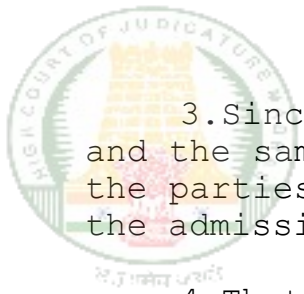
For Respondents : Mrs.S.Srimathy

Special Government Pleader

COMMON ORDER

Prayer sought for herein is for a Writ of Mandamus, to direct the second and third respondents to release forthwith annual increment admissible to Mr.J.Thomas Swami Dass as BT Assistant (History) w.e.f 25.09.2017 and Mr.A.Amal Anthony as BT Assistant (English) w.e.f.04.01.2019 with all attendant benefits including the arrears of salary thereon.

2.Heard Mr.K.Prabhu, learned counsel appearing for the petitioners and Mrs.S.Srimathy, learned Special Government Pleader appearing for the respondents.



3.Since the issue raised in both these writ petitions are one and the same, with consent of both the learned counsel appearing for the parties, these writ petitions are taken up for final disposal at the admission stage itself.

4.That the two teachers, namely one J.Thomas Swami Dass and another one is namely A.Amal Anthony were working in the petitioner School as B.T.Assistant (History) and B.T.Assistant (English) respectively for some years and their appointment has already been approved by the respondents.

5.However, the grievance of the petitioner School in respect of these two teachers are concerned, though their appointment has been approved and they had been getting a time scale of pay, the annual increment has not been periodically given by the respondents. Therefore, in this regard, in respect of both cases, a School management has sent a representations on 09.07.2018, 05.07.2019 and 15.11.2019 in the first case and on 25.10.2018 and 27.01.2020 in respect of second case.

6.Despite these representations have been given, since no orders have been passed by the respondents sanctioning the annual increment for these two teachers of the petitioner School, the School has filed these two writ petitions with the aforesaid prayer.

7.The learned counsel appearing for the petitioners would submit that, the teachers' appointment having been already approved by the respondents and when they are getting a time scale of pay, they would be entitled to have the annual increment, which has not so far been sanctioned by the respondents, despite the request made by the School in this regard on several time. Therefore, the learned counsel appearing for the petitioner would submit that, the representations given on various dates by the School in respect of these two teachers for sanctioning the annual increment can be directed to be considered and orders to that effect may be directed to be passed.

8.The learned Special Government Pleader appearing for the respondents, on instructions, would submit that, though these teachers were appointed in the petitioner's School and their appointment had been approved, however, the fact remains that both the teachers have not qualified with TET., qualification and because of which, their annual increment have not been sanctioned.

9.I have considered the said submissions made on both sides.

10.Insofar as the said reason now revealed by the learned Special Government Pleader appearing for the respondents for not sanctioning the annual increment to these two teachers of the petitioner School that, they have not qualified with TET.,



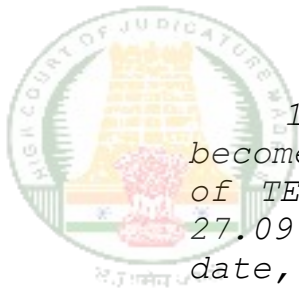
number of cases by this Court and I had an occasion to consider a similar issue in W.P(MD).No.7772 of 2020, dated 24.07.2020, where I have passed the following:

'.....'

WEB COPY

10. In this context, the learned counsel appearing for the petitioner has relied upon a decision of the learned Judge of this Court, exactly on the same point, made in a batch of writ petitions in W.P(MD).Nos.5626 to 5630 of 2017 etc., dated 08.03.2019 in the matter of **M.Maharani Vs. State of Tamil Nadu rep., by its Secretary, Department of School Education and others.** In the said order, the learned counsel for the petitioner relied upon para No.10, which reads thus.

"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 <http://www.judis.nic.in> 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, 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 and the teachers, who were appointed prior to that date need not pass TET and even in the case of the teachers who were 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."



11.From the reading of the said judgment, it has become clear that the NCTE prescribed the qualification of TET originally from 23.08.2010 and subsequently from 27.09.2011 by way of notification. Therefore, the actual date, on which, the said qualification become mandatory is 27.09.2011. Therefore, those teachers, who were appointed prior to 27.09.2011 cannot be put against the said prescription of the NCTE and this has been exactly decided by the learned Judge in the said judgement, referred to above.

12.In the case of the petitioner, she was appointed on 03.01.2011 in the sanctioned vacancy as Secondary Grade Teacher at the fifth respondent School and the said appointment, having been considered, was approved by the third respondent vide his proceedings, dated 28.06.2011, where it has been specifically stated that, the petitioner was appointed on 03.01.2011 and approval is also given from 03.01.2011.

13.Therefore, it has become quite clear that, the appointment of the petitioner as on 03.01.2011 having been approved by the third respondent through the said approval order, the applicability of the prescription made by NCTE to have such qualification, insofar as the petitioner is concerned, cannot be made or applied. Therefore, the said reason cited in the impugned order by the fourth respondent, in the considered opinion of this Court, may not hold good. Therefore, on that reason, the petitioner's service benefit like annual increment cannot be denied.

14.Moreover, once the appointment is approved by the authority and the same still holds good, the petitioner has been brought under regular time scale of pay. When that being the position, the annual increment is part and parcel of the time scale of pay system being adopted for permanent employees/Teachers of the Government is concerned and when such is the position, the fourth respondent cannot insist upon any Government Order, which cannot be created by the petitioner.

15.More over, if at all, any such request is made by the petitioner for annual increment, that should have been decided by the respondents by taking into account the relevant Rule position, Service Law and the Government order, if any available with the respondent, instead, off late, it has become a practice that some of the officials/authorities would raise a question stating



that, in order to get the benefit sought for by the employees/Teacher/incumbent, whether any Government order is available in their favour .

16. Whether any Government order is available in their favour or not, whether they are entitled to have such a benefit or not, can be decided only by the authority and not by the person, who seeks it. Therefore, that kind of questions being raised by the authorities would show that they abdicate their responsibility on the very employee or Teacher concerned, which kind of practice cannot be approved by this Court.

17. Therefore, this Court is of the considered view that, the reason cited in the impugned order cannot be sustained in the eye of law. Hence, it is liable to be interfered with.

18. In the result, the impugned order is quashed and the respondents are directed to reconsider the request of the petitioner with regard to her plea for grant of annual increment as her appointment dated 03.01.2011 having been approved by the third respondent vide his proceedings dated 28.06.2011, this Court feels that, there can be no further impediment for the petitioner to get such benefits. Therefore, suitable order to that effect shall be passed by the official respondents within a period of eight (8) weeks from the date of receipt of a copy of this order.

19. With these directions, the Writ Petition is ordered accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.'

11. Since the teachers' appointment had already been approved by the respondents and they have been continuously working, where they are getting regular salary on time scale of pay, the refusal to sanction annual increment, for which, they are entitled to being the employee getting salary under time scale of pay, cannot be sustained and therefore, this Court is inclined to dispose of these writ petitions with the following direction:-

'that the respondents are hereby directed to consider the representations given by the School on various dates, as referred to above, seeking annual increment for two teachers, referred to above, who are working as P.T. Assistant (History) and P.T. Assistant (English) at the petitioner School and accordingly, sanction the annual increment, for which, they are entitled to, calculate the said amount and disburse the



same along with the next month salary, within a period of six(6) weeks from the date of receipt of a copy of this order.

12. With the above directions, these writ petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (A.S)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rmk

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Director of School Education,
College Road, Chennai 600 006.
2. The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
3. The District Educational Officer,
Cheranmahadevi, Tirunelveli District.

+2 CCs to Mr.K.PRABHU, Advocate SR-17376 & 17374.

+1 CC to the SPL GP SR-17406.

W.P.(MD).Nos.11831 and 11834 of 2020

16.09.2020

SMV(CO)

CS(09.11.2020) 6P 7C