



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.09.2021

PRONOUNCED ON : 08.10.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.20265 of 2021
and WMP.Nos.21522 & 21523 of 2021

B.Sowrnambiga .. Petitioner

vs

1. The State of Tamil Nadu
Represented by its Secretary,
School Education Department,
Fort St.George, Chennai 600 009.

2.The Director of School Education,
DPI Campus,
Chennai 600 006.

3.The Joint Director (Personnel)
DPI Campus,
Chennai 600 006.

4. The Chief Educational Officer,
Erode District.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records of 4th respondent in Na.Ka.No.2763/A2/2020 dated 10.08.2021 and quash the same and consequently restrain the respondents from in any manner disturbing the petitioner from discharging her duties in the post of BT Assistant (Tamil) on the ground of lack of qualification.

For Petitioner : M/s.Dakshayani Reddy
For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate.

O R D E R

The petitioner has challenged the impugned show cause notice dated 10.08.2021 wherein it has been concluded that since



the petitioner had pursued both U.G in B.Litt (Tamil) and Diploma in Teacher Education (D.T.Ed) simultaneously, the petitioner was ineligible to be appointed as a B.T.Assistant with the 4th Respondent.

WEB COPY

2. It is the case of the petitioner that the petitioner was appointed as a B.T.Assistant in Tamil in the 4th respondent Government High School, Addakurukki, Krishnagiri in the year 2014, after the petitioner had completed her in B.Litt(Tamil) and after a obtaining Diploma in Teacher Education(D.T.Ed).

3. It is further case of the petitioner that with the above qualification, the petitioner had also cleared TET qualification (Paper-II) in the year 2013 and was thus thereafter appointed as a B.T.Assistant in Tamil in 2014 by the Teachers Recruitment Board.

4. The learned counsel for the petitioner submits that the petitioner has also completed B.Ed on 24.11.2020. It is the contention of the learned counsel for the petitioner that the proceedings initiated by the 4th respondent vide Na.Ka.No-2763/AA2/2020 impugned order notice dated 10.08.2021 is vitiated, as the respondents have already made up their mind to dismiss the petitioner from service on the ground that the petitioner did not have the requisite qualification to be appointed as a B.T Assistant.

5. It is therefore submitted the entire show cause proceedings is liable to be quashed. That apart, the learned counsel for the petitioner has placed reliance on the decision of this court rendered in the case of V.Premakumari Vs. The Government of Tamilnadu and S.Aruna Vs.

The Director of School education and others in W.P.Nos.27064 and 26120 of 2018 vide order dated 12.12.2018.

6. In this connection, a reference was made to paragraph 15 from the aforesaid decision which reads as under:-

15.It is evident from the case of the petitioners that they had the basic degree qualification, which is not disputed by the respondents. But the only ground on which the respondents cancelled the appointment of the petitioners is that the petitioners were not possessed of the requisite qualification on the date of their appointment and, therefore, they are liable for termination in view of clause 20. It is to be pointed out that the



WEB COPY

petitioners were appointed a decade before and the respondents have taken a long time to ascertain their qualification. In the interregnum, the petitioners have got themselves armed with the requisite qualification. Further, it is to be pointed out that the petitioners, though had a different degree, had fared well in the stream in which they were appointed by producing exemplary results continuously. Their merit speaks volumes through the results produced by them. The delay on the part of the respondents in taking action against the petitioners definitely sways the balance in favour of the petitioners. The delay caused by the respondents cannot be put against the petitioners at this belated point of time disabling them from continuing in service. The decision in Ashok Kumar's case (supra) relied on by the respondents comes to the aid of the petitioners. Further, the petitioners have also equipped themselves in Mathematics by obtaining the degree from open

university. It cannot be said that the degree obtained from Open university is bad, as already the petitioners have got the basic degree in Computer Science. Therefore, the contention of the respondents that the degree in computer science. Therefore, the contention of the respondents that the degree obtained from Open University cannot be accepted is wholly unsustainable.

7. That apart, the learned counsel for the petitioner has also placed reliance on the decision rendered in the case of The Director of School Education and another Vs. S.Prabu in W.A.No.866 of 2015 vide order dated 27.01.2017.

8. The Learned Government Advocate for the respondent submits that the writ petition is not maintainable. It is submitted that the writ petition is pre-mature in as much as the petitioner has been issued only with a notice. He submits that petitioner has to participate in the said proceedings and give an appropriate reply. Only if any adverse order is passed in future, a cause of action can be said to have arisen. He therefore prays for dismissal of the writ petition.

9. On merits the learned Government Advocate submits that the petitioner could not have been appointed as a B.T.Assistant



in Tamil in as much as the petitioner did not possess the requisite qualification to be appointed as a B.T.Assistant (Tamil) as the petitioner admittedly did not possess B.Ed., qualification at the time of her recruitment in the year 2014 on 25.09.2014.

10. He further submits that the petitioner completed her UG in a staggered manner and had thus simultaneously pursued her UG and Diploma in Teacher Education(D.T.Ed) between 2008 and 2010.

11. It is further submitted that the petitioner had without completing her UG from the Annamalai University joined and completed D.T.Ed earlier and thereafter later completed her U.G only December 2010. It is further submitted that the petitioner has obtained the Diploma in Teacher Education without giving up her U.G and therefore the petitioner was not eligible to be appointed as a B.T. Assistant. Under these circumstances, it is submitted that the present writ petition is even otherwise liable to be dismissed on merits.

12. Heard the learned counsel for the petitioner and the respondent and perused the records and the decisions cited by the learned counsel for the petitioner.

13. The 4th respondent vide impugned notice dated 10.08.2021 has called upon the petitioner to give an explanation in writing within seven days of receipt of the memorandum with the relevant evidence. The allegation against the petitioner is that the petitioner was appointed as a Graduate Teacher in Tamil by concealing the fact that the petitioner completed two different courses simultaneously.

14. The reference was answered as follows:-

The issue regarding simultaneous qualification/ degree was considered by the Full Bench of this Court recently in R.Chitra and others Vs. Member Secretary and others vide its order dated 26.04.2021 W.P.No.2807 of 2014 and W.P.No.16871 of 2020 and W.P.No.25698 of 2017.

The question that has been referred to the Full Bench for being answered reads as under:-

"Whether two degrees (dual degrees) obtained simultaneously during the same academic year,

can be considered for employment purpose,



WEB COPY

particularly, for being selected to a post under The Tamil Nadu Higher Secondary Education Service?"

27. That apart, prescribing a particular educational qualification to a particular post is a policy matter within the domain and prerogative of the employer. The employer may prescribe the requisite educational qualification taking into consideration various circumstances including the nature of job and the essential requirements for the efficient discharge of the duties attached to a particular post. It is for the State to decide whether a particular qualification could be regarded as equivalent and the court cannot sit in the armchair of the policy maker.

28. So far as Educational Services in Tamil Nadu , there are number of statutory rules framed viz., Special Rules for The Tamil Nadu Elementary Educational Subordinate Service; Special Rules for the Tamil Nadu Higher Secondary Educational Service; Tamil Nadu Municipal Educational Service Rules; Special Rules for the Tamil Nadu School Educational Subordinate Service (Municipal and Township Schools), etc. In all those rules, the Government has fixed qualifications for appointment to various posts. In all the statutory rules, in respect of educational qualifications, reference have also been made about recognized degree and a degree of equivalent standard, besides a diploma or degree in teacher education". Admittedly, a simultaneous degree obtained in the same academic year has not been regarded as equivalent degree in any of the service rules. In such circumstances, unless and until, such degree obtained in the same academic year is prescribed as qualification in the relevant service rules, it is open to the authorities to refuse to recognize such degrees, in other words, unless and otherwise, statutory rules provides for it, a presumption of equivalence cannot be construed.



WEB COPY

29. The prescription of qualifications for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine.

30. As stated earlier, unless and until, the UGC recognizes such degree courses, there is no obligation on the part of the university or the employers / recruiting agencies to recognize such degree courses in the absence of any such rules in this regard. Thus, we are in agreement with the law laid down by the Division Bench in B. Jagadeeswari v. The Chairman, Teachers Recruitment Board, Chennai [W.A.No.845 of 2013 dated 07.01.2014]. For the reasons already discussed by us hereinabove, we are not in agreement with the judgement rendered by the latter Division Bench in The Secretary, School Education Department, Fort St. George, Chennai and 2 others v. L. Kavitha [W.A.No.1098 of 2012 dated 24.06.2016] as it did not lay down the correct law.

31. This Reference is answered accordingly. The Registry is directed to list the writ petitions before the concerned learned Judge dealing with the subject matter as per roster and it is for the learned Judge to decide the issue(s) involved in the

writ petitions on its own merits and in accordance with law.

15. A few other passage from the Full Bench decision in R. Chitra vs The Member Secretary Government of Tamil Nadu in W.P.No.2807 of 2014 and vide order dated 26.04.2021 also may be referred.

16. In para 13, it was observed as under:



WEB COPY

education system and also for the matters connected therewith. In terms of Section 3 of the NCTE Act, a National Council for Teachers Education has been established. Sub-section (2) (d) (i) of Section 32 of the NCTE Act empowers the council to make regulations for fixing norms and guidelines and standards in respect of the minimum qualifications for a person to be employed as a teacher and sub-section 2(d)(ii) empowers the Council to make regulations in respect of the specified category of courses or training in teacher education. In exercise of the power conferred under the NCTE Act, the Regulations has been framed called "The National Council For Teacher Education (Recognition Norms and Procedure) Regulations, 2014. Under Regulation No.9, as many as 15 Teacher Education Programmes have been specified in Appendix 1 to 15.

23. On a cursory look at the curriculum, programme implementation and assessment fixed for each programme, it could be seen that apart from theory classes, students should under attend practical training like school engagement (school internship) and other practical trainings in schools. For example, the Bachelor of Education Programme (B.Ed.) comprises of three broad curricular areas, (i) Perspectives in Education, (ii) Curriculum and Pedagogic Studies, and (3) Engagement with the Field. That apart, the students should also undergo school internship and actively engage in teaching for 16 weeks in the final year of the course. Likewise, for Master of Education (M.Ed.,) also similar norms and standards have been fixed under the regulations. It is doubtful, whether a student undergoing teacher education programme through distance education mode would be able to undergo such training effectively as prescribed in the regulations.



WEB COPY

24. The teaching profession is not like any other profession and the teacher's service cannot be compared with any other ministerial service. Teachers are the cornerstone of society as they are the real nation builders. Teachers are the people who mould the children and inculcate values to children to become better citizens and leaders of tomorrow. A teacher is the role model of his student and should therefore, be well equipped to deal with his students. A teacher should be able to assess the strength and weakness of the students and provide proper guidance and training, they should be the source of inspiration and motivation to the students and should have the compassion, passion for learning and understanding. To become a better teacher, proper training is required. A better teacher alone can make a better student and an ill trained teacher will cause havoc to the system. A student doing teacher education programme in the distance education mode may not have the hands-on experience like his counterpart undergoing a course in the regular stream.

19. There is a subtle difference between a diploma conferred by an Educational Institution which is intended for the purpose of employment while a degree conferred by a University is a rounded recognition for further qualification. A Degree is normally conferred by a University or a Deemed University. Diploma course, on the other hand, is normally awarded by an educational institution for pursuing and accomplishing a particular course successfully. A Diploma course is more technical in nature and offers a field specific exposure and designed to equip an attendee with a special skills required for a profession. It is more detailed than ordinary certificate course. Diploma course is lower than a degree from a College/University/Deemed University.

20. The expression 'degree' is defined in Section 22(3) of the University Grants Commission (UGC) Act 1956 which reads as follows:

"For the purposes of this section, "degree" means any such degree as may, with the previous approval of the Central Government,



be specified in this behalf by the commission by notification in the official Gazette."

21. Diploma is outside the purview of University Grants Commission under (UGC) Act, 1956. In Tamil Nadu, Diploma Course for Teachers is Governed by the Directorate of Technical Education.

22. To be appointed as a (B.T.Assistant) Bachelor of Teachers Assistant, a person must be an under graduate with an additional qualification in Bachelor of Education(B.Ed). After the introduction of the Right of Children to Free and Compulsory Education Act 2009 and The National Council for Teacher Education Act, 1993 (in short "NCTE Act") and the regulations made there under, a TET Qualification was made mandatory in Teaching Profession. Though Section 16 of Right of Children to Free and Compulsory Education Act 2009, makes TET qualification mandatory for teachers appointed even prior to implementation of the University Grants Commission Act 1956, certain concessions have been given by the Courts in the light of the lacunae in the Act and Rules made thereunder even if such a teacher fails to qualify TET. In so far as minority institutions are concerned, the Hon'ble Supreme Court in Pramathi Educational and Cultural Trust Vs Union of India (2014) 8 SCC 1 has held that the provisions and the Right of Children to Free and Compulsory Education Act 2009 will not apply to them.

23. A Division Bench of this Court in The Secretary to Government Vs S.Jeyalakshmi and another (2016) 4 LW 841 has also followed the above view and it is being currently being followed. In para Nos.58 to 61 the Division Bench held as under:

58. In our opinion, non qualifying in TET by the Teachers already in service should not defeat the object of the Government to provide quality and standard education and therefore, the Government may, in the alternative, conduct a refresher course and also some interactive sessions during annual vacation, in order to ensure and enhance the quality of education.

59. Insofar as minority institutions are concerned, the contention of the learned senior counsel appearing for the minority Schools is that when Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 received the assent of the President of India and it is still in force, it cannot be supplanted by an Executive Order, namely by G.O.Ms.No.181 dated 15.11.2011. Further, the Apex Court has clearly held in Pramati



WEB COPY

Educational & Cultural Trust that RTE Act, 2009 is not applicable to the minority institutions. Therefore, we have no hesitation to hold that the right conferred under Article 30(1) of the Constitution cannot be abrogated. Consequently, G.O.Ms.No.181 dated 15.11.2011, which was issued pursuant to the directions of NCTE, cannot be made applicable to the minority institutions.

60. In the light of the above, we are of the view that the Government cannot insist upon the minority institution, both aided or unaided, to abide by any Regulation framed under the provisions of the RTE Act. Therefore, we hold that G.O.Ms.No.181, School Education (C2) Department dated 15.11.2011 issued by the Government of Tamil Nadu, is not applicable to the minority institutions. Similarly, G.O.Ms.No.76 dated 18.3.2015 issued by the Government of Puducherry, is also not applicable to the minority institutions.

61. Though the intention of the Government is that there should not be any discrimination among the Teachers working in non-minority Schools and minority Schools with respect to qualification and that there should be uniformity in the teaching imparted to the children, in view of the decision of the Apex Court in Pramati Educational & Cultural Trust, the Government cannot take shelter under the guise of discrimination to impose restrictions on minority institutions.

24. Power to dismiss a teacher appointed prior to the enactment of the Right of Children to Free and Compulsory Education Act 2009 and the Regulations made thereunder who fail to qualify in TET, has been held to be not available to the Education Department and School management.

25. As far as the present case is concerned, the petitioner has been appointed after The Right of Children to Free and Compulsory Education Act 2009 came into force. The qualifications for a B.T.Assistant to teach either in the Middle School or the Secondary School are as under.



Pre-Primary School or Nursery School	Children between aged 3-5 years by kindergarten or play school	Pre-KG LKG UKG	D.T.Ed (Diploma Teacher Education) + U.G	TET paper I pass (TEACHER ELIGIBILITY TEST)	By direct recruitment
Primary or Elementary School (Secondary Grade Teacher II)	Student aged between 6-10 years	1 st - 5 th standard	D.T.Ed + U.G + B.Ed	TET paper I pass	(i) By DR; or (ii) By promotion from any post in the service on a lower scale of pay: Provided that fifty percent of the substantive vacancies arising in the category shall be filled by DR.
Middle School - BT Assistant (Bachelor of Teachers)	Student between aged 11-13 years	6 th - 8 th standard	U.G + B.Ed	TET paper II pass	By direct recruitment
Secondary School (BT Assistant)	Student aged between 14-15 years	9 th and 10 th standard	U.G + B.Ed	TET paper II pass	By direct recruitment



WEB COPY

Pre-Primary School or Nursery School	Children between aged 3-5 years by kindergarten or play school	Pre-KG LKG UKG	D.T.Ed (Diploma Teacher Education) + U.G	TET paper I pass (TEACHER ELIGIBILITY TEST)	By direct recruitment
Higher Secondary or Senior Secondary School - PG Assistant (Post Graduate)	Student aged between 16-18 years	11 th and 12 th standard	P.G + B.Ed	TN TRB pass (TAMIL NADU TEACHER TN TRB pass (TAMIL NADU TEACHER RECRUITMENT BOARD)	By direct recruitment

26. The petitioner in this case had joined B.Litt (Tamil) in the year 2006 in the Annamalai University. The petitioner pursued 1st year and 2nd year between 2006 - 2007 and 2007 - 2008 respectively. Thereafter, without completing the 3rd year, the petitioner pursued Diploma in Teacher Education (D.T.Ed) offered by Department of Government Examinations, Chennai-600 006, Secretary State Board of School Examinations Tamil Nadu, perhaps with a view to get into the teaching profession to teach in Primary and Elementary Schools under the relevant Service Rules.

27. After obtaining the Diploma in Teacher Education (D.T.Ed) in June 2010, the petitioner thereafter completed her 3rd year in B.A Literature (Tamil) during December 2010 from Annamalai University.

28. The petitioner appears to have also cleared Paper-II of the TET in the year 2013. As per the Rules applicable and prevailing Government Orders, for obtaining TET qualification in Paper-II, a candidate must possess requisite two qualifications and it is evident from a Notification issued by Teachers Recruitment Board for Tamil Nadu Teacher Eligibility Test (TNTET) 2013, which reads as under:-

Eligibility to Write TET Paper II:

Candidates should possess the following prescribed qualifications to write the Teacher Eligibility Test Paper II:



WEB COPY

- a) Candidates who have passed a Bachelor's Degree (B.A. /B.Sc. / B.Litt.) with Tamil, English, Mathematics, Physics, Chemistry, Botany, Zoology, History and Geography as major subjects in their Degree course or a Degree with any one of the equivalent subjects (Regarding equivalent subjects, Government orders issued prior to the date of this notification alone will be considered) from a Recognized University under 10+2+3 Pattern and a Bachelor Degree in Education (B.Ed.) from a Recognized University and seeking an appointment as Graduate Teacher for classes VI to VIII can write Paper II.
- b) Candidates appearing for the Final Year Examination of B.Ed. during the current Academic Year (2012 - 2013) are also permitted to appear for Paper II in Teacher Eligibility Test. Such Candidate's should have successfully completed the course in the current Academic Year (2012-2013) itself and should produce B.Ed Certificate during Certificate Verification, otherwise they shall not be considered for current year Government recruitment process. However they may be issued with TET certificate after producing B.Ed Degree certificate.

29. In the prospectus of the Tamil Nadu Teachers Eligibility Test (TNTET), 2013 issued by Teachers Recruitment Board, it is stated that a candidate possessing 60% or more in the TET Paper II examination with prescribed qualification was eligible to be appointed to the post of Graduate Teacher in Tamil Nadu. Para 6 of the prospectus reads as under:-

6. Teacher Eligibility Test - Certificate:

- a. A person who secures 60% or more in the TET Paper II examination and possess prescribed qualification for the post of Graduate Teacher in Tamil Nadu will be considered to have passed TET Paper II. This will be the qualifying marks for the candidates of all the categories.
- b. Candidates are allowed to appear for the



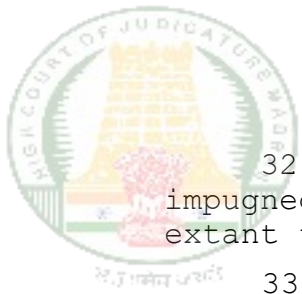
WEB COPY

TET Paper II Examination only on the basis of their declaration that they possess the required qualification for the post of the Graduate Teacher.

- c.Candidates who have secured 60% and above in the TET Paper II Examination will be called for Certificate Verification.
- d.During Certificate Verification their academic qualifications will be verified.
- e.After Certificate Verification TET certificate will be issued only to eligible candidates.
- f.TET Certificate will be valid for 7 years from the date of issue of the certificate.
- g.TET qualification is only one of the eligibility conditions for appointment. Mere holding of a TET certificate does not confer any right to appointment.

30. In this case, the petitioner completed her B.Ed only in the year 2020. Therefore, Prima facie it appears that the TET Paper-II qualification obtained by the petitioner based on which she was called for an interview and later appointed as a B.T.Assistant was without the petitioner having mandatory and requisite prescribed qualification to write TET Paper-II. Though the petitioner has post-facto obtained B.Ed., in 2020, it appears that the petitioner did not possess the requisite qualification to be appointed as a B.T.Assistant in 2014. It appears that the petitioner was neither qualified to write TET-Paper-II nor was qualified to be appointed as a B.T.Assistant in the absence of mandatory B.Ed qualification in 2014. This would however require a detailed consideration by the appointing authority.

31. At the same time, the impugned notice treating that the petitioner as a person with disqualification for simultaneously pursuing degree and diploma is not correct. The expression "degree" as defined in as Section 22(3) of the University Grants Commission (UGC) Act, 1956 as extracted above makes it clear out a degree means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the University Grants Commission by the notification in Official Gazetted. A 'degree' is not a equivalent to 'Diploma'.



32. Therefore, to that extent, the proposed exercise in the impugned notice 10.08.2021 has no legal basis. Therefore to that extent the impugned show cause notice is liable to be quashed.

33. A reading of the decision of the Full Bench of this Court R.Chitra vs Member Secretary Government of Tamil Nadu, TRB, also indicates that it cannot be said that the petitioner pursued simultaneously two degrees. Diploma conferred by The Department of Government Examination, Chennai - 600 006, under the authority of the Government of Tamil Nadu, is not a "Degree" granted by an institution recognized under the provisions of the University Grants Commission (UGC) Act, 1956.

34. Therefore, while quashing the impugned notice, liberty is given to the respondent to examine the issue whether the petitioner had the requisite qualification for being appointed as a B.T.Assistant (Bachelor of Teacher) Assistant without possessing a necessary B.Ed., qualification in 2014 and whether the petitioner was indeed entitled to write TET Paper-II without B.Ed., qualification.

35. This exercise may be carried out by the respondents within a period of three months from the date of a receipt of a copy of this order. Thereafter, the respondents shall call upon the petitioner to reply to the same. The petitioner shall give a detailed reply, if desired the petitioner may be also offered an opportunity of hearing.

36. This writ petition stands disposed in terms of the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

kkd

To

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

2.The Director of School Education,
DPI Campus,
Chennai 600 006.



3.The Joint Director (Personnel)
DPI Campus,
Chennai 600 006.

4. The Chief Educational Officer,
Erode District.

W.P.No.20265 of 2021

SV I(CO)
GN(02/11/2021)