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IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D :29.09.2021

C O R A M

THE HON'BLE MR. JUSTICE C.SARAVANAN

WRIT PETITION NOS.20913 OF 2021

(THROUGH VIDEO CONFERENCING)

P.Sureshkumar
B.T. Assistant (Maths)
A.J.S. Nidhi Higher Secondary School,
Alandur, Chennai-600016.

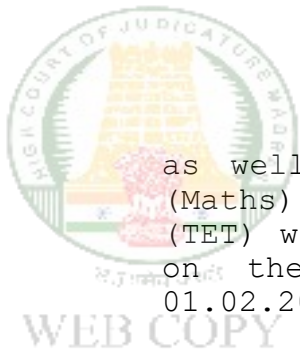
... Petitioner

.Vs.

1. State of Tamil Nadu
Rep. by its Principal Secretary to Government,
School Education Department,
Fort St George, Secretariat,
Chennai - 600 009.
2. The Commissioner of School Education,
DPI Campus, College Road,
Chennai - 600 009.
3. The Chief Educational Officer,
Chengalpet,
Chengalpet District.
4. The District Educational Officer,
Chrompet Education District,
Chrompet - 600 044,
Chengalpet District.
5. The Secretary,
A.J.S. Nidhi Higher Secondary School,
Alandur, Chennai-600016.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the Respondents to sanction annual increment to the Petitioner in the post of B.T. Assistant (Maths) in the 5th Respondent School from the year 2018



as well as the incentive increment for having acquired M.Sc. (Maths) without reference to passing of Teacher Eligibility Test (TET) with all consequential and other attendant benefits, based on the representation submitted by the Petitioner dated 01.02.2021.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.L.S.M.Hasan Fizal

Govern Advocate for R1 to R5

O R D E R

The Petitioner was appointed in the 5th Respondent school vide order 07.09.2011 and he joined service on 12.09.2011. In the meanwhile, after implementation of Right of Children to Free and Compulsory Education Act, 2009(RTE Act), the Government issued G.O.Ms.No.181 School Education Department dated 15.11.2011. The admitted fact of the case of the Petitioner is that the Petitioner has not obtained TET qualification even though the proviso to Section 23(2) contemplates such qualification to be obtained by teachers. Section 23(2) of the Act reads as under:-

''(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification: Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.''

2. Appearing on behalf of the Petitioner, the learned counsel for the Petitioner submits that as a matter of fact two orders have been passed by this Court one in W.P.(MD)No.8313 of 2020 vide order dated 30.07.2020 and another order in W.P.No.23999 and 24003 of 2019 vide order dated 29.07.2021, wherein this Court granted relief stating that the requirement of obtaining TET qualification prior to issue G.O.Ms.No.181 School Education Department dated 15.11.2011 will not apply.



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The learned counsel for the Petitioner further submits that even though the Petitioner was receiving the salary, the respondent has stop to give the annual increment to the Petitioner presumably on account of the fact that the Petitioner has not obtained TET qualification. For the same reason, the respondents have not paid the incentive increments to the Petitioner. The learned counsel for the Petitioner further submits that through the said Act has been passed in the year 2009, with effect from 01.04.2010, the State Government has not framed any rule under Section 38 of the Act and notified the same as G.O.Ms.No.173 School Education Department dated 08.11.2011 and there is no clear guidelines for obtaining TET qualifications. The learned counsel for the Petitioner further submits that G.O.Ms.No.220 School Education (S-2) Department dated 10.11.2008, G.O.Ms.No.120 School Education(C-2) Department dated 24.04.2010 and G.O.Ms.No.181, School Education Department dated 15.11.2011 also make it clear that the teachers ought to be recruited in future in the elementary school only after having obtained Teacher Eligible Test(TET) to be conducted by the appropriate Government Department in accordance with the guidelines framed by the National Council for Teachers Education for the above said purpose.

3. Appearing on behalf of the Respondents, the learned counsel for the Respondents submits that not only Section 23 prohibits the employment of the petitioner as the petitioner does not possess requisite TET qualification, G.O.Ms.No.181 dated 15.11.2011 referred to supra also prohibits the Government from recognizing the employment of such Teachers who do not possess TET qualifications.

4. Heard the learned counsel for the Petitioner and the learned counsel for the Respondents and perused the G.O.Ms.No.181 dated 15.11.2011 and the provisions of the Right of Children to Free and Compulsory Education Act, 2009.

5. The proviso to Section 23 makes it very clear that a Teacher who, at the commencement of this Act did not possess minimum qualifications as laid down under sub-section (1) shall acquire such maximum qualifications within a period of five years. However, consequences for not obtaining such qualifications has neither been prescribed in the Act nor the Rules and Government orders. The State government has framed the Rules under 38 of the above said Act and had notified it vide G.O.Ms.No.173 dated 08.11.2011 and G.O.Ms.No.120 School Education(C-2) Department dated 24.04.2010 and the rules have come into force, the above said rules do not deal with the situation under contemplation for the purpose of implementing, requirements of proviso to Section 23. Rule 13 however empowers



the Government to take appropriate action by withdrawal of recognitions granted to the school. However no steps have taken by the respondents in that direction. Since the Rules are silent for taking action against those who do not possess TET qualifications, the Respondents cannot deduct payments due to the vacuum in the Rules. As long as, the Petitioner was working as a teacher in the 5th Respondent School, the Petitioner is entitled to all the benefits that are available to the regular teachers i.e., increments and the incentive increments for possessing for additional qualification as per the relevant Government orders of the State Government which were issued prior to the enact much of the Right of Children to Free and Compulsory Act, 2009. That apart, the two decisions cited by the learned counsel for the Petitioner also make it clear that TET cannot be applied to those teachers who were appointed prior to the implementation of the above Act. Though, the views expressed therein may require a reconsideration, the fact remains that there are no provisions in the Act to penalise a teacher for not possessing TET qualification. Therefore, the present writ petition deserves to be allowed.

6. This writ petition is allowed with the above observation. The Respondents are directed to release the appropriate payment that are due to the Petitioner within a period of 12 weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
Government of Tamil Nadu, School Education Department,
Fort St George, Secretariat, Chennai - 600 009.
2. The Commissioner of School Education,
DPI Campus, College Road, Chennai - 600 009.
3. The Chief Educational Officer,
Chengalpet, Chengalpet District.



4. The District Educational Officer,
Chrompet Education District, Chrompet - 600 044,
Chengalpet District.

5. The Secretary,
A.J.S. Nidhi Higher Secondary School,
Alandur, Chennai - 600 016.

+1cc to Mr.G.Sankaran , Advocate, S.R.No.50664
+1cc to the Government Pleader, S.R.No.51238

W.P.No.20913 of 2021

GPL(CO)
PM/20/10/2021