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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.22480 of 2021

and

W.M.P.Nos.23707 & 23708 of 2021

(Through Video Conferencing)

G.Hemamalini

...Petitioner

Vs

1. The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Commissioner of School Education,
DPI Campus, College Road,
Chennai - 600 006.
3. The District Educational Officer,
Chennai North District,
Sidco Nagar, Villivakkam,
Chennai - 600 049.
4. The Secretary,
Hindu Theological Higher Secondary School,
107, Audiappan Street,
Sowcarpet, Chennai - 600 001.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned Proceedings issued by the third respondent in Na.Ka.No.1859/A1/202 dated 13.09.2021 and to quash the same and consequently directing the respondents to pass orders for granting annual increment as well as incentive increment for acquiring higher qualification of M.A and M.Ed Degree in the post of B.T. Assistant (History) in the fourth respondent School with all consequential and other attendant benefits, including the payment of arrears of salary with interest.



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For Petitioner : Mr.G.Sankaran
For Respondents :
For R1 to R3 : Mr.L.S.M.Hasan Fizal
Government Advocate

ORDER

Mr.L.S.M.Hasan Fizal, learned Government Advocate takes notice on behalf of the first to third respondents.

2. The petitioner was appointed as a B.T. Assistant in Social Science by the fourth respondent. An appointment order dated 24.02.2011 was issued by the fourth respondent. Thereafter, the third respondent approved the appointment of the petitioner by an order dated 25.10.2011. Mean while, the Government of Tamil Nadu issued G.O.Ms.No.181, School Education (C2) Department dated 15.11.2011 which made it mandatory to obtain TET qualification in the wake of implementation of Right of Children to Free and Compulsory Act, 2009.

3. It is the case of the petitioner that though the petitioner is receiving regular salary, the petitioner has not been paid with the increments on account of the fact that the petitioner has not qualified herself in the TET qualification. The learned counsel for the petitioner submits that the appointment of the petitioner is prior to implementation of G.O.Ms.No.181, School Education (C2) Department dated 15.11.2011.

4. The learned counsel for the petitioner submits that the issue is no longer res integra and is squarely covered by plethora decisions of this Court in the following cases:-

(i) Mrs.D.Raja Malar Vs The State of Tamil Nadu, Department of School Education, Chennai and others, passed in W.P.(MD). Nos.8313, 8317 & 8319 of 2020 dated 30.07.2020.

(ii) G.Hemamalini Vs The State of Tamil Nadu, School Education Department, Chennai and others, passed in W.P.No.15290 of 2021 dated 26.07.2021.

(iii) M.Velayutham and another Vs The Director of School Education, Chennai and others, passed in W.P.Nos.23999 & 24003 of 2019 dated 29.07.2021.

(iv) P.Mangayarkarasi Vs State of Tamil Nadu, School Education Department, Chennai and others, passed in W.P.No.20013 of 2021 dated 27.09.2021.

5. The Government Advocate for the first to third respondents submits that there is no merits in the present writ petition. He submits that in absence of TET qualification, no incentives can be granted to the petitioner.



6. Heard the learned counsel for the petitioner and the learned Government Advocate for the first to third respondents.

7. In W.P.No.20013 of 2021, a detailed order was passed after considering some of the decisions of this Court. The operative portion from the said order reads as under:-

"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



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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. Consequently, connected WMP is closed."

8. Since the issue is covered by the decision of this Court, this Writ Petition is allowed at the stage of admission itself by directing the first to third respondents to implement the order within a period of 180 days of this order. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Commissioner of School Education,
DPI Campus, College Road,
Chennai - 600 006.
3. The District Educational Officer,
Chennai North District,
Sidco Nagar, Villivakkam,
Chennai - 600 049.



4. The Secretary,
Hindu Theological Higher Secondary School,
107, Audiappan Street,
Sowcarpet, Chennai - 600 001.

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+1CC to Mr.G.Sankaran, Advocate, Sr.No.54530
+1CC to Mr.Government Pleader, Sr.No.55024

W.P.No.22480 of 2021
and

W.M.P.Nos.23707 & 23708 of 2021

RSI (CO)
K.RK. (29.11.2021)