



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.12.2021

Coram

The Hon'ble Mr.Justice V.PARTHIBAN

W.P.Nos.24629 of 2021

K.Sumathi

...Petitioner

Vs.

1. The Director of School Education,
DPI Complex, College Road,
Chennai - 06.
2. The Chief Educational Officer,
Egmore, Chennai - 08.
3. The District Educational Officer,
Chennai North,
Chennai - 49.
4. The Secretary/Correspondent
Railway Colony Aided High School,
No.1 Morse Road, Ayanavaram,
Chennai - 23.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 3rd respondent in his proceedings Na.Ka.No.1859/A1/202 dated 13.09.2021 and quash the same and direct the respondents to grant annual increment to the petitioner from the date of initial appointment (15.06.2011) in the post of B.T.Assistant (Science) as well as the incentive increments for acquiring higher qualifications (M.A.) and other service benefits / allowances to the petitioner without reference to passing of Teacher Eligibility Test (TET), by taking note of the facts that the petitioner was appointed prior to the G.O.Ms.No.181 School Education Department 15.11.2011.

For Petitioner : Mrs.Dakshayini Reddy

For Respondents : Mr.Abhisekh Murthy,
Government Advocate



ORDER

The Petitioner was appointed as B.T.Assistant (Science) in the fourth respondent School on 15.06.2011 in the sanctioned post. The Petitioner was fully qualified to be appointed as B.T.Assistant (Science) as per the norms prescribed by the competent authority. The fourth respondent school after the appointment of the petitioner had forwarded a proposal to the third respondent on 24.06.2011 for approval. However, the same was returned by the authority on 20.12.2011 on the ground that the petitioner had not passed the T.E.T.

2.The petitioner appeared to have preferred an appeal to the second and first respondent against refusal to approve his appointment. According to the petitioner the requirement of acquiring T.E.T qualification came into force only after issuance of G.O.Ms.No.181 School Education Department dated 15.11.2011, but, on the other hand, the petitioner was appointed earlier to that in June 2011. Without appreciating the appointment of the petitioner which was prior to the date of issuance of the above said G.O.Ms.No.181, his request came to be rejected by the authorities on 12.01.2015. The petitioner was therefore constrained to challenge the rejection order in W.P.No.1926 of 2015 and the same was allowed along with batch of cases by the learned Division Bench of this Court on 24.01.2017.

3.In the meanwhile, the appointment of the petitioner was also approved by the D.E.O vide his proceedings in Na.Ka.No.807/A2/2015 dated 13.08.2015. However, at that point of time, the approval was subjected to the outcome of the Writ Petition pending before this Court in W.P.No.1926 of 2015.

4.While the matters stood thus, several connected Writ Petitions with similar claim, came up for consideration and those Writ Petitions were allowed by this Court. Even after favourable orders were passed by this Court in the batch of writ petitions, the petitioner had not been granted annual increment, every year, despite approval granted to him and also subsequent allowing of the above Writ Petitions in favour of the petitioner.

5.When the matter is taken up for hearing today, the learned counsel for the petitioner would submit that the matter is squarely covered by the latest orders of this Court, wherein, a learned Judge had an occasion to deal with the identical issue in W.P.No.8381 of 2017 dated 06.07.2021. The learned counsel would rely on paragraphs 6 to 11 of the said order which read as under;

"6. As rightly pointed out by the learned Senior Counsel for the petitioner, the issue with regard to



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requirement of the possession of TET Examination came up for consideration before this Court in the case of R.Kumar and another (supra) and this Court had taken into account the order passed by the Hon'ble Division Bench of this Court and had ultimately held that the teachers, who were appointed as B.T. Assistants prior to the issuance of G.O.Ms.No.181, cannot be compelled to pass the TET Examination. The relevant portion of the order reads thus:-

"4. According to the petitioners, the respondents are compelling the petitioners for appearing Teachers Eligibility Test (hereinafter referred to as 'TET') examination to be held on 29.04.2017. The petitioners submitted that when they were appointed on 27.12.2010, there was no requirement of pass in TET examination for appointment. The National Council for Teacher Education (hereinafter referred to as 'NCTE') has issued a notification, dated 23.08.2010, laying down the minimum qualifications for a person to be eligible for appointment as a teacher in class I to VIII. The first respondent issued Government Order in G.O.Ms.No.181, dated 15.11.2011, making the TET as mandatory for all the teachers, who are working within the State. The Government first time conducted TET examination in the month of July, 2012 and the results were published only in the month of August, 2012.

5. The learned counsel for the petitioners contended that this issue was already considered by the Division Bench of this Court and the Division Bench of this Court held that those, who were appointed prior to the issuance of G.O.Ms.No.181, cannot be compelled to pass TET. In view of the said judgment, the notification, dated 23.08.2010, was amended on 29.07.2011, stating that the qualification of TET is mandatory only from 29.07.2011 and the respondents cannot compel the petitioners to appear and pass in the TET examination and he prayed for allowing these Writ Petitions.

6. The issue whether a person, who was appointed as B.T. Assistant prior to the issuance of G.O.Ms.No.181, can be compelled to acquire a pass in TET Examination, is no



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07.09.2010, the requirement of passing the TET Examination is not mandatory. Consequently, it requires to be held that the impugned order seeking for recovery of the mandatory benefits granted to the petitioner for non-possession of the TET Examination, cannot be sustained.

9. Accordingly, the impugned order dated 26.09.2014 passed by the 5th respondent herein in Na.Ka.No. Aa2/2015 is quashed and the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

10. At this juncture, the learned Senior Counsel appearing for the petitioner submitted that in view of passing of the impugned order, the petitioner's other service benefits including consideration for regularization of appointment has been withheld.

11. It is needless to point out that since this Court has held that there is no requirement of passing of TET Examination prior to 29.07.2011 and in the light of the amended notification of the NCTE dated 29.07.2011, the petitioner's request for regularization can be considered without reference to the requirement of passing the TET Examination, in case she is otherwise entitled to it."

6.The learned counsel for the petitioner would also refer to two other contemporaneous orders passed in W.P.(MD)Nos.17516 & 17519 of 2020 dated 14.06.2021 and W.P.No.20013 of 2021 dated 27.09.2021. In the last decision, the learned Judge of this Court in W.P.No.20013 of 2021 has held in paragraphs 2 to 6 as under;

"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. 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



other incentive increments as admissible to her. The above exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order, or on production of a copy of this order, whichever is earlier. No costs.

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Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

mrm/tri/cs

To

1. The Director of School Education,
DPI Complex, College Road, Chennai - 06.
2. The Chief Educational Officer,
Egmore, Chennai - 08.
3. The District Educational Officer,
Chennai North, Chennai - 49.

+1cc to M/s.R.Hemavathi, Advocate, S.R.No.65239

+1cc to the Government Pleader, S.R.No.66143

W.P.No.24629 of 2021

KSM(CO)
SU(07/01/2022)