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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

WRIT PETITION NO.25138 OF 2021

AND

W.M.P.NO.26503 OF 2021

V.Hemavathai

... Petitioner

Vs.

1.The Chief educational officer,
Chengalpattu District,
Chengalpattu.

2.The District Educational Officer,
Chengalpattu Education District,
Chengalpattu.

3.The Secretary,
Hindu Higher Secondary School,
Maduranthakam 603 306
Chengalpattu District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to pass orders for granting annual increment to the petitioner in the post of B.T. Assistant (Tamil) working in the 3rd respondent school from the year 2013 onwards and incentive increment for having acquired M.A.Degree qualification, based on the representation submitted by the petitioner, with all consequential and other attendant benefits including payment of interest, within a time frame to be fixed by this Court.

For petitioner : Mr.G.Sankaran

For respondents : Mr.Abishek Moorthy,
Government Advocate for R1 and R2
No appearance for R3

O R D E R

This Writ Petition is filed praying for issuance of a Writ of Mandamus to direct the respondents to pass orders for granting annual increment to the petitioner in the post of B.T.



Assistant (Tamil) working in the 3rd respondent school from the year 2013 onwards and incentive increment for having acquired M.A.Degree qualification, based on the representation submitted by the petitioner, with all consequential and other attendant benefits including payment of interest, within a time frame to be fixed by this Court.

2. The petitioner was appointed as B.T.Assistant (Tamil) in the 3rd respondent School on 25.01.2011 in the sanctioned post. The 3rd respondent School is a Government Aided School governed by the provisions of Tamil Nadu Private Schools (Regulation) Act and Rules made thereunder. The petitioner was fully qualified to be appointed as B.T.Assistant (Tamil) as per the norms prescribed by the competent authority. The appointment of the petitioner was duly approved by the Department, vide proceedings of the 2nd respondent dated 16.05.2011. She was sanctioned with annual increment in the year 2012, whereas she was not granted annual increment from the year 2013 onwards on the ground that the petitioner had not passed the Teachers Eligibility Test.

3. 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 January, 2011. The petitioner submitted a representation to the respondents through School for payment of annual increment and incentive increment, but the same was not considered till date. Hence, the petitioner has filed the above writ petition.

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 her and also subsequent allowing of the similar Writ Petitions in favour of the petitioner.

5. When the matter is taken up for hearing today, the learned counsel for the petitioner submitted 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.(MD) No.8313 of 2020 etc. dated 30.07.2020. The learned counsel relied on paragraphs 3 to 20 of the said order which read as under;

"3. Since the facts of the case in all the writ petitions and the issue raised therein are common, with the consent of both sides, these writ petitions are being disposed of at the admission stage itself,



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by this common order.

4. The short facts leading to filing of this writ petition are that, the petitioners were appointed at the Sarah Tucker Girls Higher Secondary School, Tirunelveli as B.T.Assistant (English) on 17.09.2010, Tamil Pandit on 20.06.2011 and Tamil Pandit on 20.06.2011 respectively. On such appointment, the School had sent a proposal for approval of such appointments and on considering the said proposals, the third respondent vide proceedings dated 02.01.2012, 15.11.2011 and 15.11.2011 respectively has given approval to such appointments.

5. By the said approval orders, the third respondent approved the appointment of the petitioners as B.T., Assistant and Tamil Pandit at the Sarah Tucker Girls Higher Secondary School, Tirunelveli from the date of their appointment. Thereafter, the petitioners have been continuously working in that School.

6. However, the present grievance of the petitioners is that, the petitioners even though have been working in the approved post from the date of their appointment, they have not been given the annual increment, for which, they are entitled. When such request was made to the respondents to grant the annual increment of pay to the petitioners, the same has now been rejected through the impugned orders, dated 11.06.2020, 11.06.2020 and 16.06.2020 respectively, by the third respondent. Challenging the said orders, the present writ petitions have been filed.

7. Mr.D.Vijayakumar, learned counsel appearing for the petitioners has brought to the notice of this Court that, the one and only reason cited in the impugned order for denying such annual increment to the petitioners is that, the petitioners have not completed the 'Teacher Eligibility Test ' (for brevity 'TET') qualification and without TET qualification since the petitioners were appointed and they were approved, in order to give the annual increment, was there any Government order issued in that effect, they asked that should be produced.

8. In this context, the learned counsel would further submit that, the very reason cited in the impugned order does not hold good, because, the TET qualification itself was prescribed by the National Council for Teacher Education (for brevity NCTE) originally on 23.08.2010 and subsequently, by amendment, as per NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in



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Schools) Amendment Regulations 2011, by way of notification, dated 27.09.2011. Therefore, from that date only the said qualification of TET prescribed by NCTE has become a mandatory one. In other words, the Teachers, who are appointed on or after 27.09.2011 should have the qualification of TET, without which, their appointment cannot be approved and they will not be entitled to get service benefits. However, according to the learned counsel appearing for the petitioner, the petitioners admittedly were appointed on 17.09.2010, 20.06.2011 and 20.06.2011 respectively and the same having been approved by the third respondent vide his proceedings dated 28.12.2011, 15.11.2011 and 15.11.2011 respectively such appointments obviously are prior to the cut-off date i.e., 27.09.2011. Therefore, the said reason of having the qualification of TET as prescribed by the NCTE insofar as the petitioners are concerned, may not be applicable and therefore, citing the said reason since the impugned orders have been passed, it cannot be sustained. Hence, the learned counsel seeks indulgence of this Court.

9. I have heard Mrs.S.Srimathy, learned Special Government Pleader appearing for the official respondents, who would submit that, the TET have become the necessary and mandatory qualification for every Teacher to be appointed both in Government as well as the Government Aided Schools and without such qualification, no appointment of Teacher can be made and if at all, any appointment is already made, those Teachers have been given time to complete the TET qualification and without having qualified with the TET qualification, the petitioners cannot seek for any additional service benefits like the annual increment. Therefore, it has rightly been rejected by the third respondent through the impugned orders. Therefore, the said order may not be interfered with by this Court.

10. I have considered the said submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.

11. The only controversy which arises in this writ petition is, whether the reason cited in the impugned order that, the petitioners should have qualified with TET qualification, even though they were appointed on 17.09.2010, 20.06.2011 and 20.06.2011 respectively and from that date, their appointments have also been approved by the 3rd respondent, for getting the benefit like the annual increment, is hold good or not.



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12. In this context, the learned counsel appearing for the petitioners 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 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.?"

13. 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



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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.

14. In the case of the petitioners, they were appointed on 17.09.2010, 20.06.2011 and 20.06.2011 respectively in the sanctioned vacancy as B.T.Assistant and Tamil Pandit at the fifth respondent School and the said appointments, having been considered, was approved by the third respondent vide his proceedings, dated 28.12.2011, 15.11.2011 and 15.11.2011 respectively, where it has been specifically stated that, the petitioners were appointed on 17.09.2010, 20.06.2011 and 20.06.2011 and approval was also given from the date of their appointment.

15. Therefore, it has become quite clear that, the appointment of the petitioners as on 17.09.2010, 20.06.2011 and 20.06.2011 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 petitioners are concerned, cannot be made or applied. Therefore, the said reason cited in the impugned order by the third respondent, in the considered opinion of this Court, may not hold good. Therefore, on that reason, the petitioners service benefit like annual increment cannot be denied.

16. Moreover, once the appointments are approved by the authority and the same still holds good, the petitioners have 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 third respondent cannot insist upon any Government Order, which cannot be created by the petitioners.

17. More over, if at all, any such request is made by the petitioners 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 respondents, 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



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order is available in their favour.

18. 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.

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

20. In the result, the impugned orders are quashed and the respondents are directed to reconsider the request of the petitioners with regard to their plea for grant of annual increment as their appointment dated 17.09.2010, 20.06.2011 and 20.06.2011 respectively having been approved by the third respondent vide his proceedings dated 28.12.2011, 15.11.2011 and 15.11.2011 respectively, this Court feels that, there can be no further impediment for the petitioners 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."

6. The learned counsel for the petitioner also referred to yet another order passed in W.P.Nos.23999 and 24003 of 2019 dated 29.07.2021, wherein the learned Judge of this Court has held in paragraphs 3 to 5 as under:

"3. In the instant case, the petitioners herein were appointed in the fourth respondent School on 15.06.2011 and 29.07.2011, which is prior to the issuance of G.O.Ms.No.181, dated 15.08.2011, which is prior to the crucial date of 27.09.2011, as held in the aforesaid decisions. The petitioners-apprehension is that the respondents are withholding their salaries on the ground that the petitioners do not possess the TET qualification. Such an apprehension is also ratified in the statement made by the respondents in their counter affidavit. While that being so, by taking into consideration of the fact that the petitioners had been appointed by the fourth respondent School on 15.06.2011 & 29.07.2011, which is prior to issuance of G.O.Ms.No.181, School Education Department, dated 15.11.2011, the petitioners shall be entitled for the mandatory



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benefits as on the date of their appointment.

4. In view of the above observations, there shall be a direction to the second and third respondents herein to pay the salaries, including any other annual increment and incentive increments, which the petitioners may be entitled to, along with other service benefits, atleast within a period of eight weeks from the date of receipt of a copy of this order.

5. These Writ Petitions stand allowed accordingly. Consequently, connected Miscellaneous Petitions are closed. There shall be no orders as to costs.

7. Mr. Abishek Moorthy, learned Government Advocate appeared on behalf of the respondents 1 and 2. He stated that he would not have any quarrel that the issue is squarely covered by the above decisions and numerous others of this Court.

8. In view of the same, this Writ Petition is allowed. The respondents are directed to grant annual increment to the petitioner by passing suitable orders from the year 2013 onwards in the post of B.T. Assistant (Tamil) as well as incentive increments as admissible to her, with all consequential and other attendant benefits.

9. 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. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

vsi

To

1. The Chief Educational Officer,
Chengalpattu District,
Chengalpattu.

2. The District Educational Officer,
Chengalpattu Education District,
Chengalpattu.



3.The Secretary,
Hindu Higher Secondary School,
Maduranthakam 603 306
Chengalpattu District.

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+1cc the M/s.G.Sankaran, Advocate SR.No.68484

+1cc to the Government Pleader SR.No.69031

W.P.No.25138 of 2021

NK(CO)
RVM(25/01/2022)