

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 06.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.8381 of 2017
and

W.M.P.Nos.9163, 9164, 9175 of 2017 & 1197 of 2018

P.Sangeetha

...Petitioner

Vs

- 1.The Government of Tamil Nadu,
Rep. by the Secretary,
Department of School Education,
Fort St. George, Madras - 600 009.
- 2.The Joint Director of Secondary Education,
Directorate of School Education,
DPI Campus, College Road,
Chennai - 600 006.
- 3.The Chairman,
Teachers Recruitment Board,
College Road, Chennai - 600 009.
- 4.The Chief Educational Officer,
The Office of the Chief
Educational Officer,
Saidapet, Chennai - 15.
- 5.District Educational Officer (Central Chennai)
The Office of the District
Educational Officer,
Saidapet, Chennai - 15.
- 6.The Correspondent,
Avvai Home T.V.R. Girl's Higher
Secondary School,
Adyar, Chennai - 600 020.
- 7.The Secretary,
Savitri Ammal Oriental Higher
Secondary School,
Sankrit College Campus,
84, Royapettah High Road,
Mylapore, Chennai - 600 004.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated 26.09.2014 in Na.Ka.No.Aa2/ 2014 on the file of the 5th respondent and the consequential Letter dated 07.10.2014 on the file of the 7th respondent, quash the same and directing the respondents to regularize the appointment of the petitioner Mrs.P.Sangeetha, working as B.T.Assistant (Science) in Savitri Ammal Oriental Higher Secondary School, Sankrit College Campus, 84, Royapettah High Road, Mylapore, Chennai - 600 004, w.e.f. 07.09.2010, without reference to Teachers' Eligibility Test (TET) qualification, with all service benefits.

For Petitioner : Dr.Fr.A.Xavier Arul Raj,
Senior Counsel
for Mrs.A.Arul Mary

For R1 to R6 : Mr.K.V.Sajeev Kumar
Government Counsel

For R7 : Mr.J.Narayanasamy

ORDER

By consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner herein was appointed as a B.T. Assistant in the 6th respondent School on 01.09.2010 in the vacancy that arose due to promotion of an erstwhile teacher. It is stated that the petitioner was thereafter employed with the 7th respondent School, where she is now working as a B.T. Assistant. The appointment of the petitioner was approved by the District Educational Officer, Chennai, who is the 5th respondent herein, through proceedings dated 26.09.2014, approving the petitioner's appointment with effect from 07.09.2010. By the impugned order dated 26.09.2014, the 5th respondent herein had taken into consideration the objections of the Director of School Education and stated that the petitioner herein, since has not qualified herself in the Teacher Eligibility Test (TET), would not be entitled for the annual increments and other additional allowances and therefore has directed for recovery of these monetary benefits. Aggrieved against the same, the present writ petition has been filed.

3. The learned Senior Counsel appearing for the petitioner submitted that the issue involved in the present writ petition has been considered by an Hon'ble Division Bench of this Court, which was subsequently followed in other cases also, including

the case in R.Kumar and another Vs. State of Tamil Nadu, Department of School Education in W.P.(MD) Nos.8168 and 8169 of 2017 dated 23.09.2019. It is his further submission that the National Counsel of Teacher Education (NCTE) has also amended the minimum qualification for these teachers, through a notification dated 29.07.2011, by which, it is clarified that the teachers appointed, prior to the date of this notification, need not qualify themselves with the TET Examination.

4. Per contra, the learned Government Counsel appearing for the respondents 1 to 6 placed reliance on the averments in the counter affidavit and submitted that the Director of School Education has issued circulars to all Inspecting Officers to the effect that the teachers appointed in these schools prior to 31.03.2019 without teacher's eligibility qualification test, would not be entitled for the monetary benefits. In view of these objections, the present impugned order has been passed, which does not require any interference.

5. Mr.J.Narayanasamy, learned counsel appearing for the 7th respondent adopted the arguments made by the learned Government Counsel.

6. As rightly pointed out by the learned Senior Counsel for the petitioner, the issue with regard to 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 longer res integra. The amended notification issued by the NCTE makes it very clear that the qualification of TET is mandatory only from 29.07.2011. The Division Bench of this Court, in a batch of Writ Petitions, has considered these issues and held that the respondents cannot compel the teachers similarly placed like petitioners to pass in TET examination."

7. The NCTE has also brought an amendment through notification dated 29.07.2011, whereby, the determination of minimum qualification for recruitment of teachers in schools were amended as follows:-

"(IV) For para 5 of the Principal Notification, the following shall be substituted, namely:-

5. (a) Teacher appointed after the date of this notification in certain cases:- Where an appropriate Government or local authority or a school has issued an advertisement to initiate the process of appointment of teachers prior to the date of this Notification, such appointments may be made in accordance with the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time).

(b) The minimum qualification norms referred to in this Notification apply to teachers of Languages, Social Studies, Mathematics, Science, etc. In respect of teachers for Physical

Education, the minimum qualification norms for Physical Education teachers referred to in NCTE Regulation dated 3rd November, 2001 (as amended from time to time) shall be applicable. For teachers for Art Education, Craft Education, Home Science, Work Education, ect., the existing eligibility norms prescribed by the State Government and other school managements shall be applicable till such time the NCTE lays down the minimum qualification in respect of such teachers."

8. Thus, it is clear that the minimum qualification norms would apply only to the teachers whose appointment has been approved on or after 29.07.2011 and since the petitioner's appointment as a B.T.Assistant has been approved with effect from 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.

WEB COPY

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

hvk

To

- 1.The Secretary,
The Government of Tamil Nadu,
Department of School Education,
Fort St. George, Madras - 600 009.
- 2.The Joint Director of Secondary Education,
Directorate of School Education,
DPI Campus, College Road,
Chennai - 600 006.
- 3.The Chairman,
Teachers Recruitment Board,
College Road, Chennai - 600 009.
- 4.The Chief Educational Officer,
The Office of the Chief Educational Officer,
Saidapet, Chennai - 15.
- 5.District Educational Officer (Central Chennai)
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Savitri Ammal Oriental Higher Secondary School,
Sankrit College Campus,
84, Royapettah High Road,
Mylapore, Chennai - 600 004.

+2ccs to M/s.Father Xavier Associates, Sr.31541

+1cc to M/s.J.Narayanaswamy, Advocate Sr.31588

W.P.No.8381 of 2017

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