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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.12.2021

CORAM

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.No.34876 of 2019

M.Poongodi

...Petitioner

Vs.

1. The State of Tamil Nadu,
rep by its Secretary,
School Education Department,
Fort St.George, Chennai - 600 009.
2. The Director of School Education,
DPI Complex, Nungambakkam, Chennai - 06.
3. The Chief Educational Officer,
Thiruvannamalai.
4. The District Educational Officer,
Arani, Thiruvannamalai.
5. The Correspondent,
Arani, Thiruvannamalai District.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus directing the third and fourth respondents to approve the appointment of the petitioner as Post Graduate Assistant Teacher on promotion w.e.f. 03.10.2017 and grant all consequential monetary benefits with all consequential benefits.

For Petitioner ..

Mrs.T.Aananthi

For Respondents..

Mr.L.S.M.Hasan Fizal,
Special Government Pleader
(for R.1, R.3 & R.4)

Mr.G.Abisekh Murthy,
Government Advocate
(for R.2)

No appearance for R.5



ORDER

The petitioner has filed the present Writ Petition praying for issuance of a Writ of Mandamus to direct the third and fourth respondents to approve the appointment of the petitioner as Post Graduate Assistant Teacher on promotion with effect from 03.10.2017 and grant all consequential monetary benefits, with all consequential benefits.

2.The Petitioner was appointed as B.T. Assistant on 10.10.2011 in the regular post. On 03.10.2017, the petitioner was promoted to the post of Post Graduate Assistant.

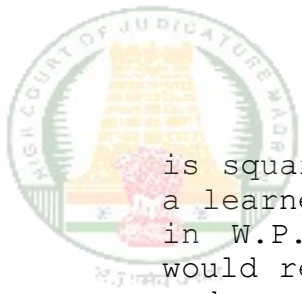
3.According to the petitioner, the requirement of acquiring T.E.T qualification came into force only after issuance of G.O.Ms.No.181, School Education Department, dated 15.11.2011, but, on the other hand, the petitioner was appointed earlier to that in October 2011. Without appreciating the appointment of the petitioner which was prior to the date of issuance of the above said G.O.Ms.No.181, the promotion to the post of PG Assistant has not been approved on the basis of the fact that at the time of her original appointment, she was not qualified in TET as per the said G.O. Hence, the petitioner is constrained to file the present Writ Petition for the relief stated supra.

4. According to the learned counsel for the petitioner, her promotion to the post of PG Assistant, had not been approved on the basis of the fact that at the time of her original appointment, she was not qualified in TET, as per G.O.Ms.No.181, School Education Department, dated 15.11.2021.

5. Further, it is the submission of the learned counsel for the petitioner that the petitioner has been appointed earlier to passing of the said G.O.Ms.No.181 and therefore, there is no mandatory requirement for the petitioner to qualify in TET. This fact has also been acknowledged by the learned Government Advocate appearing for the second respondent and the learned Additional Government Pleader appearing for the respondents 1, 3 and 4.

6.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 the 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 above Writ Petitions in favour of the petitioner.

7.Further, 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.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;

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"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



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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



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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. Consequently, connected WMP is closed.

The learned counsel has also referred to few other decisions covering the issue in favour of petitioner herein.

9. Mr.Abishek Murthy, learned Government Advocate appeared on behalf of the second respondent and Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader appearing for the respondents 1, 3 and 4 stated that they would not have any quarrel with the issue being covered by the above decisions of this Court.

10.In view of the same, the Writ Petition is allowed. There shall be a direction to the respondents 3 and 4 to approve the appointment of the petitioner in the Post-Graduate Assistant Teacher on promotion with effect from 03.10.2017 and grant all consequential monetary benefits.

11.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 web-copy of this order, whichever is earlier. No costs.

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Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

mrm/tri/cs

To

1. The Secretary,
The State of Tamil Nadu,
School Education Department,
Fort St.George,
Chennai - 600 009.
2. The Director of School Education,
DPI Complex, Nungambakkam, Chennai - 06.
3. The Chief Educational Officer,
Thiruvannamalai.
4. The District Educational Officer,
Arani, Thiruvannamalai.

+lcc to the Government Pleader, S.R.No.68691

W.P.No.34876 of 2019

SMI (CO)
RGA(24/01/2022)