



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P (MD) No.5894 of 2021

and

W.M.P (MD) No.4621 of 2021

WEB COPY

D.Mary Samathanam

...Petitioner

Vs.

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

2.The District Educational Officer,
Aruppukottai, Virudhunagar District.

3.The Correspondent,
CSI Girls Higher Secondary School,
Aruppukottai, Virudhunagar District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorarified Mandamus calling for the records relating to impugned order in Na.Ka.No.1787/A2/20 dated 11/09/2020 of the 1st respondent herein and quash the same and consequently direct the respondents 1 and 2 herein to award annual increments , incentive , surrender leave benefits and other attended benefits to the petitioner from the date of petitioners appointments namely 01/09/2014 with all attendant benefits including pay fixation and allowance.

For Petitioner : Mr.Pon Ramkumar.T

For Respondents : Mr.N.Shanmugaselvam, for R1&R2
Additional Government Pleader

O R D E R

The petitioner herein is a B.T. Assistant under the 3rd respondent school and in view of the proceedings of the Chief Educational Officer, Virudhunagar the 3rd respondent School was approved to be a minority institution. The petitioner's claim for conferment of yearly increments and other service benefits from his date of appointment has been rejected by the 2nd respondent herein on the ground that the petitioner had not qualified herself in the Teacher Eligibility Test (TET). The requirement of a pass in TET came up for consideration in many cases before this Court, wherein this Court held that such a requirement was not mandatory for the purpose of extending the service and monetary benefits. One such order is in the case of **Banu Vs State of Tamil Nadu represented by its Secretary, School Education Department** in W.P (MD) No.1336 of 2019, etc., dated 05.01.2020, which reads as follows:

"3. The issue involved in these writ petitions



pertains to Teachers, who hail from Non-Minority School. The only issue involved in these writ petitions is as to whether the Teacher Eligibility Test (TET) qualification for the Teachers is a mandatory condition for consideration of disbursement of the yearly increment as well as other monetary and service benefits.

4.The aforesaid issue is no more res integra. The provisions of the 'Right of Children to Free and Compulsory Education Act' (in short 'RTE Act') was already put under challenge, which came to be upheld by the Hon'ble Apex Court holding that the provisions of the RTE Act are not applicable to the minority institution. Following the same, the Hon'ble Division Bench of this Court, in the case of **Secretary to Government, Government of Tamil Nadu, Education Department, Fort St.George, Chennai Vs., S.Jeyalakshmi** reported in (2016) 5 CTC 639 had held that the provisions of the RTE Act are not applicable to the minority Aided School, insofar as it relates to Teachers appointed prior to 15.11.2011. The Government in G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 had specified that the teachers, who do not possess the minimum qualification of pass in the TET, shall acquire the same within a period of five years. While construing G.O.Ms.No.181, a learned Single Judge of this Court, in a batch of writ petitions in W.P(MD).No.5626 of 2017 etc., dated 08.03.2019, had held that, the cut off date for acquiring the TET qualification would be the date of notification for appointment and that, the Teachers who were appointed prior to that date need not pass the TET examination. The relevant portion of the said order reads as follows:-

'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 and the same was amended with effect from 29.07.2011. As per the said NCTE 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. Thus, it could be inferred that the cut off date for acquiring the TET qualification is 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. '

In the instant case, all the Teachers have been appointed prior to 15.11.2011 and by applying the ratio laid down by this Court in the aforesaid order dated 08.03.2019 and by taking into consideration that these teachers were also appointed prior to the notification of their appointments, it has to be held that, the requirement of a pass in TET examination, is not necessary. As such, denial of the service and monetary benefits on the ground that the concerned Teachers have not passed the TET examination is not sustainable. By applying the ratio laid down in the aforesaid decision, this Court is of the affirmed view that the petitioners would be entitled for disbursement of all the service and monetary benefits, without reference to their non-passing of the TET examination, from the date of their appointment."

2.The aforesaid order is self explanatory. The proceedings impugned in this writ petition is only a communication from the Chief Minister's Special Cell and it is not an order.

3.At this juncture, the learned Additional Government Pleader appearing for the respondents submitted that though the petitioner herein has been disqualified from claiming service and monetary benefits on the ground that she has not qualified in TET, there can be other factors, which might require consideration for the purpose of extending other benefits.

4.In this background the 3rd respondent herein is granted liberty to re-present the application to the 2nd respondent seeking for extension of service and monetary benefits insofar as the petitioner herein is concerned and the 2nd respondent shall consider the same on its own merits without reference to her failure to qualify in the TET and pass appropriate orders within a period of twelve weeks therefrom.



5.The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

dsk

To

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

2.The District Educational Officer,
Virudhunagar , Virudhunagar District.

3.The Correspondent,
CSI Girls Higher Secondary School,
Aruppukottai, Virudhunagar District.

+1 CC to M/s.SPL GP (SR-12278[F] dated 18/03/2021)

+1 CC to M/s.T.PON RAMKUMAR, Advocate (SR-13391[F] dated 24/03/2021

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RK (24.04.2021) 4P 6C