



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2021

CORAM:

THE HONOURABLE DR JUSTICE ANITA SUMANTH

W.P. (MD) No.131 of 2018

and

W.M.P (MD) No.139 of 2018

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K.Nagasathiyan

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

3.The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 600 006.

4.The Chief Educational Officer,
Chief Educational Office,
Aranmanai West Street,
Ramanathapuram - 623 501

5.The District Educational Officer,
District Educational Office,
R.S.Govt. Hr.Sec.School Campus,
Paramakudi 623 707.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of declaration to declare that passing of Teacher Eligibility Test not required for the petitioner appointed prior to issue of G.O.Ms.No.181 School Education (C2) Department dated 15.11.2011 and G.O.Ms.No.90 School Education (Q) Department dated 28.08.2012 and consequently to forbear the respondents and their subordinates to insist passing of Teacher Eligibility Test for the petitioner to continue in service with all benefits.

For Petitioner
For Respondents

: Mr.F.Deepak
: Mr..K.S.Selvaganesan
Standing counsel for State



O R D E R

Heard, Mr.F.Deepak, learned counsel for the petitioner and Mr.K.S.Selvaganesan, learned Government Pleader appearing for the respondents.

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2. The prayer of the petitioner is for a declaration to the effect that passing of Teacher Eligibility Test (TET) is not required for the petitioner, a teacher appointed prior to issue of G.O.Ms.No.181 School Education (C2) Department dated 15.11.2011 and G.O.Ms.No.90 School Education (Q) Department dated 28.08.2012. Both learned counsel would concur upon the position that this issue stands decided by a plethora of decisions of the Division Benches of this Court.

3. In W.A(MD)No.1437 of 2016 dated 25.01.2016 in the case of K.Solomon Jeyaraj Vs. The Secreary, Department of School Education and 4 others, a Division Bench of this Court held that the operation of the aforesaid two Government Orders would only be prospective. The Bench cited and applied the ratio of the orders of this Court in the case of the Secretary to Government, Government of Tamil Nadu, Chennai and Others Vs.S.Jeyalakshmi and others (2016 (5) CTC 639) to the effect that teachers employed in aided and unaided minority schools need not possess TET qualification. The operative portion of the judgment has been extracted in paragraph No.7 of the decision of the Division Bench as follows:

"7. It is relevant to extract the following paragraphs of the judgment of the Division Bench of this Court (cited supra):

52. However, the Government, before issuing G.O.Ms.No.181 dated 15.11.2011, lost sight of one important fact, namely imposition of a condition on the Teachers, who were appointed prior to the issue of G.O., in non minority and minority Schools, both aided and unaided, to qualify themselves with TET within a period of five years, in order to continue in service, would cause great hardship to them. Moreover, if the Teachers who have put in more number of years of service, could not pass TET within five years, their continuation in service would be in jeopardy. Further, it is seen that the percentage of pass in the TET examination conducted in 2012 and 2013 was very minimal.

....

56. We are, therefore, of the considered view that the Government may seek a clarification from the



NCTE, in the light of what is stated in the preceding paragraph, whether the prescription of minimum qualification of TET can be made applicable prospectively for the Teachers who were appointed subsequent to the date of the issue of G.O., in both non minority and minority institutions and not retrospectively as the same would cause undue hardship to the Teachers who have been serving for a quite a long time.

...

58. In our opinion, non qualifying in TET by the Teachers already in service should not defeat the object of the Government to provide quality and standard education and therefore, the Government may, in the alternative, conduct a refresher course and also some interactive sessions during annual vacation, in order to ensure and enhance the quality of education.

...

60. In the light of the above, we are of the view that the Government cannot insist upon the minority institution, both aided or unaided, to abide by any Regulation framed under the provisions of the RTE Act. Therefore, we hold that G.O.Ms.No.181, School Education (C2) Department dated 15.11.2011 issued by the Government of Tamil Nadu, is not applicable to the minority institutions. Similarly, G.O.Ms.No.76 dated 18.3.2015 issued by the Government of Puducherry, is also not applicable to the minority institutions.

...

62. However, keeping in mind the larger interest in which the Government has issued the above G.Os., this Court feels that the minority institutions may also consider conducting a refresher course and also some interactive sessions to all the Teachers during annual vacation, in order to ensure and improve the quality of Teachers."

8. In the light of the above said judgment, the Writ Appeal is allowed and the impugned order, which was subject matter of challenge in W.P.(MD)No.15952 of 2015 as well as the impugned order passed in W.P.(MD)No.15952 of 2015 dated



14.07.2016 are set aside. However, in the circumstances of the case, there shall be no order as to cost."

4. The Writ Appeal thus ultimately came to be allowed and the impugned order in that case was set aside. The decision of the Division Bench in *K.Solomon Jeyaraj* case has been followed in the following decisions:

i) W.A(MD) No.1090 of 2017 dated 26.02.2018 (In *K.Anita Vs. the State of Tamilnadu Rep by its Secretary, Department of School Education and 4 others*)

ii) W.P(MD) No.11599 of 2019 dated 24.10.2019 (*R.Kanimozhi Vs.The State of Tamil nadu, represented by its Principal Secretrkary to Government, School Education Department*)

iii) W.A(MD) No.1365 of 2019 dated 26.11.2019 (in *The State of Tamil Nadu represented by its Secretary to Government, Secretariat, Fort St.George, Chennai -9 and 2 others Vs.P.Loveline and another*).

5. The aforesaid decisions of the Division Benches have become final and have not been challenged further. In the light of the aforesaid decisions, the operation of the Government Orders in G.O.Ms.No.181 School Education (C2) Department dated 15.11.2011 and G.O.Ms.No.90 School Education (Q) Department dated 28.08.2012 would only be prospective and appointments made prior to the dates of the Government Orders as aforesaid would not be subject to the requirement of passing the Teacher Eligibility Test.

6. Incidentally, counter affidavit filed by the District Educational Officer/ the fifth respondent appears to indicate that though appointment of the petitioner was on 24.10.2011, the same was approved only on 12.01.2012 subsequent to the date of the Government Orders. However, the fifth respondent has lost sight of the fact that the approval was granted on 12.01.2012 relates back to the date of original date of appointment i.e 24.10.2011 prior to the date of the aforesaid Government Orders.

7. In fine, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

CM



To

1.The Principal Secretary to Government,
State of Tamil Nadu,
School Education Department,
Secretariat, Fort St. George,
Chennai - 600 009.

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Paramakudi 623 707.

+1 CC to M/s.F.DEEPAK, Advocate (SR-34313[F] dated 12/11/2021)

+1 CC to M/s.SPL.GP (SR-34252[F] dated 12/11/2021)

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and W.M.P (MD) No.139 of 2018
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KMV (CO)
RS/SKN (23.11.2021) 5P 8C