



W.P.No.12584 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.08.2022

Delivered on: 28 .10.2022

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.12584 of 2022
and WMP.Nos.12037 and 12038 of 2022

C.Bharani

...Petitioner

-Vs-

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

2.The Commissioner,
School Education,
DPI Campus, Chennai-600 006.

3.The Joint Director (Personnel),
School Education,
DPI Campus, Chennai-600 006.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents to implement the amendment to Rule 3 of the Tamil Nadu School Education Subordinate Services, vide G.O.Ms.No.7, School Education dated 20.01.2020 by taking into account that it is with retrospective effect from 19.07.2007 by preparing the number of vacancies for each year from the



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year 2011 for the purpose of filling up 2% of the vacancies in the post of B.T. Assistants by recruitment by transfer from among the qualified non teaching staff and accordingly, call for the names of the petitioners and grant them with appointment to the post of B.T. Assistants by promotion.

For Petitioner : Mrs.Dhakshayanireddy

For Respondents : Mr.S.Silambanan,
Additional Advocate General
assisted by
Mr.T.Chezhiyan,
Additional Government Pleader

ORDER

The Writ Petition is filed for a Mandamus directing the respondents to implement the amendment to Rule 3 of the Tamil Nadu School Education Subordinate Services, vide G.O.Ms.No.7, School Education dated 20.01.2020 by taking into account that it is with retrospective effect from 19.07.2007 by preparing the number of vacancies for each year from the year 2011 for the purpose of filling up 2% of the vacancies in the post of B.T. Assistants by recruitment by transfer from among qualified non teaching staff and accordingly, call for the names of the petitioner and grant him appointment to the post of B.T. Assistants by promotion.

2. The petitioner is working as Non-Teaching staff in the Education



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Department and he is an undergraduate with B.Ed., degree and hence, entitled for appointment to the post of B.T. Assistants. According to the petitioner, several years there was a demand from non-teaching staff of the Education Department to consider them for appointment to the teaching post, in as much as many of them were qualified by languishing. The Government considered the request of the non-teaching staff and accordingly, issued G.O.Ms.No.175, School Education (M2) Department dated 19.07.2007 by providing 2% of vacancies to be filled up by promotion from amongst non-teaching staff of the Education Department by recruitment by transfer. In the same manner, 2% of the vacancies in the post of PG Assistants to be filled by promotion were also set apart to be filled from the qualified teaching staff of the Education Department. The petitioner further states that the Government Orders provided that the first consideration would be of qualified Superintendents, Assistants and then Junior Assistants.

3. According to the petitioner, over a period of 3 to 4 years, the non-



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teaching staff were recruited by transfer to the teaching posts and from the year 2011 onwards, no recruitment took place by recruitment by transfer vide G.O.Ms.No.21 dated 02.11.2011 on the premise that there was no amendment to the service Rules providing for 2% reservation for Non-Teaching Staff. Several writ petitions were filed and finally the Government issued amendment to the Service Rules, vide G.O.Ms.No.7, School Education Department dated 20.01.2020, by amending Tamil Nadu School Education Subordinate Service Rules 2% of the vacancies of BT Assistants to be filled up by recruitment by transfer from among Superintendents, Assistants and Junior Assistants. The said amendment to Rule 3 of the Service Rules was made with retrospective effect from 19.07.2007, i.e., from the date of issuance of G.O.Ms.No.175.

4. According to the petitioner so far as the PG Assistants are concerned, the respondents have filled up backlog vacancies and after completing the said process, they have rightly considered the appointment by transfer from amongst non-teaching staff of 2% and then, filled up the vacancies by promotion. As far as BT Assistants are concerned, the



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respondents have not sought for names of qualified candidates for appointment from among non-teaching staff. In other words, without filling up the backlog vacancies, as was done with PG Assistants, the respondents are first resorting to filling up the post of BT Assistants by promotion and in such event, individuals like the petitioner will be greatly affected, in as much as the respondents have not filled up 2% vacancies by recruitment by transfer from among non-teaching staff for over a period of 8 years, as a result of which over 600 posts have to be filled up. Therefore, according to the petitioner, if the respondents are permitted to fill up the present vacancies by promotion, qualified individuals like the petitioner can never be recruited by transfer and they will be put to irreparable loss and hardship.

5. According to the petitioner, insofar as the qualification required for the post of B.T. Assistant on recruitment by transfer is concerned, as per the Service Rules, Teachers Eligibility Test [TET] has been prescribed only for direct recruitment, promotion and not for recruitment by transfer and hence the petitioner is fully qualified for the post of BT Assistant. A representation was also submitted through the Association of Non Teaching Staffs dated



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13.03.2021 seeking implementation of 2% reservation for recruitment by transfer and since the same has not been considered, the petitioner has filed the instant writ petition with the aforesaid prayer.

6. Mrs.Dakshayani Reddy, learned counsel for the petitioner contended that due to retrospective amendment to the Service Rules, year-wise vacancies have to be drawn up from the year 2007 and qualified candidates for each year have to be appointed first, however, individuals like the petitioner has been discriminated in as much as for the past 10 years, there has been no recruitment by transfer for the post of BT Assistants from among non-teaching staff in the 2% vacancies set apart for them and therefore, prays for appropriate orders.

7. Heard Mr.S.Silambanan, learned Additional Advocate General for the respondents and also perused the materials on record.

8. The primordial contention of the petitioner is that though the



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amendment has been made to Rule 3 of the Tamil Nadu School Education Subordinate Service, vide G.O.Ms.No.7, School Education Department dated 20.01.2020 giving retrospective effect from 19.07.2007 for the purpose of filling up 2% of the vacancies in the post of BT Assistants by recruitment by transfer from among qualified non-teaching staff, the said amendment has not been implemented from the year 2011 and as a result of the same, nearly 600 vacancies have cropped up and now the respondents sought to fill the said vacancies by way of promotion, on such event many candidates like the petitioner will be put to grave hardship and irreparable loss and therefore, they seek for filling up of backlog vacancies under 2% reservation first on recruitment by transfer and thereafter to resort to recruitment by promotion. As regards the qualification is concerned, the petitioner has relied upon Gazette Notification dated 30.01.2020 wherein the State Government has issued the Special Rules for the Tamil Nadu School Educational Subordinate Service, vide G.O.Ms.No.13, School Education (SE 3(1)] Department dated 30.01.2020, wherein the qualification of TET is prescribed only for direct recruitment by promotion and not for recruitment by transfer and therefore, TET is not mandatory for them.



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9. It is to be pointed out at this juncture that Right of Children to Free and Compulsory Education Act, 2009 [Central Act] came into force on 01.04.2020 and Section 23 of the Act stipulates that teachers, who are in service at the commencement of the Act, shall possess the minimum qualification of pass in TET and the State Government has also framed Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011 and more particularly Rule 16 stipulating that it is mandatory for the teachers to acquire such minimum qualification of pass in TET within a period of five years from the commencement of the Act. When there is a clear stipulation that pass in TET is mandatory for all the teachers, as laid down under RTE Act, 2009 as well as RTE Rules, 2011, the contention of petitioner by relying upon Special Rules under the Tamil Nadu School Educational Subordinate Service cannot be countenanced. Therefore, the respondents have to consider for recruitment by transfer under 2% reservation by prescribing the qualification of TET under RTE Act, 2009 as well as the Rules framed by the State Government.



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10. According to the petitioner, Non Teaching Staff Association has made a representation to the respondents on 13.03.2021 for filling up the backlog vacancies under 2% quota for the post of BT Assistants by recruitment by transfer from non-teaching staff and the said representation is pending with the respondents and therefore, he has filed the instant writ petition.

11. In the light of the above, this Court is inclined to pass the following order:

(i) The petitioner shall make a fresh individual representation to the respondents with a period of one week from the date of receipt of a copy of this order;

(ii) The petitioner shall also furnish a copy of the representation submitted by the Non-Teaching Staff Association dated 13.03.2021 along with this order to the respondents and the same shall be considered by the respondents on its own merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.



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12. The Writ Petition stands disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

28.10.2022

Index: Yes/No

Internet: Yes/No

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To

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

2.The Commissioner,
School Education,
DPI Campus, Chennai-600 006.

3.The Joint Director (Personnel),
School Education,
DPI Campus, Chennai-600 006.

D.KRISHNAKUMAR, J.



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Order in
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