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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 23853 of 2019
and
W.M.P. No. 23700 of 2019

R.Dhivya

...Petitioner

-vs-

1. The Director of School Education,
DPI Campus,
College Road,
Chennai - 600 006.
2. The Chief Educational Officer,
Tiruvarur District,
Tiruvarur.
3. The District Educational Officer,
Tiruvarur Education District,
Tiruvarur.
4. The Block Educational Officer,
Valangaiman Block,
Tiruvarur District.
5. The Secretary,
Saraswathi Aided Primary School,
Eari - 612 701,
Valangaiman Taluk,
Tiruvarur District.
6. Teachers Recruitment Board,
Rep. by its Chairman,
College Road,
Nungambakkam,
Chennai - 600 006.
7. Union of India,
Rep. by its Secretary to Government,
Department of School Educational and Literacy,
Ministry of Human Resource Development,
217-C, Shastri Bhawan,
New Delhi - 110 001.



8. National Council for Teacher Education (NCTE),
Rep. by its Member Secretary,
G-7, Sector-10, Dwarka,
New Delhi - 110 075.

...Respondents

(R6 to R8 are suo-motu impleaded
vide order dated 04.04.2022
IN WP No.23853/2019)

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, forbearing the Respondents from insisting passing of Teacher Eligibility Test (TET) for the Petitioner appointed as Secondary Grade Teacher in 5th Respondent School on 15.10.2011 prior to G.O. Ms. No. 181, School Education Department dated 15.11.2011 and consequently direct the Respondents to continue to make payment of salary including other service benefits.

For Petitioner : Mr. G.Sankaran

For Respondents : Mr. Silambannan,
Additional Advocate General assisted by
Mrs. C.Sangamithirai,
Special Government Pleader (for R1 to R4)

No appearance (for R5)

Mr. R.Neelakandan,
Additional Advocate General assisted by
Mr. C.Kathiravan,
Special Government Pleader (for R6)

Mr. R.Sankaranarayanan,
Additional Solicitor General of India
assisted by Mr. V.Ashok Kumar,
Central Government Standing Counsel
(for R7)

Mr. Su.Srinivasan, Standing Counsel (for R8)

O R D E R

Heard Mr. G.Sankaran, Learned Counsel for the Petitioner, Mr. Silambannan, Learned Additional Advocate General assisted by Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the First to Fourth Respondents, Mr. R.Neelakandan, Learned Additional Advocate General assisted by Mr. C.Kathiravan, Learned Special Government Pleader appearing for the Sixth Respondent, Mr. R.Sankaranarayanan, Learned Additional Solicitor General of India General assisted by Mr. V.Ashok Kumar, Learned Central Government Standing Counsel appearing for the Seventh Respondent and Mr. Su.Srinivasan, Learned Standing Counsel appearing for the Eighth Respondent and perused the materials placed on record, apart from the pleadings of the parties.



2. The Fifth Respondent is a Private School receiving grant-in-aid from the Government of Tamil Nadu for payment of salary to its teachers and the Petitioner claims to have joined on 15.10.2011 as Secondary Grade Teacher in that School, where she is continuing to work from then onwards. It is the case of the Petitioner that since her appointment was made prior to G.O. (Ms).No. 181, School Education (C2) Department dated 15.11.2011 issued by the Government of Tamil Nadu, the Respondents cannot insist that she must pass the Teachers Eligibility Test (hereinafter referred to as 'the TET' for short) for holding the said post and has filed this Writ Petition in that regard. It is further claimed that the First to Third Respondents would have to make payment of her salary including other service benefits to her.

3. In order to examine the claim made by the Petitioner, it would be appropriate to refer to the relevant legal provisions governing the requirement of passing the TET for appointment as a teacher.

4. It has been provided in Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as 'the RTE Act' for short) as follows:-

"23. Qualifications for appointment and terms and conditions of service of teachers.-(1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.

[Provided further that every teacher appointed or in position as on the 31st March, 2015, who does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of four years from the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017.]¹.



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(3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed.

¹ Inserted. by Act 24 of 2017, s. 2 (w.e.f. 1-4-2015)."

5. The National Council for Teacher Education (hereinafter referred to as 'the NCTE' for short), which is the Academic Authority in terms of Section 23(1) of the RTE Act, has issued the notification dated 23.08.2010 (as substituted by notification dated 29.07.2011) in the exercise of the said powers laying down the minimum qualifications for a person to be eligible for appointment as a teacher in Class I to VIII in a School referred to in Section 2(n) of the RTE Act with effect from the date of that notification, as follows:-

"1. Minimum Qualifications:-

(i) Classes I - V

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Elementary Education (by whatever name known)

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2-year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure) Regulations, 2002.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor of Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 20-year Diploma in Education (Special Education)

OR

Graduation and two year Diploma in Elementary Education (by whatever name known)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

(ii) Classes VI-VIII

(a) Graduation and 2-year Diploma in Elementary Education (by whatever name known)

OR

Graduation with at least 50% marks and 1-year Bachelor in Education (B.Ed.)

OR

Graduation with at least 45% marks and 1-year Bachelor in Education (B.Ed.), in accordance with



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the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor in Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year B.A./B.Sc.Ed. Or B.A.Ed./B.Sc.Ed.

OR

Graduation with at least 50% marks and 1-year B.Ed. (Special Education)

AND

(b) Pass in Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

....

4. Teacher appointed before the date of this Notification:- The following categories of teachers appointed for Classes I to VIII prior to date of this Notification need not acquire the minimum qualifications specified in Para (1) above:-

(a) A teacher appointed on or after the 3rd September, 2001 i.e. the date on which the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time) came into force, in accordance with that Regulation.

Provided that a teacher of class I to V possessing B.Ed qualification, or a teacher possessing B.Ed (Special Education) or D.Ed (Special Education) qualification shall undergo an NCTE recognized 6 - month special programme on elementary education.

(b) A teacher of class I to V with B.Ed qualification who has completed a 6 - month Special Basic Teacher Course (Special BTC) approved by the NCTE.

(c) A teacher appointed before the 3rd September, 2001, in accordance with the prevalent Recruitment Rules.

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).

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(b) The minimum qualification norms referred to in this Notification shall 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 of Art Education, Craft Education, Home Science, Work Education, etc. the existing eligibility norms prescribed by the State Governments and other school managements shall be applicable till such time the NCTE lays down the minimum qualification in respect of such teachers."

6. The Government of Tamil Nadu by G.O. (Ms) No. 181, School Education (C2) Department 15.11.2011 in clause 7(iii) has designated the Teachers Recruitment Board as the Nodal Agency for conducting the TET in the State of Tamil Nadu and in its annexure, the guidelines have been issued for the same. In another Governmental Order in G.O. (Ms) No. 90, School Education (Q) Department 28.03.2012, it has been provided as follows:-

" In the G.O. (Ms) No. 181, School Education (C2) Department, dated 15.11.2011, the Government have changed the recruitment policy for recruitment of Secondary Grade Teachers and Graduate Assistants. Henceforth, the recruitment will be based on written examination, namely, Teacher Eligibility Test in accordance with the guidelines issued by the National Council for Teacher Education. The qualifying candidates of the Teacher Eligibility Test will be recruited based on marks, communal rotation and certificate verification.

2. However, with respect to the recruitment of Secondary Grade Teachers, the state-wide seniority in employment exchange registration will continue till the disposal of the Special Leave Petition filed in the Supreme Court."

7. It would emerge from a combined reading of the aforesaid legal provisions that in terms of Section 23 of the RTE Act, particularly the first and second proviso to clause (2) thereof along with Paras 1(i)(b) and 1(ii)(b) of the notification dated 23.08.2010 (as substituted by notification dated 29.07.2011) issued by the NCTE, pass in the TET is an essential requirement for appointment of teachers made from



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23.08.2010 onwards. It must be noticed here that though Paras 1, 3 and 5 of the notification dated 23.08.2010 issued by the NCTE have been substituted by another notification dated 29.07.2011, the effective date of its commencement from 23.08.2010 has remained unchanged. Moreover, when the requirement to pass the TET in Paras 1(i)(b) and 1(ii)(b) exists in the notifications dated 23.08.2010 and 29.07.2011, it is far fetched to construe that the passing of the TET would not be applicable for those who had been appointed during the period from 23.08.2010 to 29.07.2011 as teachers. This view taken is fortified by the decision of this Court in K.Vasudevan -vs- Principal Secretary to Government, School Education Department (Order dated 07.04.2022 in W.P. No. 28284 of 2021 etc., batch).

8. It is, no doubt, true that the Teachers Recruitment Board as the Nodal Agency in the State of Tamil Nadu had conducted the TET for the first time only on 12.07.2012 from which it could be inferred that no person who had passed the TET would have been available to be appointed during the period from 23.08.2010 to 12.07.2012 as a teacher. It is in that backdrop that the first and second proviso to clause (2) of Section 23 of the RTE Act enables those teachers, who were appointed during that period, to pass the TET by 31.03.2019 for their continuance in the post.

9. Though there is a requirement in the Notification No. 76-4/2010/NCTE/ Acad dated 11.02.2011 published by the NCTE that the TET should be conducted atleast once every year and there will be no restriction on the number of attempts a person can take for acquiring a TET Certificate and a person who has qualified the TET may also appear again for improving his/her score, it has been brought to notice that the TET has not been conducted annually in the State of Tamil Nadu except on 14.10.2012, 17.08.2013, 18.08.2013, 29.04.2017, 30.04.2017, 08.06.2019 and 09.06.2019. However, it cannot mean that merely because the TET had not been conducted in the years 2014, 2015, 2016 and 2018, the persons appointed during the period from 23.08.2010 to 12.07.2012 have to be exempted from passing the TET, particularly when it is not in dispute that the TET has been conducted during the years 2012, 2013 and 2017 and they have had sufficient opportunity to prepare and appear for the TET during the said period. It has to be recapitulated here that the Division Bench of this Court in State of Tamil Nadu -vs- R.Arivazhagan (Order dated 24.01.2017 in W.A. No. 1126 of 2016 etc., batch) had taken note of those aspects of the matter and held as follows:-

"42. Accordingly, to meet the ends of justice, the writ appeals and the writ petitions are disposed with the following directions:-



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(i) The Teachers herein, who have been appointed subsequent to the issuance of the Government Order, are granted one opportunity to appear for the Teacher Eligibility Test to be conducted by the Teachers Recruitment Board and in the event of their passing in the Teacher Eligibility Test, their appointments shall be approved else, they have not other option but to quit the service/ousted from service;

(ii) Till the results are published, the Government shall pay the salary to the Teachers, who are in service of the aided institutions, for the service rendered by them and in the cases where salary was not paid the same shall be paid along with arrears, if any, forthwith;

....

(v) The Teachers Recruitment Board is directed to take note of the above observations and to issue notification for conducting Teacher Eligibility Test on or before the end of February 2017, indicating the date of exam to be either in the last week of March 2017 or in the first week of April 2017."

10. It is not possible to accept the contention that the requirement to pass the TET could not be made applicable in the State of Tamil Nadu prior to G.O. (Ms) No. 181, School Education (C2) Department 15.11.2011 and G.O. (Ms) No. 90, School Education (Q) Department 28.03.2012 issued by the Government of Tamil Nadu. The said Governmental Orders which have been passed by the Government of Tamil Nadu for the sake of implementing the statutory mandate in Section 23 of the RTE Act along with the notification dated 23.08.2010 issued by the NCTE cannot be viewed in isolation so as to dilute the avowed object of improving the standards of education in larger public interest.

11. The appointment of the Petitioner as teacher in the School of the Fifth Respondent has been made on 15.10.2011 (which is after 23.08.2010) and there is nothing to show that it does not fall under the exempted category of cases where the process of appointment of teachers had been initiated prior to 23.08.2010 as stipulated in clause 5(a) of the notification dated 23.08.2010 issued by the NCTE. It is informed by the Respondents that the Petitioner has not passed the TET till the extended time which lapsed on 31.03.2019. There had been another TET conducted on 08.06.2019 and 09.06.2019 and the Petitioner has not passed the same even then. In such circumstances, the Petitioner is not entitled to the relief sought in the Writ Petition.



In the upshot, the Writ Petition is dismissed.
Consequently, the connected Miscellaneous Petition is closed.
No costs.

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Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Director of School Education,
DPI Campus,
College Road,
Chennai - 600 006.
2. The Chief Educational Officer,
Tiruvarur District,
Tiruvarur.
3. The District Educational Officer,
Tiruvarur Education District,
Tiruvarur.
4. The Block Educational Officer,
Valangaiman Block,
Tiruvarur District.
5. The Chairman,
Teachers Recruitment Board,
College Road, Nungambakkam,
Chennai - 600 006.
6. The Secretary to Government of India,
Department of School Educational and Literacy,
Ministry of Human Resource Development,
217-C, Shastri Bhawan,
New Delhi - 110 001.
7. The Member Secretary,
National Council for Teacher Education (NCTE),
G-7, Sector-10, Dwaraka,
New Delhi - 110 075.

+1cc to Government Pleader SR. No. 30638

W.P. No. 23853 of 2019