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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. 26716 of 2017

and

W.M.P. Nos. 28445 to 28447 of 2017

E.Suganthi

... Petitioner

-vs-

1. The Principal Secretary/The State Project Officer,
Sarva Shiksha Aayan (SSA),
Chennai - 600 006.
2. The Additional Chief Educational Officer (SSA),
Villupuram,
Villupuram District.
3. The Secretary,
KIRUPALAYA Charitable Trust,
Opposite to Sacred Heart School,
East Pondi Road, Villupuram,
Villupuram District.
4. The Secretary,
AWARD Charitable Trust,
1/1 Periyar Nagar,
Thirukovlur Road, Thiyagadurgam,
Thiyagadurgam Post,
Kallakurichi Taluk,
Villupuram District.
5. Teachers Recruitment Board,
Rep. by its Chairman,
College Road,
Nungambakkam,
Chennai - 600 006.
6. 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.



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

... Respondents

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(R5 to R7 are suo motu impleaded vide order dated 26.04.2022)

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned advertisement published in the Tamil Daily Dhinathanthi on 21.09.2017 on the file of the Third Respondent and quash the same as illegal and consequently direct the Respondents to permit the Petitioner to continue in service as B.T. Assistant (Tamil) upto 31st March 2019 without TET enabling the Petitioner to acquire TET within such time.

For Petitioner : Mr. G.Sankaran

For Respondents: Mr. Silambannan,
Additional Advocate General assisted by
Mrs. C.Sangamithirai,
Special Government Pleader (for R1 & R2)

No appearance (for R3 & R4)

Mr. R.Neelakandan,
Additional Advocate General assisted by
Mr. C.Kathiravan,
Special Government Pleader (for R5)

Mr. R.Sankaranarayanan,
Additional Solicitor General of India
assisted by Mr. V.Ashok Kumar,
Central Government Standing Counsel
(for R6)

Mr. Su.Srinivasan, Standing Counsel (for R7)

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 and Second Respondents, Mr. R.Neelakandan, Learned Additional Advocate General assisted by Mr. C.Kathiravan, Learned Special Government Pleader appearing for the Fifth Respondent, Mr. R.Sankaranarayanan, Learned



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Additional Solicitor General of India assisted by Mr. V.Ashok Kumar, Learned Central Government Standing Counsel appearing for the Sixth Respondent and Mr. Su.Srinivasan, Learned Standing Counsel appearing for the Seventh Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner claims to have been appointed as B.T. Assistant (Tamil) to teach in one of the Schools under the Sarva Shiksha Abiyan Scheme, which is funded by the Central and State Governments and managed by a Non-governmental Organization. It is the case of the Petitioner that though her appointment has been made on 10.06.2013, which was after the introduction of the Teachers Eligibility Test (hereinafter referred to as 'the TET' for short) for holding the said post, she is entitled to continue in service till 31.03.2019 and acquire such qualification by that period, but the Respondents have published an advertisement dated 21.09.2017 in the Tamil Daily Newspaper 'Dina Thanthi' calling for applications as if a vacancy has arisen in the post held by her. The said action of the Third Respondent is challenged in this Writ Petition with a direction to the Respondents to permit the Petitioner to continue in service as B.T. Assistant (Tamil) upto 31.03.2019 without passing the TET so as to enable her to acquire such qualification within that period.

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.

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[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.

(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.

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(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 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)



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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).

(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. It would emerge on a reading together of the aforesaid legal provisions that pass in the TET is an essential requirement for appointment of teachers made from 23.08.2010 onwards. 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.

7. Though there is a mandate 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:-

(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."

8. 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.

9. The appointment of the Petitioner as teacher in one of the Schools under the Sarva Shiksha Abiyan Scheme has been made on 10.06.2013 (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 Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

vjt

To

1. The Principal Secretary/The State Project Officer,
Sarva Shiksha Aiyam (SSA),
Chennai - 600 006.
2. The Additional Chief Educational Officer (SSA),
Villupuram,
Villupuram District.
3. The Chairman,
Teachers Recruitment Board,
College Road,
Nungambakkam,
Chennai - 600 006.



4. 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.

5. The Member Secretary,
National Council for Teacher Education (NCTE),
G-7, Sector-10, Dwaraka,
New Delhi - 110 075.

+1cc to Mr.G.Sankaran, Advocate SR.No.29861

W.P. No. 26716 of 2017

MG(CO)
GMY(24/06/2022)