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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. 26835 of 2017

and

W.M.P. Nos. 28560 to 28562 of 2017

P.Themozhi

... Petitioner

-vs-

1. The Principal Secretary/The State Project Officer,
Sarva Shiksha Abiyan (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,
Kashthurpa Kushta Nivarana Nilayam,
Mazhavanthangal,
Kashthurpa Ganthi Pallika Vidyalaya,
Thirunavalur,
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

(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 (Mathematics) 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 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.

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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 her appointment had been made on 01.01.2010 prior to 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.

[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.

(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) qualification shall undergo an NCTE recognized 6 -



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month special programme on elementary education.

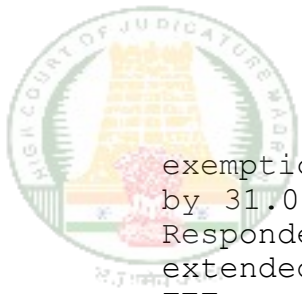
(b) A teacher of class I to V with B.Ed qualification who has completed a 6 - month Special Basic Teacher Course (Special BTC) approved by the NCTE.

(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 and an exemption from it would be available for a teacher of Class I to V with B.Ed. qualification, who has completed a six month Special Basic Teacher Course (Special BTC) approved by the NCTE, if the appointment had been made during the period from 03.09.2001 to 22.08.2010. Since the Petitioner had been appointed on 01.01.2010 during that period, it is incumbent upon the concerned authorities to first ascertain whether the said exemption would be available to the Petitioner on satisfying the conditions for it. In case the Petitioner does not satisfy those prescribed conditions for exemption, she would have to acquire the TET qualification before 31.03.2019. In other words, the question of terminating the Petitioner from service would arise only if she does not possess the stipulated qualification for



exemption from the passing of the TET or has not passed the TET by 31.03.2019 for continuance in service. It is informed by the Respondents that the Petitioner has not passed the TET till the extended time which has lapsed on 31.03.2019 and also in another TET conducted on 08.06.2019 and 09.06.2019 after the said period. This would obviously mean that before coming to any conclusion to terminate the services of the Petitioner for not having passed the TET within the stipulated time limit, the concerned authorities would have to verify as to whether she possess the stipulated qualification for exemption from the passing of the TET. As neither the Petitioner nor the Respondents have stated anything on that relevant aspect of the matter, the concerned authorities shall duly examine the same before taking any final decision in that regard.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

vjt

To

1. The Principal Secretary/The State Project Officer,
Sarva Shiksha Abiyan (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.

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+1cc to Mr.G.Sankaran, Advocate SR.No.29876

+1cc to Government Pleader SR.No.30684

W.P. No. 26835 of 2017

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