



W.P.(MD) No.5932 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.5932 of 2022
and W.M.P.(MD).No.4666 of 2022

S.Sutha Parvathi

... Petitioner

Vs.

**1.The District Educational Officer,
Tirunelveli, Tirunelveli District,
Earlier as The District Elementary Educational Officer,
Tirunelveli, Tirunelveli District.**

**2.The Block Educational Officer,
Palayamkottai Nagar, Tirunelveli District.**

**3.The Secretary,
Manivasagar Arulneri Middle School,
Palayamkottai,
Tirunelveli District.**

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 1st respondent in Ni.Mu.No. 6778/A4/2011, dated 30.03.2012, insofar as 5th condition is concerned alone



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and the consequential proceedings of the 2nd respondent in Oo.Mu.No. 413/A2/2020, dated --.09.2020, quash the same and further direct the respondents herein to sanction forthwith the annual increments and other allowances towards the salary of Petitioner as BT Assistant Schience in the 3rd respondent school from the date of her appointment, i.e., 18.02.2011.

For Petitioner : Ms.A.Amala

For Respondents : Mr.V.Nirmal Kumar for R1 and R2
Additional Government Pleader

ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 and 2.

2. The petitioner is a BT Assistant (Science) in the third respondent school. Her claim for annual increment and other allowances towards the salary came to be rejected through the impugned order by stating that since she was not qualified in the Teachers Eligibility Test (herein after referred to as TET), she is ineligible for such a claim. The petitioner herein was appointed as a BT Assistant on 18.02.2011. The requirement of qualifying



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TET was mandatory only from 29.07.2011. Apparently, the petitioner herein was appointed even prior to such a mandatory requirement of qualification in TET and therefore, the respondents 1 and 2 may not be justified in insisting for qualification in TET, as a pre requirement for grant of annual increment. This aspect has already been dealt with by various decisions of this Court. One such decision is in the case of ***M.Velayutham vs. The Director of School Education, Chennai and others*** in W.P.Nos.23999 and 24003 of 2019, dated 29.07.2021, where the ratio was held in the following manner.

“2. In a series of decisions rendered by this Court, it has been held that the requirement of passing Teacher Eligibility Test (TET) for appointment of teachers to the posts of BT Assistants and Secondary Grade Teachers, would be applicable only for such of those teachers, who were appointed on and after 27.09.2011. The rationale behind such decisions is that the pre-requirement of a TET qualification, which was prescribed through G.O.Ms.No.181, School Educational Department, dated 15.11.2011, was originally introduced by notification dated 23.08.2010 and subsequently amended on 27.09.2011. It is on this basis that the Courts have held that the effective date



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*for possession of TET as a Prequalification, is from 27.09.2011. In other words, the teachers who were appointed prior to 27.09.2011, cannot be insisted for possessing TET qualification, as prescribed by the NCTE. This ratio has been laid down in a decision of the Madurai Bench of this Court in the case of **Mrs.D.Raja Malar Vs The State of Tamil Nadu, Department of School Education and others**, passed in W.P(MD).Nos.8313, 8317 & 8319 of 2020 dated 30.07.2020, as well as in the case of **K.Priyanka Vs The District Educational Officer and others** passed in W.P(MD).No.17814 of 2020 dated 07.12.2020. The relevant portion of the order in D.Raja Malar's case (*supra*) reads as follows:-*

“11.The only controversy which arises in this writ petition is, whether the reason cited in the impugned order that, the petitioners should have qualified with TET qualification, even though they were appointed on 17.09.2010, 20.06.2011 and 20.06.2011 respectively and from that date, their appointments have also been approved by the 3rd respondent, for getting the benefit like the annual increment, is hold good or not.

12. In this context, the learned counsel appearing for



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the petitioners has relied upon a decision of the learned Judge of this Court exactly on the same point made in a batch of writ petitions in W.P(MD).Nos.5626 to 5630 of 2017 etc., dated 08.03.2019 in the matter of M.Maharani Vs. State of Tamil Nadu rep., by its Secretary, Department of School Education and others. In the said order, the learned counsel for the petitioner relied upon para No.10, which reads thus.

'10.However, there is no cut off date specified in the said G.O.Ms.No.181, with regard to acquiring the qualification of pass TET to continue in service as B.T.Assistants/Secondary Grade Teachers, who are working as such in the respondent Schools. In this regard, a cursory glance at Clause (5) of the notification dated 23.08.2010 and its amended notification dated 29.07.2011 issued by the NCTE, the contents of which are reproduced at paragraph Nos.8.2 and 8.4 above, would reveal that if the process of appointment of teachers was initiated prior to the date of notification by issuing advertisement, such appointments have to be made in accordance with NCTE (Determination of



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Minimum Qualifications for Recruitment of Teachers in Schools) Regulations 2001, there is no qualification prescribed with regard to possession of TET certificate, for appointment to the post of B.T.Assistant and Secondary Grade Teachers. The qualification of passing TET was first introduced by the notification dated 23.08.2010 and it was amended vide notification dated 27.09.2011 and the teachers, who were appointed prior to that date need not pass TET and even in the case of the teachers who were appointed after that date, if the advertisement to initiate the process of appointment of teachers was made prior to that date, then, their appointments also can be in accordance with the NCTE Regulations 2001 and they need not acquire the TET qualification.'

13. From the reading of the said judgment, it has become clear that the NCTE prescribed the qualification of TET originally from 23.08.2010 and subsequently from 27.09.2011 by way of notification. Therefore, the actual date, on which, the said qualification become mandatory is 27.09.2011. Therefore, those teachers, who were



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appointed prior to 27.09.2011 cannot be put against the said prescription of the NCTE and this has been exactly decided by the learned Judge in the said judgement, referred to above.

14. In the case of the petitioners, they were appointed on 17.09.2010, 20.06.2011 and 20.06.2011 respectively in the sanctioned vacancy as B.T.Assistant and Tamil Pandit at the fifth respondent School and the said appointments, having been considered, was approved by the third respondent vide his proceedings, dated 28.12.2011, 15.11.2011 and 15.11.2011 respectively, where it has been specifically stated that, the petitioners were appointed on 17.09.2010, 20.06.2011 and 20.06.2011 and approval was also given from the date of their appointment.

15. Therefore, it has become quite clear that, the appointment of the petitioners as on 17.09.2010, 20.06.2011 and 20.06.2011 having been approved by the third respondent through the said approval order, the applicability of the prescription made by NCTE to have such qualification, insofar as the petitioners are concerned, cannot be made or applied. Therefore, the said reason cited in the



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impugned order by the third respondent, in the considered opinion of this Court, may not hold good. Therefore, on that reason, the petitioners service benefit like annual increment cannot be denied.”

3. The aforesaid extract is self explanatory. As stated earlier, since the petitioner was already appointed as BT Assistant on 18.02.2011, which is prior to the mandatory requirement of the TET qualification, the reasons adopted by the respondents for rejection of the petitioner's claim, cannot be sustained.

4. Accordingly, the impugned proceedings issued by the 1st respondent in Ni.Mu.No.6778/A4/2011, dated 30.03.2012, insofar as 5th condition is concerned alone and the consequential proceedings of the 2nd respondent in Oo.Mu.No.413/A2/2020, dated --.09.2020, are hereby quashed. Consequently, there shall be a direction to the respondents 1 and 2 herein to pass appropriate orders, sanctioning the annual increments and other allowances towards the salary of the petitioner as a BT Assistant in the third respondent school, with effect from the date of her initial appointment i.e., from 18.02.2011, within a



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period of six weeks from the date of receipt of a copy of this order.

5. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Speaking Order/ Non Speaking Order

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To

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2.The Block Educational Officer,
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M.S.RAMESH,J.

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