



W.P.(MD) No.13904 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.13904 of 2022

and W.M.P.(MD).No.9896 of 2022

G.Anthonysamy

... Petitioner

Vs.

1.The District Educational Officer,
O/o. The District Educational Office,
Sankarankovil,
Tirunelveli District.

2.The Block Educational Officer,
O/o. The Block Educational Office,
Kuruvikulam,
Tirunelveli District.

3.The Correspondent,
R.C.Schools,
Chidambarapuram,
Kuruvikulam (Via),
Tirunelveli District – 627 754

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to
issue a writ of Certiorarified Mandamus, to call for the records relating to the



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impugned proceedings issued by the 1st respondent in Na.Ka.No. 4463/A3/2020, dated 20.12.2021, to quash the same and further direct the respondents 1 and 2 herein, to sanction the annual increment and other allowances to the petitioner as Secondary Grade Teacher in the 3rd respondent school from the date of his appointment, date 11.07.2012 to till date in the light of order passed by this Court in W.P.(MD).Nos.5895 of 2021, dated 17.03.2021.

For Petitioner : Mr.K.Sankar

For Respondents : Mr.S.Shaji Bino for R1 and R2
Special Government Pleader

No Appearance for R3

ORDER

The petitioner's claim for sanctioning annual increment in the post of Secondary Grade Teacher under the third respondent School, was rejected through the impugned order, dated 20.11.2021, on the only ground that the petitioner had not qualified in the Teachers Eligibility Test (TET). Such rejection of claim for annual increment on the ground of non qualification in TET cannot be sustained in view of various decisions of this Court including the case of *I.Selvakumar Vs. The Chief Educational Officer, Sivagangai*,



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Sivagangai District and others in **W.P.(MD).No.5895 of 2021**, dated 17.03.2021, wherein, I had placed reliance on the earlier order of this Court and held that a Secondary Grade Teacher could be entitled for sanction of annual increment without reference to pass in TET. The relevant portion of the order reads as follows:

*“The petitioner's claim for conferment of yearly increments and other service benefits from his date of appointment has been rejected by the 2nd respondent herein on the ground that the petitioner had not qualified herself in the Teacher Eligibility Test (TET). The requirement of a pass in TET came up for consideration in many cases before this Court, wherein this Court held that such a requirement was not mandatory for the purpose of extending the service and monetary benefits. One such order is in the case of **Banu Vs State of Tamil Nadu represented by its Secretary, School Education Department** in **W.P(MD)No.1336 of 2019**, etc., dated 05.01.2020, which reads as follows:*

“3. The issue involved in these writ petitions pertains to Teachers, who hail from Non-Minority



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School. The only issue involved in these writ petitions is as to whether the Teacher Eligibility Test (TET) qualification for the Teachers is a mandatory condition for consideration of disbursement of the yearly increment as well as other monetary and service benefits.

*4.The aforesaid issue is no more res integra. The provisions of the 'Right of Children to Free and Compulsory Education Act' (in short 'RTE Act') was already put under challenge, which came to be upheld by the Hon'ble Apex Court holding that the provisions of the RTE Act are not applicable to the minority institution. Following the same, the Hon'ble Division Bench of this Court, in the case of **Secretary to Government, Government of Tamil Nadu, Education Department, Fort St.George, Chennai Vs., S.Jeyalakshmi** reported in (2016) 5 CTC 639 had held that the provisions of the RTE Act are not applicable to the minority Aided School, insofar as it relates to Teachers appointed prior to 15.11.2011. The Government in G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 had specified that the teachers, who do not possess the minimum qualification of pass in the*



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TET, shall acquire the same within a period of five years. While construing G.O.Ms.No.181, a learned Single Judge of this Court, in a batch of writ petitions in W.P(MD).No.5626 of 2017 etc., dated 08.03.2019, had held that, the cut off date for acquiring the TET qualification would be the date of notification for appointment and that, the Teachers who were appointed prior to that date need not pass the TET examination. The relevant portion of the said order reads as follows:-

'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



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accordance with NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 and the same was amended with effect from 29.07.2011. As per the said NCTE 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. Thus, it could be inferred that the cut off date for acquiring the TET qualification is 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.'

In the instant case, all the Teachers have been appointed prior to 15.11.2011 and by applying the



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ratio laid down by this Court in the aforesaid order dated 08.03.2019 and by taking into consideration that these teachers were also appointed prior to the notification of their appointments, it has to be held that, the requirement of a pass in TET examination, is not necessary. As such, denial of the service and monetary benefits on the ground that the concerned Teachers have not passed the TET examination is not sustainable. By applying the ratio laid down in the aforesaid decision, this Court is of the affirmed view that the petitioners would be entitled for disbursement of all the service and monetary benefits, without reference to their non-passing of the TET examination, from the date of their appointment.”

2.The aforesaid order is self explanatory. As such the impugned order passed by the 2nd respondent, rejecting the petitioner's claim for the increments and other benefits cannot be sustained on the ground that the petitioner has not qualified herself in TET. Accordingly, the order of the 2nd respondent in A.Thi.Mu.No.297/A5/2021, dated 01.03.2021 stands quashed.”



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2. At this juncture, the learned Additional Government Pleader, placed reliance on the counter affidavit and submitted that since the writ petitioner had obtained only temporary approval of the post, he cannot claim the benefit of the annual increment based on Government Orders. It is settled preposition of law under the service jurisprudence that the reasons assigned in the impugned order for rejection of any claim cannot be sustained through the additional reasons in the counter affidavit. The issue of grant of temporary approval was not the reason assigned in the impugned order and therefore, such an objection in the counter affidavit does not require any consideration.

3. In the result, the impugned order issued by the 1st respondent in Na.Ka.No.4463/A3/2020, dated 20.12.2021 is hereby quashed. Consequently, there shall be a direction to the first respondent to pass appropriate orders, sanctioning the annual increment and other allowances to the petitioner in the post of Secondary Grade Teacher under the third respondent School from the date of his appointment i.e., from 11.07.2012, within a period of eight weeks from the date of receipt of a copy of this order.



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Index : Yes / No
Speaking Order/ Non Speaking Order

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To

1. The District Educational Officer,
O/o. The District Educational Office,
Sankarankovil,
Tirunelveli District.
2. The Block Educational Officer,
O/o. The Block Educational Office,
Kuruvikulam,
Tirunelveli District.



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M.S.RAMESH,J.

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