



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2022

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THE HONOURABLE MR. JUSTICE M. S. RAMESH

W.P. (MD) No.26661 of 2019
and W.M.P. (MD) .No.22991 of 2019

N.Josuvapal

... Petitioner

Vs.

1.The Director of School Education,
Chennai - 6.

2.The Chief Educational Officer,
Tirunelveli District.

3.The District Educational Officer,
Cheranmahadevi,
Tirunelveli District.

4.The Correspondent,
West Tirunelveli Higher Secondary School,
Nallur, Tirunelveli District.

... Respondents

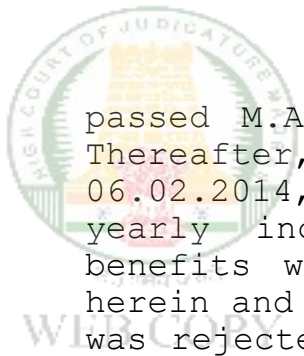
PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 3rd respondent in his proceedings in Na.Ka.no.3751/A2/2019 dated 19.11.2019 and quash the same in so far as the petitioner is concerned and direct the respondents to sanction yearly increments incentive increment for M.A. qualification earn leave surrender and contributory pension scheme benefits with all the consequential benefits.

For Petitioner : MrV.Panneer Selvam
For Respondents : Mr.V.Nirmal Kumar for R1 to R3
Government Advocate

O R D E R

Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

2.The petitioner's appointment was approved by the third respondent on 28.03.2011. Though the first yearly increment was sanctioned on 01.10.2011, the entitlement for the subsequent increments to the petitioner, has been denied. The petitioner had also made a request seeking for incentive increment for having



passed M.A. English in May 2012, which was also not sanctioned. Thereafter, he was deployed to the fourth respondent school on 06.02.2014, where from, he had retired on 31.12.2016. Since his yearly increments and incentive increment and other monetary benefits were not settled, he made a request to the respondents herein and through the impugned order, dated 19.11.2019, his request was rejected on the ground that the petitioner was not qualified in the Teachers Eligibility Test (herein after referred to as TET). Challenging the same, the present writ petition has been filed.

3.The requirement of the pass in TET have been considered in various decisions of this Court by holding that such a requirement was not mandatory for the purpose of sanctioning 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 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 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:-

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'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 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 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."

4.Following the aforesaid decisions, I had also allowed a similar claim in the case of ***I.Selvakumar Vs. The Chief Educational Officer, Sivagangai, Sivagangai District and others*** in ***W.P.(MD). No.5895 of 2021***, dated 17.03.2021. The order passed in *I.Selvakumar (Supra)*, came to be confirmed by the Honourable Division Bench of this Court in the case of ***The Chief Educational Officer, Sivagangai and another Vs. I.Selvakumar and another*** in ***W.A.(MD).No.1862 of 2021***, dated 28.09.2021. From the aforesaid decisions, the claim of the respondents in rejecting the petitioner's request for the monetary benefits on the ground that the TET is a pre-requirement for sanctioning of such benefits cannot be sustained.

5.In the result, the impugned order passed by the 3rd respondent in his proceedings in Na.Ka.no.3751/A2/2019 dated 19.11.2019, insofar as relates to the petitioner herein is quashed. Consequently, there shall be a direction to the respondents herein to pass necessary orders sanctioning the petitioner's yearly increments, incentive increments and all other monetary benefits, which he is entitled to on his retirement and disburse the same, within a period of twelve **(12)** weeks from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar(AD-II)

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/07/2022

Sub Assistant Registrar(CS)

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To

1.The Director of School Education,
Chennai - 6.

2.The Chief Educational Officer,
Tirunelveli District.

3.The District Educational Officer,
Cheranmahadevi,
Tirunelveli District.

+1 CC to M/s.SPL.GP (SR-27445[F] dated 22/06/2022)

+1 CC to M/s.V. PANNEER SELVAM, Advocate (SR-27563[F] dated
22/06/2022)

W.P. (MD) No.26661 of 2019
21.06.2022

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TR(05.07.2022) 5P 6C