



W.A.No.1088 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.06.2023

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

W.A.No.1088 of 2023
and C.M.P.Nos.11028, 11030 & 11033 of 2023

D.Kavitha

.. Appellant

Vs.

1. The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 600 006.
2. The Chief Educational Officer,
Thiruvannamalai District, Thiruvannamalai.
3. The District Educational Officer,
Thiruvannamalai, Thiruvannamalai District.
4. The Block Educational Officer,
Thurinjapuram Block,
Thiruvannamalai District.
5. The Manager,
Aided Primary School,
Kovur - 606 751,
Ladvaram Post, Thiruvannamalai District.



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6. Teachers Recruitment Board,
represented by its Chairman,
College Road,
Nungambakkam,
Chennai - 600 006.

7. Union of India,
represented by its Secretary to Government,
Department of School Educational and Literacy,
Ministry of Human Resource Development,
217-C, Shastri Bhawan,
New Delhi - 110 001.

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

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the
order dated 29.08.2022 passed in W.P.No.22197 of 2022 on the file of this
Court.

For Appellant : Mr.S.Nedunchezhiyan

For RR1 to 4 : Mr.Stalin Abimanyu
Additional Government Pleader

For R5 : Mr.P.Murali



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JUDGMENT

[Judgment of the court was delivered by R.MAHADEVAN, J.]

This writ appeal has been filed as against the order dated 28.04.2022 passed by a learned Judge in W.P.No.19083 of 2019.

2. The appellant herein is the writ petitioner. The facts of the case which necessitated for filing of this writ appeal are that the appellant joined the fifth respondent Private School on 25.04.2012 as Secondary Grade Teacher and continuing to work from then onwards. Inasmuch as the appellant had not passed the Teachers Eligibility Test ('TET' in short) by 31.03.2019, the fifth respondent, by order dated 30.04.2019 terminated the services of the appellant. Hence the appellant filed W.P.No.19083 of 2019 praying to set aside the order passed by the fifth respondent and to direct the respondents to permit her to continue in service with all consequential and other attendant benefits. An order of interim stay was granted by the writ court at the time of admission on 05.07.2019 which continued till the disposal of the writ petition.



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3. During the final hearing of the writ petition, in order to examine the claim made by the appellant, the learned Judge referred to Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 ('Act' in short) which deals with qualifications for appointment and terms and conditions of service of teachers. The learned Judge also referred to Section 23(1) of the Act and went on to further referring the Notification dated 23.08.2010 issued by the National Council for Teacher Education, laying down 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 Act with effect from the date of that Notification. Thereafter, the learned Judge referred to the orders passed by the Government in G.O.Ms.No.181 School Education (C2) Department dated 15.11.2011 and G.O.Ms.No.90 School Education (Q) Department dated 28.03.2012, and held that pass in TET is an essential requirement for appointment of teachers made from 23.08.2010 onwards, in terms of Section 23 of the Act particularly the first and second proviso to Clause (2) thereof along with Paragraphs 1(i)(b) and 1(ii)(b) of the Notification dated 23.08.2010 issued by the NCTE.



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4. The learned Judge has also held that even though TET has not been conducted every year regularly as required in the Notification No.76-4/2010/NCTE/Acad dated 11.02.2011 published by the NCTE, and it has been conducted only on 14.10.2012, 17.08.2013, 18.08.2013, 29.04.2017, 30.04.2017, 08.06.2019 and 09.06.2019, 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 that, the teachers who have been appointed during that period, had sufficient opportunity to prepare and appear for the TET during the said period. Ultimately, the learned Judge in paragraph 12 of the impugned order, has observed as follows:

"12.The appointment of the petitioner as teacher in the school of the fifth respondent has been made on 25.04.2012 (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 and the interim order granted earlier stands



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vacated with immediate effect."

Accordingly, the learned Judge has dismissed the writ petition by the order impugned herein. Challenging the same, the present appeal has been filed.

5. Heard the learned counsel on either side, who jointly submitted that the issue involved herein is covered by a common judgment passed by this Bench earlier in *The Director of School Education D.P.I. Campus, College Road, Chennai vs M. Velayutham (W.A.No.313 of 2022 etc., batch decided on 02.06.2023)*. The key issues for determination and also the resultant portion of the said judgment, read as under:

"1.The key issues that arise for determination in these batch of writ appeals and writ petitions are:

(i) whether passing of the Teacher Eligibility Test (TET) is mandatory for promotion to the post of B.T. Assistant/Graduate Teacher, from the cadre of Secondary Grade Teacher (already in service).

(ii) whether non-possession/non-acquisition of a pass in TET by a teacher appointed prior to 29.07.2011 would affect his/her continuance in service and drawal of increment, without seeking for further promotion to the post of BT Assistant/Graduate Teacher."

"74. For the sake of clarity and ease of reference, the upshot of the above discussion is as under:

(a)Any teacher appointed as Secondary Grade Teacher or Graduate Teacher/BT Assistant prior to 29.07.2011 shall continue in service and also receive increments and incentives, even if they do not possess/acquire a pass in TET. At the same time, for future promotional prospects like promotion from secondary grade teacher to B.T. Assistant as well as for promotion to Headmasters, etc.,



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irrespective of their dates of original appointment, they must necessarily possess TET, failing which they will not be eligible for promotion.

(b)Any appointment made to the post of Secondary Grade Teacher after 29.07.2011 must necessarily possess TET.

*(c)Any appointment made to Graduate Teacher/BT Assistant, after 29.07.2011, whether by direct recruitment or promotion from the post of Secondary Grade Teacher; or transfer; must necessarily possess TET. **The principles laid down in this judgment will not have application to minority schools both aided and unaided as explained in paragraph no.71.1.***

(d)The Special Rules for the Tamil Nadu School Educational Subordinate Service issued in GO (Ms.) No.13 School Education (S.E3(1)) Department dated 30.01.2020 insofar as it prescribes “a pass in Teacher Eligibility Test (TET)” only for direct recruitment for the post of BT Assistant and not for promotion thereto in Annexure-I (referred to in Rule 6) is struck down, thereby meaning that TET is mandatory/essential eligibility criterion for appointment to the post of BT Assistant even by promotion from Secondary Grade Teachers.

(e)The language employed in G.O. (Ms) No. 181 dated 15.11.2011 is to be read and understood to the effect that for continuance in service without promotional prospects, TET is not mandatory."

6. A reading of the above judgment would make it clear that any appointment made to the post of Secondary Grade Teacher after 29.07.2011, must necessarily possess TET. In the present case, the appellant has been appointed as Secondary Grade Teacher on 25.04.2012, which is after 29.07.2011. At that point of time, the incumbent was not possessing TET qualification. Though the TET has been conducted during the years 2012, 2013 and 2017, the appellant herein did not pass the said examination.



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Therefore, the appellant was terminated from service, by the order of the fifth respondent dated 30.04.2019, which was rightly affirmed by the learned Judge and the same does not call for any interference by this court, in the light of the judgment as referred to above.

7. In the result, the writ appeal stands dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]
05.06.2023

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No
nsd

To

1. The Director of Elementary Education,
DPI Campus, College Road, Chennai - 600 006.
2. The Chief Educational Officer,
Thiruvannamalai District, Thiruvannamalai.
3. The District Educational Officer,
Thiruvannamalai, Thiruvannamalai District.

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4. The Block Educational Officer,
Thurinjapuram Block, Thiruvannamalai District.
5. The Manager, Aided Primary School,
Kovur - 606 751, Ladvaram Post,
Thiruvannamalai District.
6. The Chairman, Teachers Recruitment Board,
College Road, Nungambakkam, Chennai - 600 006.
7. The Secretary to Government, Union of India,
Department of School Educational and Literacy,
Ministry of Human Resource Development,
217-C, Shastri Bhawan, New Delhi - 110 001.
8. The Member Secretary,
National Council for Teacher Education (NCTE),
G-7, Sector-10, Dwaraka, New Delhi - 110 075.



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