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WA No. 933 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 933 of 2022
and
CMP. No. 6085 of 2022

1.The Director of School Education
College Road
Chennai – 600 006

2.The Chief Educational Officer
Thiruvarur

3.The District Educational Officer
Mannargudi, Thiruvarur District

.. Appellants

Versus

1.V.Arivazhgan

2.The Secretary
Thirumurugan High School
Melavasal, Manargudi
Tiruvarur District

3.The Secretary
Thirumurugan Elementary School
Melavasal-Mannargudi
Thiruvaur District

.. Respondents



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Writ Appeal filed under Clause 15 of the Letters Patent against the order

dated 08.10.2021 passed by the learned Judge in W.P. No.2092 of 2019.

For Appellants : Mr. Silambanan, Additional Advocate General
assisted by Mr.S.Yashwanth, AGP
& Mr.Babu Barveez, Government Advocate

For Respondents : Mr.Prakash, Senior Advocate for
Mr.S.N.Ravichandran for R1
Mr.G.Nagarajan for R2
Mr.Suresh Babu for R3

JUDGMENT

[Judgement of the Court was delivered by R.MAHADEVAN, J.]

This writ appeal has been filed against the order dated 08.10.2021 passed by the learned Judge in W.P.No.2092 of 2019.

2. The brief facts of the case would run thus:

2.1. The first respondent herein / writ petitioner was appointed as Secondary Grade Teacher in the third respondent school by an order dated 14.02.2001 and the said appointment was approved by the Educational Authorities. Thereafter, the first respondent studied B.Sc.(Mathematics) through correspondence course in the year 2002 and passed M.C.A. in May 2009 and B.Ed. in December 2013. He also completed M.Sc.(Mathematics) in May 2015.



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2.2. While so, a vacancy arose for the post of Secondary Grade Teacher on 10.04.2012 in the second respondent school due to the promotion of one Mr.S.Lakshmanan, Secondary Grade Teacher as B.T.Assistant and the said vacant post of Secondary Grade Teacher was upgraded as B.T.Assistant(Mathematics) by proceedings of the second appellant dated 09.12.2015. Since there was no qualified teacher in the second respondent school for promotion to the post of B.T.Assistant (Mathematics), the first respondent submitted an application seeking promotion to the said post. Consequently, a resolution was passed on 29.02.2016 by the school committee of the third respondent, to the effect that in the event of the first respondent being appointed / promoted as BT Assistant in the second respondent school, he will be relieved from service. By proceedings dated 14.03.2016, the District Elementary Educational Officer, sought additional details about the first respondent's promotion as B.T.Assistant in the second respondent school. The second appellant by letter dated 15.09.2016, granted permission to appoint the first respondent as B.T.Assistant (Mathematics) by way of promotion in the second respondent school as per Rule 15(4)(iii) and (iv)(b) of the Tamil Nadu Recognised Private School Regulation Act, 1973. Accordingly, the third respondent passed a resolution on 21.09.2016 and decided to appoint the first respondent as B.T.Assistant by way of promotion in the second respondent



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school.

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2.3. However, the second appellant, vide proceedings dated 10.11.2016, cancelled the earlier order granting permission to fill up the post of B.T.Assistant in the second respondent school by way of promotion on the premise that the second and third respondents are not a single entity; that there is no certificate approving these respondents to be the same corporate body and there is clear bifurcation of functions amongst these respondents; that the members of the School Committee of the second and third respondents are different; and therefore, it was not possible to give promotion to the first respondent and accordingly directed that the selection to the said post be made from the open market by direct recruitment.

2.4. Aggrieved by the aforesaid order, W.P.No.29087 of 2018 was filed by the first respondent and the same was disposed of, by order dated 01.11.2018, directing the second appellant to consider the representation of the first respondent herein, in the light of Rule 15(iv)(b) of the Rules. However, the second appellant rejected the claim of the first respondent on the ground that he had not possessed TET and that, the promotion if granted by way of appointment, would result in reduction of his pay scale. Aggrieved by the same, the first respondent preferred W.P.No.2092 of 2019 before the writ court.

3. After hearing both sides, the learned Judge has partly allowed the



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writ petition, by setting aside the order passed by the second appellant cancelling the earlier order granting permission to fill up the post of B.T.Assistant in the second respondent school by way of promotion, and also directing the second appellant to approve the appointment of the first respondent herein as Secondary Grade Teacher in the second respondent school, if his appointment was covered under either of the situations contemplated in Rule 15(4)(ii)(iii)(a) or (b) of the Rules and in case approval is granted, in view of the vacancy caused in the second respondent school, approval shall be accorded for appointment of the first respondent in terms of G.O.Ms.No.144, School Education (D1) Department, dated 04.07.2008, within a period of eight weeks.

4. Challenging the order passed in the writ petition, the present writ appeal has been filed by the State.

5. Mr.Silambanan, learned Additional Advocate General appearing for the appellants / State submitted that the second and third respondent schools are separate and non-minority schools having separate entities and the same are administered separately and hence, either the transfer of the first respondent as Secondary Grade Teacher or promotion as B.T.Assistant, is not



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permitted according to Section 15(i) of the Tamil Nadu Regulation Private Schools Act, 1974. Only in these circumstances, the approval given to the first respondent was cancelled by the second appellant. He also submitted that the second and third respondent schools are even though under the same management, have not obtained the status of Corporate Body Management from the competent authority and hence, there is no question of promotion of the first respondent inasmuch as Rule 15(4) provides promotion from the eligible incumbents in the same school and not from any other school. If at all, the appointment of the first respondent is considered as per Rule 15(4)(ii) from any other schools, it has to be treated as a fresh one, for which, the first respondent has to qualify the TET as prescribed in G.O.Ms.No.181, School Education (C2) Department dated 15.11.2011 and hence, there is no scope for the appointment of the first respondent in the Thirumurugan High School, the second respondent herein. The vacant post in the second respondent school has already been upgraded as B.T.Assistant and hence, there is no scope to entertain the post of Secondary Grade Teacher in terms of Rule 15(4)(ii) in the second respondent school. In the same way, the need to upgrade again the post as B.T.Assistant in terms of G.O.Ms.No.144, School Education (D1) Department dated 04.07.2008 does not arise, due to the fact that it was already upgraded to B.T.Assistant, according to the learned Additional Advocate



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General. Without considering all these aspects in proper perspective, the learned Judge erred in allowing the writ petition partly and directing the appellants to consider the claim of the first respondent. Therefore, the learned Additional Advocate General submitted that the order of the learned Judge is arbitrary, illegal and contrary to the provisions of law and the same will have to be set aside.

6. On the other hand, it is submitted by the learned senior counsel for the first respondent that the second and third respondent schools are aided schools administered by the same Educational Agency of Thirumurugan Educational Society, Melavasal registered under the Societies Registration Act, bearing Reg.No.76/2005, and are governed by the provisions of the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973 and Rules 1974. The first respondent was working as a Secondary Grade Teacher in the third respondent school and by the approval of the second appellant's proceedings dated 15.09.2016, he was granted promotion as B.T.Assistant in the second respondent school as per Rule 15(4)(iii) and iv(b). While so, without any notice or hearing to the first respondent, by order dated 10.11.2016, the approval was erroneously cancelled by the second appellant on the ground that the Educational Agency of the second and third respondent schools is not one and the same. According to the first respondent, the second appellant without



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appreciating the proper facts, had construed as though the schools are separate units and thereby ordered that the second respondent school has to resort to direct recruitment. The approval was also cancelled on one another ground that the first respondent did not possess certificate in Teachers Eligibility Test. The learned senior counsel further submitted that TET was introduced by G.O.Ms.No.181 dated 15.11.2011, whereas, the first respondent was appointed as Secondary Grade Teacher as early as on 14.02.2001 in the third respondent school and therefore, the question of qualifying TET does not arise to an in-service candidate and the said reason is contrary to the earlier order dated 15.09.2016 passed by the second appellant granting permission for promotion. According to the learned senior counsel, it is also misconstrued by the official respondents that only if the schools are of the same corporate body, appointment or transfer as enumerated under Rule 15(4)(ii)(b) could be effected. The language of Rule 15(4)(ii)(b) is plain and unambiguous and the interpretation of the second appellant is mischief interpretation and the same runs counter to the very object of the Rule. He further submitted that when the school management agrees for appointment by transfer, the educational authorities have to grant permission. Referring to Rule 15(4)(ii)(ii), he submitted that it employs the term 'appointment', which cannot be construed as fresh appointment as the qualified employee who worked in the same school or



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any other school will not forfeit his past service. Reiterating this aspect, he submitted that the Director of School Education, by way of G.O.Ms.No.1289 dated 18.06.1982, granted pay protection to teachers who are transferred from one school to another which would make it clear that in the event of transfer, they are entitled to pay protection and the past services should be counted for the purpose of pension. Hence, the nomenclature of the term 'appointment' does not mean a fresh appointment, according to the learned senior counsel for the first respondent. With regard to the second appellant's contention that the second and third respondent schools did not obtain the status of Corporate Body Management and hence they cannot be construed as single unit, he submitted that there is no provision in the Act or Rules which mandates a School to possess the status as same corporate body to claim the benefit of Rule 15(4) of the Tamil Nadu Private School Regulation Rules, 1974. Thus, according to the learned senior counsel, the order of the learned Judge need not be interfered with.

7. The learned counsel for the second respondent submitted that the respondents 2 and 3 are separate units having separate school committees and administered separately and these schools have not obtained any Corporate Body Certificate. The cancellation of the first respondent's approval vide



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proceedings dated 10.11.2016 was challenged before this Court in

W.P.No.22248 of 2018 and the same was dismissed by Order dated

30.08.2018, for which, the first respondent has not filed any appeal, hence, the

said order has become final. He also contended that the first respondent had

not been given any appointment order by the second respondent High School.

It is no doubt that a resolution was passed for filling up the vacancy of

B.T.Assistant, however, the appointment ought to have been approved by the

concerned Educational Authority, but whereas, originally permission was

granted by the second appellant, but it was subsequently cancelled by order

dated 10.11.2016. It was also submitted that the first respondent has not

passed the Teacher Eligibility Test and hence, his claim has to be rejected. The

learned counsel has also placed attendance register which would indicate that

the first respondent is still working in the third respondent Elementary School

including the period which he claims that he was working in the second

respondent High School. The first respondent ought to have been considered

only for fresh appointment in the second respondent school as a new entrant

and not by way of promotion as B.T.Assistant in the second respondent school.

Stating so, he prayed this Court to set aside the order impugned herein and to

allow this appeal.

8. The learned counsel for the third respondent submitted that the



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third respondent-Elementary School is a separate unit with separate School Committee and not under any corporate body. The first respondent's claim for appointment as B.T.Assistant in the second respondent-school is contrary to the rules and regulations of the Tamil Nadu Private Schools Regulation Act, 1973. The first respondent's claim that he is working in the second respondent High School, is false and he is working in the third respondent Elementary School till date and he is also signing the attendance register. Hence, he sought indulgence of this court to set aside the impugned order and thereby allow this writ appeal.

9. Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

10. The challenge in this writ appeal is to the order of the learned Judge in setting aside the order dated 11.01.2019 rejecting the request of the first respondent for promotion as B.T. Assistant in the fourth respondent school and consequential direction to the second appellant to approve the appointment of the first respondent as a secondary grade teacher in the second respondent, if his appointment was covered under either of the situations contemplated in Rule 15(4)(ii) (iii)(a) or (b) of the Rules and in case, approval is granted in view of the vacancy caused in the second respondent school, approval shall be



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accorded in terms of G.O.(Ms)No.144, School Education (D1) Department,
dated 04.07.2008.

11. According to the learned Additional Advocate General appearing for the appellants / State that the second and third respondent schools are non-minority aided schools with separate recognition and separate Education School Committee and hence, the first respondent cannot be appointed in the second respondent school as B.T. Assistant by way of promotion or as Secondary Grade Teacher, which post was already upgraded as B.T. Assistant; and that, the first respondent did not possess the qualification of TET. On the other hand, the first respondent / writ petitioner stated that the second and third respondent schools are aided schools administered by the same Educational Agency of Thirumurugan Educational Society, Melavasal registered under the Societies Registration Act, bearing Reg.No.76/2005, and are governed by the provisions of the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973 and Rules 1974; that TET was introduced by G.O.Ms.No.181 dated 15.11.2011, whereas, the first respondent was appointed as Secondary Grade Teacher as early as on 14.02.2001 in the third respondent school and therefore, the question of qualifying TET does not arise to an in-service candidate. Whereas, the learned counsel for the second and third respondents submitted that the respondents 2 and 3 are separate units



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having separate school committees and administered separately and that, the first respondent has not passed the Teacher Eligibility Test and hence, there is no possibility to consider his claim to the post of B.T. Assistant in the second respondent school.

12. It is evident from the records that the second and third respondent Schools are separate units with separate School Committees. The second appellant rejected the claim of the first respondent seeking promotion as B.T Assistant in the second respondent school on the ground that Rule 15(4)(ii)(b) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, does not permit transfer and promotion from one Unit of Establishment to another Unit of Establishment. Without going into the said aspect, the order of the second appellant dated 11.01.2019 was set aside by the learned Judge by observing that the second appellant has to examine whether the approval can be granted if there was a vacancy in the second respondent school as per the staff fixation order for the relevant academic year; and if a vacancy caused due to the promotion of Mr.L.S.Lakshmanan warranted a filling up the vacancy, the appellants would be duty bound to grant approval for appointment of the first respondent as a teacher in the said school, in the light of G.O.Ms.No.144, School Education (D1) Department, dated 04.07.2008.

13. It is an admitted position that for appointment to the post of



teacher, the qualification of TET is mandatory. At this juncture, it would be pertinent to refer to the judgment passed by us (RMDJ and MSQJ) in Writ Appeal No.313 of 2022 etc. batch dated 02.06.2023, which covers the entire issue on all fours. 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., 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



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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."

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, admittedly, the first respondent was not possessing TET qualification and hence, he is not entitled to be appointed as Secondary Grade Teacher or promoted as B.T. Assistant in the second respondent School. The applicability of G.O.Ms.No.144, School Education (D1) Department, dated 04.07.2008 as observed by the learned Judge, to the case of the first respondent, does not arise for consideration. In such view of the matter, the order of the learned Judge deserves to be set aside.

14. Accordingly, the writ appeal stands allowed by setting aside the order dated 08.10.2021 passed by the learned Judge in WP.No.2092 of 2019. No costs. Consequently, connected Miscellaneous Petition is closed.

[R.M.D., J] [M.S.Q., J]
19.06.2023

Index: Yes / No.

Speaking order/ Non-speaking order

Neutral Citation: Yes / No.



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