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W.A.Nos.3014 & 3023 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.11.2023

CORAM

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

W.A.Nos.3014 & 3023 of 2023
and
C.M.P.Nos.24980 & 25015 of 2023

H.Thahera Begum,
D/o. R.Himamsha,
B.T.Assistant (Science),
A.J.S. Nidhi Higher Secondary School,
Alandur, Chennai-600 016.

.. Appellant in
W.A.No.3014 of 2023

P.J.Punitha,
D/o.B.Janakiraman,
B.T.Assistant (Tamil),
A.J.S. Nidhi Higher Secondary School,
Alandur, Chennai-600 016.

.. Appellant in
W.A.No.3023 of 2023

Vs.

1.State of Tamil Nadu represented
by its Principal Secretary to Government,
School Education Department,
Fort St. George, Secretariat, Chennai-600 009.

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2.The Commissioner,
Directorate of School Education,
DPI Campus, College Road, Chennai-600 006.

3.The Chief Educational Officer,
Chengalpet, Chengalpet District.

4.The District Educational Officer
Chrompet Education District, Chengalpet District.

5.The Secretary,
AJS Nidhi Higher Secondary School,
Alandur, Chennai-600 016.

6.The Union of India represented
by its Secretary, Ministry of Education,
124-C Shastri Bhawan,
New Delhi-110 001.

.. Respondents in
both appeals

Common Prayer: Writ Appeals filed under Clause 15 of the Letters
Patent against the common order dated 07.04.2022 passed in W.P.Nos.2126
& 2128 of 2022 respectively, on the file of this Court.

For Appellants
in both appeals : Mr.S.Nedunchezhiyan

For Respondents
in both appeals : Mr.Silambannan,
Additional Advocate General
assisted by Mrs.S.Anitha,
Special Government Pleader



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COMMON JUDGMENT

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

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These writ appeals arise out of the common order dated 07.04.2022 passed by this Court in W.P.Nos.2126 of 2022 and 2128 of 2022, respectively.

2.The necessary facts leading to the filing of these writ appeals would run thus:

2.1. The appellant in W.A.No.3014 of 2023 was appointed as B.T. Assistant (Science) vide order dated 22.09.2011 and she joined duty in the fifth respondent School on the same day, ie., on 22.09.2011. The appellant in W.A.No.3023 of 2011 was appointed as B.T.Assistant (Tamil) on 27.06.2011 in the fifth respondent school. While so, they have been suddenly stopped the payment of annual increment in the post of B.T. Assistant during the year 2019 on the premise that they have to pass Teachers Eligibility Test (“TET” in short). The grievance of the appellants is that TET cannot be insisted as per G.O.Ms.No.181, School Education Department dated 15.11.2011 in respect of appointments already made prior



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to the aforesaid Government Order and also duly approved by the Department and therefore, insisting upon passing of TET is totally arbitrary and unreasonable. With this background, they have filed writ petitions praying to direct the authorities to sanction annual increment to them for having acquired Post Graduation, without reference to passing of TET with all consequential and other attendant benefits based on their representations dated 01.11.2021.

2.2. Referring to the constitutional validity of the Right of Children to Free and Compulsory Education Act, 2009 (“RTE Act” in short), Notification of the Government of India dated 31.03.2010 issued under Section 23(1) of the RTE Act and the Guidelines framed by the National Council for Teacher Education, the Writ Court held that accepting the recommendation and the Notification issued by the NCTE, the Government of Tamil Nadu have issued G.O.Ms.No.181 dated 15.11.2011, which G.O. makes it very clear that TET shall be conducted by the Teachers Recruitment Board in accordance with the guidelines framed by NCTE and that it has been stated in the G.O. that teachers appointed prior to the G.O. will be given five years time to acquire the minimum qualification.



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Accordingly, the learned Judge dismissed the writ petitions, by the common order dated 07.04.2022. Challenging the same, the writ petitioners are before this court with the present writ appeals.

3. Today, when the matters were taken up for consideration, the learned counsel appearing for both sides, in union, submitted that the issue involved herein is covered by a common judgment passed by the very same 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."

WHETHER TET IS A NECESSARY MANDATE FOR TEACHERS APPOINTED IN MINORITY SCHOOLS

71.1. A perusal of the orders impugned in the writ petitions leading to these writ appeals would indicate that the fact that the



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*teachers, in respect of whom approval of appointment was sought for by the school, did not possess TET pass eligibility was not a ground for refusal for grant of appointment approval, nor was it an issue raised before the learned Single Judge at the time of disposal of the writ petitions. Only in the writ appeals, the State Government has raised an additional ground that the teachers whose appointment approval was sought for, did not possess TET. Notwithstanding the same, it is hereby clarified that by virtue of the judgment of the Constitution Bench of the Hon'ble Supreme Court in *Pramati Educational and Cultural Trust & Ors. v. Union of India*, [(2014) 8 SCC 1], wherein, it was held that the RTI Act, 2009 insofar as it applies to minority schools, aided or unaided, covered under Article 30(1) is ultravires the Constitution, meaning thereby that the 2009 Act will not apply to minority schools, the eligibility of TET pass as required for appointment of teachers in non-minority schools, will not apply to minority schools. In other words, the approval of appointment of teachers in minority schools, both aided and unaided, cannot be refused or rejected on the ground that they do not possess a pass in TET. Further, this specific issue is also pending consideration before the Supreme Court and the law laid down by the Supreme Court in *Pramati Educational and Cultural Trust*, cited *supra*, holds the filed as on today. For these reasons, the order of the Learned Judge in the writ petitions is affirmed and the above four writ appeals are dismissed.*

"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 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."

4. A reading of the above judgment would make it clear that any appointment made to 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.



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5. Applying the aforesaid ratio to the facts of the present case, wherein, the appellants / writ petitioners joined as B.T. Assistant on 22.09.2011 and 27.06.2011, this court is of the opinion that they are entitled for annual increments and incentives, without a pass in TET. However, for future promotional aspects, they must necessarily possess TET. Therefore, the order of the learned Judge is set aside and the respondent authorities are directed to consider the representations of the appellants in the light of the directions specified in the aforesaid judgment dated 02.06.2023, and pass appropriate orders, as expeditiously as possible.

6. Accordingly, both the writ appeals stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D.,J.] [M.S.Q., J.]
28.11.2023

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

nsd

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School Education Department,
Fort St.George, Secretariat, Chennai-600 009.
 - 2.The Commissioner,
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 - 3.The Chief Educational Officer,
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 - 4.The District Educational Officer
Chrompet Education District, Chengalpet District.
 - 5.The Secretary,
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 - 6.The Secretary, Union of India,
Ministry of Education,
124-C Shastri Bhawan,
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R.MAHADEVAN, J.
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MOHAMMED SHAFFIQ, J.

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