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W.P.No.938 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.938 of 2016

S. Geetha

... Petitioner

Vs.

1.The Government of Tamil Nadu,

Rep. by Secretary to Government,
School Education Department,
Fort St. George,
Chennai – 600 009.

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

3.The District Elementary Educational Officer,
Chennai District, Chennai.

4.The Additional Assistant Elementary
Educational Officer, Perambur Range,
Chennai District, Chennai.

5.The Assistant Elementary Educational Officer,
Royapuram Range,
No.11, Davidson Street,
Broadway, Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a Writ of Certiorarified Mandamus, calling for the records



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of the third respondent issued in proceedings OM No.651/A2/2015 dated 08.07.2015 and quash the same and issue consequential direction to the respondents to treat the appointment of the petitioner as Secondary Grade Teacher as approved from 15.12.2010 as per the proceedings issued by the District Elementary Educational Officer, Chennai District in Na.Ka.No.1821/A2/2011 dated 18.08.2011 and to grant all service and monetary benefits including the arrears of increments.

For Petitioner : Mr.R. Saseetharan

For Respondents : Mr.T. Chezhiyan,
Additional Government Pleader

ORDER

The petitioner herein was originally appointed as a Secondary Grade Teacher on 15.12.2010 in Sri Janakiram Ramachandran Educational Trust (J.R.E.T.) Raghava Middle School, which is a minority educational institution. Her appointment came to be approved by the District Educational Officer on 18.08.2011. On the basis of staff fixation, the post of Secondary Grade Teacher (Panel) in Sri J.R.E.T. Raghava Middle School, was declared as surplus and accordingly, the petitioner along with the post was redeployed to Thiyagaraya Chetty Primary School, through the proceedings of the Additional Assistant Elementary Education Officer dated 02.06.2014 and accordingly, the petitioner is



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continuing with the said School. In the impugned order dated 08.07.2015, the second respondent herein, had declared that the petitioner is required to qualify in the Teachers Eligibility Test (TET), within 5 years from G.O.Ms.No.181, School Education Department dated 15.11.2011. Challenging the same, the present Writ Petition has been filed.

2. The learned counsel for the petitioner submitted that since the petitioner, along with the post, was redeployed from the minority school to the non-minority school and her appointment was already approved, even prior to issuance of G.O.Ms.No.181 dated 15.11.2011, the authorities cannot insist the petitioner to qualify in TET. The learned counsel placed reliance on the decision of the Hon'ble Division Bench of this Court in the case of *'The Secretary to Government & others Vs. S.Jeyalakshmi & another'* reported in *'2016 Writ L.R. 769'* and submitted that such a requirement of qualifying in TET for the teachers whose appointment were already approved prior to issuance of G.O.Ms.No.181 dated 15.11.2011, is not mandatory.

3. Per contra, the learned Additional Government Pleader appearing



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for the respondents submitted that under Section 23(1) of the Right of Children to Free and Compulsory Education Act, 2009, (for brevity “RTE Act”) along with the notification of NCTE, a pass in TET is a mandatory condition for all minority and non-minority schools, within 5 years from the issuance of G.O.Ms.No.181 dated 15.11.2011 and therefore, there is no infirmity in the proceedings of the second respondent herein, insisting that the petitioner should qualify TET, within a period of 5 years from 15.11.2011.

4. Under Section 23(1) of RTE Act, the National Council for Teachers Education (hereinafter called as 'NCTE'), is the Academic Authority for the Government of India, which has issued notification to all the State Governments, indicating that all teachers to be appointed in all Elementary Educational Institutions should have passed TET conducted by the concerned Government, as a mandatory condition. The notification of NCTE dated 23.08.2010 and 11.02.2011, mandates a pass in TET as one of the essential qualifications for a person to be eligible 'for appointment as a Teacher' in any school, imparting elementary education. The notification does not make a reference to the requirement of passing



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of TET to the existing teachers, prior to issuance of G.O.Ms.No.181 dated 15.11.2011.

5. However, when a batch of Writ Petitions came to be dealt with by the Hon'ble Supreme Court in the case of '*Pramati Educational and Cultural Trust Vs. Union of India*' reported in '*AIR 2014 SC 2114*', it was held that the provisions of RTE Act will not apply to a minority institution.

6. It is now stated that the decision is being referred to a Larger Bench of the Hon'ble Supreme Court, where it is said to be pending and there are no interim orders with regard to the non-applicability of the provisions of RTE Act to the Minority Educational Institutions.

7. It is not in dispute that the petitioner's appointment in the minority institution on 15.12.2010, came to be approved by the authorities on 18.08.2011. The Government Order in G.O.Ms.No.181 dated 15.11.2011, speaks about passing of TET for appointments to be made, as mandatory.



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8. The fourth respondent herein, while redeploying the petitioner herein from Sri J.R.E.T. Raghava Middle School through his proceedings in Na.Ka.No.208/2014 dated 02.06.2014, had ordered that the petitioner along with the post, is being redeployed to Thiagaraya Chetty Primary School. In view of this order of redeployment, the petitioner's post, which also carries the approval of her appointment already granted, is deemed to have been transferred to the subsequent school.

9. When the issue as to the plight of the teachers who were in the minority and non-minority schools prior to G.O.Ms.No.181 dated 15.11.2011, came up for consideration before the Hon'ble Division Bench of this Court in the case of *'The Secretary to Government & others Vs. S.Jeyalakshmi & another'* (Supra), the Hon'ble Division Bench had indicated that such a requirement of qualifying in TET may not be applicable to the Teachers who were in existence, prior to G.O.Ms.No.181 dated 15.11.2011 and accordingly, had granted liberty to the State Government to seek for a clarification to NCTE in this regard. It is now stated that no such clarification has been received from NCTE in this



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connection. The relevant portion of the Hon'ble Division Bench's observations are as follows:-

..... “52. However, the Government, before issuing G.O.Ms.No.181 dated 15.11.2011, lost sight of one important fact, namely imposition of a condition on the Teachers, who were appointed prior to the issue of G.O., in non minority and minority Schools, both aided and unaided, to qualify themselves with TET within a period of five years, in order to continue in service, would cause great hardship to them. Moreover, if the Teachers who have put in more number of years of service, could not pass TET within five years, their continuation in service would be in jeopardy. Further, it is seen that the percentage of pass in the TET examination conducted in 2012 and 2013 was very minimal.

53. At this juncture, it is would be apt to refer to the qualifications prescribed for appointment as Teachers in Private Schools under Annexure V of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. The name of the post and the qualification that is relevant to the case on hand reads as follows:

Name of the Post	Qualifications
B.T. Assistant	B.A. or B.Sc. or its equivalent and B.T. or B.Ed. or L.T. and Trained Teachers Certificate to Collegiate Grade.
Secondary Grade Teacher	(1) S.S.L.C. (2) T.S.L.C. of Secondary



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	<i>Grade or its equivalent</i>
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54. In Annexure III to the Tamil Nadu Minority Schools (Recognition & Payment of Grant) Rules, the qualifications for appointment as teachers in minority Schools are prescribed as under:

B.T.Assistant

(i) B.A. or B.Sc. or its equivalent

(ii) B.T. or B.Ed., or L.T. and

(iii) Trained Teachers' Certificate or Collegiate Grade

Secondary Grade Teacher

(i) S.S.L.C.

(ii) T.S.L.C. of Secondary Grade or its equivalent provided that the teachers who have passed the Nursery, Montessori and Kindergarten School Leaving Certificate Examination of Secondary Grade shall be employed to handle standards I to II only.

55. A reading of the qualifications extracted above would clearly show that the B.T. Assistants are being appointed only if they are qualified and possessed with Teachers Training Certificate. As per G.O.Ms.No.181 dated 18.11.2011, Secondary Grade Teachers are being appointed only if they are qualified and possessed with Diploma in Teachers Education. Thus, it is evident that the persons who underwent either Teachers Training



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course or Diploma in Teachers Education alone are eligible for appointment either as B.T. Assistants or Secondary Grade Teachers as the case may be. Therefore, there cannot be an iota of doubt as to their eligibility for appointment as Teachers. Once they are appointed as Teachers after having been found eligible as on the said date of their appointment, they cannot be expected to write an examination and to qualify in such examination at a much later point of time.

56. We are, therefore, of the considered view that the Government may seek a clarification from the NCTE, in the light of what is stated in the preceding paragraph, whether the prescription of minimum qualification of TET can be made applicable prospectively for the Teachers who were appointed subsequent to the date of the issue of G.O., in both non minority and minority institutions and not retrospectively as the same would cause undue hardship to the Teachers who have been serving for a quite a long time.....”

10. Following the aforesaid decision of the Hon'ble Division Bench, a learned single Judge of this Court had taken a similar view that the teachers appointed prior to G.O.Ms.No.181 dated 15.11.2011, cannot be compelled to pass TET, in the following manner:-

..... “6. The issue whether a person, who was appointed as B.T. Assistant prior to the issuance of G.O.Ms.No.181, can



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be compelled to acquire a pass in TET Examination, is no longer res integra. The amended notification issued by the NCTE makes it very clear that the qualification of TET is mandatory only from 29.07.2011. The Division Bench of this Court, in a batch of Writ Petitions, has considered these issues and held that the respondents cannot compel the teachers similarly placed like petitioners to pass in TET examination.....”

11. The aforesaid extract is self-explanatory. In the light of the decision of the Hon'ble Division Bench of this Court that the Government Order in G.O.Ms.No.181 dated 15.11.2011, will have a prospective effect, insofar as it mandates a pass in TET is concerned and in the strength of the order of the fourth respondent herein, redeploying the petitioner to the needy school along with the post, it could be said that the petitioner's case may not require a pass in TET since her appointment under the minority school was already approved on 18.08.2011 itself, prior to the issuance of G.O.Ms.No.181 dated 15.11.2011. As such, the petitioner would be entitled for all the service and monetary benefits, without reference to her non-passing of TET.



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12. For the foregoing reasons, the impugned proceedings dated 08.07.2015, mandating the petitioner to pass TET, cannot be sustained and accordingly, the impugned order is quashed. Consequently, the respondents are directed to grant all service and monetary benefits to the petitioner herein, including annual increments, without reference to her non-qualification in Teachers Eligibility Test. Such orders along with disbursal of the monetary benefits, shall be made atleast within a period of four weeks from the date of receipt of a copy of this order.

13. With the above directions, the Writ Petition stands allowed. No costs.

09.01.2023

Speaking order
Neutral Citation: Yes
Index: Yes
Internet: Yes

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M.S.RAMESH,J.

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To

- 1.The Secretary to Government of Tamil Nadu,
School Education Department,
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Chennai – 600 009.
- 1.The Director of Elementary Education,
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