



W.A.No.1081 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.06.2023

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.1081 of 2023
AND
C.M.P.No.10937 of 2023

R.Dhivya

.. Appellant

Vs.

1.The Director of School Education
DPI Campus, College Road
Chennai 600 006

2.The Chief Educational Officer
Tiruvarur District
Tiruvarur

3.The District Educational Officer
Tiruvarur Education District
Tiruvarur

4.The Block Educational Officer
Valangaiman Block
Tiruvarur District

5.The Secretary
Saraswathi Aided Primary School
Eari 612 701
Valangaiman Taluk
Tiruvarur District



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6. Teachers Recruitment Board

Rep. by its Chairman

College Road

Nungambakkam

Chennai 600 006

7. Union of India

Rep. 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)

Rep. 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 28.04.2022 passed by the learned Judge in W.P.No.23853 of 2019.

For Appellant : Mr.S.Nedunchezhiyan

For R1 to R6 : Mr.G.Ameedius
Government Advocate

JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

Challenging the order dated 28.04.2022 passed by the learned Judge in W.P.No.23853 of 2019, the writ petitioner has preferred this writ appeal.



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2. According to the appellant / writ petitioner, she was appointed as

Secondary Grade Teacher on 15.10.2011 against the vacancies that had arisen as on 01.06.2010, in the fifth respondent school, which is an aided primary school and her appointment was duly approved by the District Elementary Educational Officer, Thiruvavur, by order dated 09.11.2011, in which, there was no reference about passing of TET. While so, the appellant was denied the benefit of annual increment and incentive increment and other service benefits from December 2019 onwards, as per the oral instructions of the fourth respondent insisting passing of TET by referring to G.O.(Ms).No.181, School Education (C2) Department dated 15.11.2011. Therefore, she preferred W.P.No.23853 of 2019 for a mandamus, forbearing the respondents from insisting passing of TET and consequently directing them to continue to make payment of salary including other service benefits. However, the learned Judge dismissed the said writ petition, by holding that the appellant does not fall under the exempted category as stipulated in clause 5(a) of the notification dated 23.08.2010 issued by the National Council for Teacher Education and she did not pass TET, within the time stipulated. Aggrieved by the same, the appellant is before this Court with the present appeal.



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3. It is submitted by both sides 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., 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



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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 the post of Secondary Grade Teacher after 29.07.2011, must necessarily possess TET.

5. Applying the aforesaid ratio to the facts of the present case, wherein, admittedly, the appellant was appointed as Secondary Grade Teacher only on 15.10.2011 i.e., after 29.07.2011, and she did not possess the qualification of TET, this court is of the view that the order of the learned Judge in rejecting the claim of the appellant seeking annual increment / incentive increment and other service benefits, without insisting TET, does not require any interference. Accordingly, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
12.06.2023

Internet : Yes
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To
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