



W.P.No.27153 of 2018

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.27153 of 2018

and

W.M.P.No.31561 of 2018

G.Thangapechi

... Petitioner

Vs.

1. The Secretary to Government,
Education Department Government of Tamil Nadu,
Fort St. George,
Chennai 600009.

2 The District Educational Officer,
Sankarankovil Education District,
Sankarankovil,
Tenkasi District.

... Respondents

(Deleted the name of the 2nd respondent as per the order of this Court dated 09.11.2023 in W.M.P.No.12260 of 2019 in W.P.No.27153 of 2018)

(Amended the cause title of the 3rd respondent as per the order of this Court dated 09.11.2023 in W.M.P.No.30192 of 2023 in W.P.No.27153 of 2018)

Writ Petition filed under Article 226 of the Constitution of India



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praying to issue a Writ of Mandamus, forbearing the respondents 1 and 2 from insisting the petitioner to pass the Teachers Eligibility test pursuant to the G.O. Ms.No.181, dated 15.11.2011 and further direct the 2nd respondent to grant annual increment to the petitioner from 23.3.2011 within a time frame as may be fixed by this Honorable Court.

For Petitioner : Mr.R.Kamaraj

For Respondents : Mr.L.S.M. Hasan Fizal,
Additional Government Pleader

ORDER

This Writ Petition has been filed to forbear the respondents 1 and 2 from insisting the petitioner to pass the Teachers Eligibility Test pursuant to the G.O.Ms.No.181, dated 15.11.2011 and further direct the 2nd respondent to grant annual increment to the petitioner from 23.3.2011.

2.Heard Mr.R.Kamaraj, learned counsel for the petitioner and Mr.L.S.M. Hasan Fizal, learned Additional Government Pleader for the respondents and perused the materials placed on record, apart from the pleading of the parties.

3.It is the case of the petitioner that on 23.3.2011, the petitioner was



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appointed as the Secondary Grade Teacher in the Arunachala Primary School, Rayagiri, Tirunelveli District. The petitioner has fully qualified to be appointed for the said post and her appointment was approved by the 3rd respondent. The 3rd respondent has been insisting the petitioner to pass the Teachers Eligibility Test (TET) as per G.O.Ms. No.181, dated 15.11.2011. This Court passed orders holding that passing of Teachers Eligibility Test would arise only for the persons who were appointed after the issuance of the said G.O., whereas the petitioner was appointed as the Secondary Grade Teacher as early as on 23.3.2011.

4.The Government Order prescribes the qualifications for appointment of Secondary Grade Teacher. Even as per the wording of the above G.O., the persons who were appointed after the issuance of the above G.O., should alone pass the Teachers Eligibility Test within the stipulated period of five years. Therefore the above G.O., is no way apply to the persons who were appointed before the issuance of the G.O. Therefore, insisting to pass the Teachers Eligibility Test is erroneous and unsustainable.



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The petitioner when pointed out the same to the 3rd respondent, she was informed that she shall have to obtain a separate order from the respondents 1 and 2 not to insist for passing of Teachers Eligibility Test (TET). Therefore, on 06.10.2017, the petitioner sent a representation to the respondents 1 and 2 setting out the facts and requested not to insist her to pass the Teachers Eligibility Test, as she had joined the services as early as on 23.03.2011, i.e., before the issuance of the G.O. Ms.No.181, dated 15.11.2011 and also praying for the grant of annual increment from the date of her appointment. Despite approval of appointment from the date of her appointment, the respondents have not granted annual increment which she is legally entitled to. In fact, even for the persons who have appointed after the issuance of G.O.Ms.No.181, dated 15.11.2011, and for those who have not passed the Teachers Eligibility Test, the respondents have granted the annual increment and therefore, there is no justification whatsoever in withholding the petitioner's annual increment on the part of the respondents.

5.The petitioner was appointed as Secondary Grade Teacher in the said School on 23.03.2011 and her appointment was approved by the



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District Elementary Educational Officer, Tirunelveli, It is pertinent to note that in the Government Order dated 15.11.2011, it is stipulated that teachers who are at the commencement of RTE Act, 2009 on 01.4.2010 shall acquire TET qualification within a period of five years. Hence, the petitioner is bound to TET within five years atleast before 23.03.2016. The petitioner has not averred whether she has written TET whenever it was conducted so far. Hence, the Petitioner is not eligible to continue to service as per Rule 18(5) of the RTE Act, 2010. Further, the condition stipulated in the G.O., in respect of teachers who are already in service on after 01.04.2010 and prior to the issuance of the said G.O. dated 15.11.2011. The said G.O. referred to supra also prohibits the Government from recognizing the employment of such teachers who do not possess the TET qualifications.



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6. In the Judgment of the Division Bench of this Court in Writ Appeal Nos. 313 of 2022, etc. batch dated 02.06.2023, at Paras 73 and 74, this Court held as follows:

73. Further, it is made clear that all those appointed prior to 29.07.2011 are exempt from passing TET only for the purpose of continuance in the post of secondary grade teacher or BT Assistant without promotional prospects. Any appointments whether by direct recruitment or promotion or transfer made after 29.07.2011, will have to necessarily adhere to the minimum eligibility criteria of passing TET.

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



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29.07.2011, whether by direct recruitment or promotion from the post of Secondary Grade Teacher, or transfer, must necessarily possess TET.

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.

75.The narration of facts which propelled this case would indicate that the teachers have not been appointed for the last ten years inspite of being qualified with a pass in TET. On the basis of the above findings and observations made, the State Government is directed to conduct TET periodically and make direct recruitment of teachers and promotion from among TET qualified candidates at the earliest.”

As per the abovesaid Judgment, the petitioner is entitled to continue in



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her service and she is eligible for the annual increment from 23.03.2011 onwards. Accordingly, this Writ Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

09.11.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
mps

To

1. The Secretary to Government,
Education Department Government of Tamil Nadu,
Fort St. George,
Chennai 600 009.
- 2 The District Educational Officer,
Sankarankovil Education District,
Sankarankovil,
Tenkasi District.

V.BHAVANI SUBBAROYAN, J.

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