



W.A.(MD)No.1475 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)No.1475 of 2021
and C.M.P. (MD) No.6058 of 2021

- 1.The State of Tamil Nadu,
Represented by its Secretary to Government,
School Education Department,
Fort St. George, Chennai.
 - 2.The Director of School Education,
College Road, Chennai – 6.
 - 3.The Chief Educational Officer,
Ramnad, Ramnad District.
 - 4.The District Educational Officer,
Mandapam @ Ramnad,
Ramnad District.
- ... Appellants/1 to 4 Respondents

Vs.

- 1.M.Suriyakala,
B.T.Assistant (Science),
Sri Sethumanikam High School,
Melaseethai,
Mallal Post,
Ramnad District.
- ... 1st Respondent/Writ Petitioner



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2.The Secretary,
Sri Sethumanikam High School,
Melaseethai, Mallal Post,
Ramnad, Ramnad District.

... 2nd Respondent/5th Respondent

PRAYER: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 08.03.2019 made in W.P.(MD)No.5629 of 2017 on the file of this Court.

For Appellants : Mr.A.Kannan
Additional Government Pleader

For Respondents : Mr.S.Ramesh

JUDGMENT

(Judgment of the Court was delivered by ***R.SURESH KUMAR, J.***)

This Writ Appeal has been directed against the order of the Writ Court dated 08.03.2019, made in W.P.(MD) No.5629 of 2017.

2. The first respondent M.Suriyakala was appointed as B.T. Assistant on 15.06.2011 at the second respondent school. Subsequently, the appointment was approved by the competent authority on 14.07.2011.

3. However, it is to be noted that under the Right of Children to Free and Compulsory Education Act, 2009, the Teachers Eligibility Test



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was made mandatory to be acquired by the teacher to be appointed either as a Secondary Grade Teacher or B.T. Assistant and a cut of date has been fixed as 27.09.2011, as on or after that date, if any appointment is made to the said two posts, those teacher must have completed the TET qualification, otherwise they should not be appointed.

4. Insofar as the first respondent is concerned, admittedly, she did not possess the TET qualification, despite that, she was appointed as such and her appointment was also approved by the competent authority. However, subsequently, it seems that, the appellants insisted upon or requiring the first respondent to qualify herself with the TET so as to continue in the said post as B.T. Assistant. Only at that juncture, the first respondent moved the Writ Petition in W.P.(MD) No.5629 of 2017, seeking for a Writ of Mandamus, directing the appellants not to insist the first respondent herein to pass TET for her continuous employment as B.T. Assistant. Along with the said Writ Petition, some similarly placed Writ Petitions were grouped together and heard by the Writ Court, where the learned Judge by common order dated 08.03.2019 allowed all those Writ Petitions, wherein in paragraph No.12, the learned Judge has stated the following:-



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“12.In the ultimate analysis, this Court has no hesitation to hold that the petitioners are entitled to seek exemption from passing TET, as they were appointed prior to the cut off date and the respondents are directed not to insist TET certificate from the petitioners as a pre-condition for their continuance in service as B.T. Assistants.”

Aggrieved over the same, the present appeal has been directed.

5. Heard Mr.A.Kannan, learned Additional Government Pleader appearing for the appellants, who would submit that, though the teacher concerned was appointed prior to 27.09.2011, the date on which it was become mandatory to have the qualification of TET, and her appointment was also approved by 14.07.2011 that would not *ipso facto* entitle her to make a claim by the teacher to continue the post without even having the qualification of TET by acquiring such qualification.

6. He would also submit that, for the purpose of acquiring such qualification, the Government time and again extended the period almost for 9 years i.e., up to 2019, even within the 9 years period if the teacher concerned could not acquire qualification she should be sent out.



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7. However, Mr.S.Ramesh, learned counsel appearing for the respondents 1 and 2 would submit that, this kind of conflict had been there before the Court of law for all these years from 2011 onwards till date and recently, this issue had engaged a Division Bench, before which, number of Writ Appeals of similar nature have been placed for disposal.

8. The Division Bench by its judgment ***dated 02.06.2023 in Writ Appeal No.313 of 2022 etc., batch*** in the matter ***of the Director of School Education and others v. M.Velayutham and another*** has given the following conclusion on those issues, which were considered by the Division Bench:-

“CONCLUSION

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.”



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9. Relying upon this judgment, the learned counsel appearing for the respondents would contend that under clause 74(a) of the judgment any teacher appointed as Secondary Grade Teacher or Graduate Teacher / B.T. Assistant prior to 29.07.2011 shall continue in service and also receive increments and incentives, even if they do not possess or acquire a pass in TET. However, only for future promotional prospects like promotion from Secondary Grade Teacher to B.T. Assistant as well as for promotion to Headmaster etc., irrespective of their dates of original appointment, they must necessarily possess TET, failing which they will not be eligible for promotion.

10. Relying upon this dictum of the Division Bench, the learned counsel for the respondents would contend that, since the first respondent has been appointed well prior to the 29.07.2011 and her appointment was also approved accordingly, the insistence of TET qualification to be acquired by the said teacher may not be justifiable in view of the authoritative pronouncement given by the Division Bench in the said judgment, of course, it is a latest decision.



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11. We have considered the said submissions made by the learned counsel for both sides and have perused the materials placed before this Court.

12. As has been rightly pointed by the learned counsel for the respondents, the issue raised in this Writ Appeal is squarely covered by the said decision of the Division Bench ***dated 02.06.2023 in WA.No.313 of 2022*** etc., batch (cited supra).

13. In this case, the first respondent since was appointed on 15.06.2011, which is well before the cut of date i.e., 27.09.2011 and her appointment was also approved on 14.07.2011, as per para 74(a) of the Division Bench judgment, she can continue in the post where she was appointed i.e., B.T. Assistant, however, without the TET qualification, she is not entitled for any promotional avenue like Headmaster etc.,

14. The word 'etc.,' means P.G. Assistant also, for which the feeder category is B.T. Assistant. Therefore, insofar as continuance of the teacher concerned as a B.T. Assistant, for which she was originally



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appointed without TET qualification, there is no impediment and she can continue as such till her superannuation.

15. However, if she seek for any promotion either as a Headmaster or as a P.G. Assistant, she should have acquired the TET qualification without which such a promotional avenue is not available to the teacher concerned and such kind of promotion could be denied.

16. It is needless to mention that, since the continuance of the teacher concerned as a B.T. Assistant is not impeded, her other service benefits, including the regular annual increments also can very well be extended to the teacher concerned and therefore, the insistence made on behalf of the appellants to the teacher concerned to complete the TET qualification even to hold the post of B.T. Assistant or to continue the said post may not be required and therefore, to that extent, the order passed by the learned Single Judge is to be approved. Hence, this Writ Appeal is disposed of with the following order:-

(i) That the first respondent can continue as a B.T. Assistant since she was appointed on 15.06.2011 and approved on 14.07.2011, prior to cut



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of date i.e., 27.09.2011.

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(ii) However, the teacher concerned is not entitled to get any promotional avenue including Headmaster, P.G. Assistant etc., without acquiring the qualification of TET.

(iii) So long as the teacher concerned does not qualify herself with the TET qualification, she is not entitled for any further promotion. This has been made clear by the said Division Bench judgment in paragraph 74(a). It is further made clear that insofar as all pay benefits, including the annual increments is concerned, the teacher is entitled for the same to the post of B.T. Assistant.

17. With these directions and observations, this Writ Appeal is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(R.S.K., J.) & (K.K.R.K, J.)
15.06.2023

NCC : Yes
Index : Yes
Internet : Yes
SJ



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