



W.A.(MD) No.860 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 18.10.2023

CORAM

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**
AND
THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD) No.860 of 2019
and C.M.P.(MD) No.7548 of 2019

- 1.The Government of Tamilnadu,
Represented by its Principal Secretary,
Department of Elementary School Education,
Fort St. George,
Chennai – 600 009.
 - 2.The Director of Elementary School Education,
College Road, D.P.I. Campus,
Chennai – 600 006.
 - 3.The District Elementary School Education Officer,
Thoothukudi,
Thoothukudi District.
 - 4.The Assistant Elementary Education Officer,
Vilathikulam Taluk,
Thoothukudi District. ... Appellants/Respondents 1 to 4
- Vs.-
- 1.M.Johny ... 1st Respondent/Writ Petitioner
 - 2.The Secretary,
Hindu Nadar Primary School,
Perilovanpatti,
Vilathikulam Taluk,
Thoothukudi District. ... 2nd Respondent/5th Respondent



W.A.(MD) No.860 of 2019

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 14.11.2018 made in W.P.(MD)No.11201 of 2013 on the file of this Court.

For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader

For Respondents : Mr.S.Vinod Sahaya Lazar
for R1

No appearance for R2

J U D G M E N T

(Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.**)

The Writ Appeal on hand has been instituted challenging the the order dated 14.11.2018, passed in W.P.(MD)No.11201 of 2013.

2. The first respondent instituted Writ Proceedings, seeking temporary approval of appointment of the first respondent with effect from 27.04.2012 and release of grand-in-aid towards his salary along with arrears of salary with all attendant and consequential monetary and service benefits.



3. The first respondent was appointed by the second respondent school on 27.04.2012. The first respondent possesses the educational qualification of Diploma in Teachers Education. Admittedly, on the date of appointment, the first respondent did not possess the requisite qualification of Teachers Eligibility Test under Section 23(1) of the Right of Children to Free and Compulsory Education Act, 2009.

4. The first respondent was allowed to continue in service and the proposal submitted by the second respondent / school management was returned by the competent educational authorities on the ground that the first respondent teacher has not qualified by passing the Teachers Eligibility Test, which is mandatory as per the Right of Children to Free and Compulsory Education Act, 2009. Since the proposal submitted by the school management was returned, the first respondent was constrained to move the Writ Petition, seeking temporary approval. The earlier Writ Petition filed by the first respondent, challenging the return of the proposal was disposed of on the ground that it was an internal communication between the school management and the educational authorities, which would not provide cause for the first respondent to file a Writ Petition.



W.A.(MD) No.860 of 2019

5. Learned Additional Government Pleader appearing on behalf

of the appellants mainly contended that TET being the mandatory qualification under Section 23(1) of the Right of Children to Free and Compulsory Education Act, 2009, the same cannot be waived by the competent authorities. Teachers appointed prior to the cut of date of 29.07.2011 was granted the benefit of five years of time limit to possess the qualification of Teachers Eligibility Test. Time was extended even thereafter, considering the hardships caused to the teachers for a long years. Therefore, the teachers appointed prior to the cut of date must possess the Teachers Eligibility Test within the stipulated period, failing which they are not eligible for any further service benefits, including promotions, increments etc. However, in the present case, the first respondent was appointed in the second respondent school on 27.04.2012 after the cut of date, therefore, at the time of appointment, the management ought to have verified the fact whether the teacher is qualified for appointment by passing the Teachers Eligibility Test. Thus, the appointment itself is irregular and not in consonance with the provision of the Act and Rules. In other words, an unqualified teacher was appointed in the second respondent school and therefore, the competent educational authorities returned the proposal submitted by the



school.

WEB COPY

6. Learned Additional Government Pleader drew the attention of this Court with reference to the earlier Division Bench judgments, wherein the issues relating to pass in Teachers Eligibility Test and the Hon'ble Division Bench in batch of cases in Writ Appeal No.313 of 2022 etc., batch cases delivered judgment on 02.06.2023, wherein the following observations are made:-

“74. For the sake of clarity and ease of reference, the upshot of the abovediscussion 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



W.A.(MD) No.860 of 2019

WEB COPY

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.”

7. In yet another case, the Division Bench of this Court in W.P. (MD) No.11317 of 2022 pronounced the judgment on 29.03.2023 as under:-

“75. This Court, in extenso, has dealt with the provisions of law and has held that the acquiring of TET qualification for the purpose of continuance in service is mandatory and that the teachers, who were in service, were



WEB COPY

granted more than nine years to acquire TET qualification. The petitioner having been appointed on 10.11.2010 by which time the academic authority, viz., NCTE, has prescribed the minimum qualification for persons to be acquired for continuing in the post of elementary school teacher, it is incumbent on the petitioner to have adhered to the prescription and acquired the qualification of TET. Between the time of appointment of the petitioner and till now, almost twelve years have passed. Nine years relaxation was granted by the Government itself for acquiring TET and further three years also having passed, the petitioner has not qualified herself in TET, but has come before this Court now to claim exemption from acquiring TET. However, the petitioner has neither challenged Section 23 nor rule 17, which have prescribed the minimum qualification and in the absence of any challenge being made to the provisions, the mandatory prescription of TET cannot be diluted by granting any exemption to the petitioner, which is already foreclosed by the statutory prescription. In such view of the matter, the case of the petitioner squarely falls within the four corners of the reference holding that TET is mandatory and, therefore, no exemption could be granted to the petitioner and necessarily this writ petition deserves to be rejected.

76. For the reasons aforesaid, the reference is answered as under :-



W.A.(MD) No.860 of 2019

WEB COPY

(i) The minimum qualification of a pass in TET for being appointed as elementary school teacher is mandatory and no exemption whatever can be claimed by any individual and to that extent the decision in Vasudevan's case has laid down the correct law.

(ii) In view of the aforesaid decision, this writ petition fails and, accordingly, the same is dismissed.

(iii) Consequently, connected miscellaneous petition is closed. There shall be no order as to costs."

8. In the above judgments, two different Division Benches have concurrently held that Teachers Eligibility Test is the mandatory qualification for appointment more specifically after the cut of date of 29.07.2011. Therefore, the appointment of the first respondent in the second respondent school was irregular and in violation of the mandatory provisions of the Right of Children to Free and Compulsory Education Act, 2009 and the guidelines issued by the Government of Tamil Nadu in G.O.Ms.No.181, School Education Department dated 15.11.2011. Since the appointment was irregular and the issues regarding passing of Teachers Eligibility Test is no more res-integra and made compulsory, we are not inclined to support the order passed by the learned Single Judge.



W.A.(MD) No.860 of 2019

9. Consequently, the order dated 14.11.2018 passed in W.P. (MD) No.11201 of 2013 is set aside and W.A.(MD) No.860 of 2019 is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

[S.M.S.J.] & [V.L.N.J.]
18.10.2023

NCC :Yes/No
Index :Yes/No
SJ

To

- 1.The Principal Secretary,
Department of Elementary School Education,
Government of Tamilnadu,
Fort St. George,
Chennai – 600 009.
- 2.The Director of Elementary School Education,
College Road, D.P.I. Campus,
Chennai – 600 006.
- 3.The District Elementary School Education Officer,
Thoothukudi,
Thoothukudi District.
- 4.The Assistant Elementary Education Officer,
Vilathikulam Taluk,
Thoothukudi District.



WEB COPY



W.A.(MD) No.860 of 2019

S.M.SUBRAMANIAM, J.
AND
V. LAKSHMINARAYANAN, J.

SJ

W.A.(MD) No.860 of 2019

18.10.2023