



W.P.(MD)Nos.13248 of 2017 batch

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved On	Judgment Pronounced On
12.01.2023	30.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos. 13248, 13249, 13367 & 13368 of 2017

and

W.M.P(MD)Nos.10318, 10438, 10439 of 2017 & 15771 of 2020

W.P.(MD)No. 13248 of 2017

G.Sharmila

... Petitioner

VS.

1. The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
School Education Department,
Secretariat,
Fort Saint George,
Chennai – 600 009.
2. The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.



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

4. The Secretary,
Ganesha Middle School,
Sidharpatti, Andipatti Taluk,
Theni District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Declaration*, to declare that passing of Teacher Eligibility Test not required for the petitioner appointed prior to issue of G.O.Ms.No.90 School Education (Q) Department dated 28.03.2012 and consequently to forbear the Respondent and their subordinates to insist passing of Teacher Eligibility Test for the Petitioner working in the 4th Respondent School and to continue in service with all service benefits.

W.P.(MD)No. 13249 of 2017

S.Swarnamugi

... Petitioner

vs.

1. The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
School Education Department,
Secretariat,
Fort Saint George,
Chennai – 600 009.



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2. The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of ***Writ of Mandamus***, directing the respondents to grant extension of period to acquire the qualification of passing of Teacher Eligibility Test (TET) to the Petitioner based on the amendment to the provisions of right of Children to Free and Compulsory Education Act, 2009 approved by Government of India, by considering the representation submitted by the petitioner, dated 13.04.2017.

W.P.(MD)No. 13367 of 2017

1. V.Satheeskumar
2. B.Sathya
3. M.Karthikeyan

... Petitioners

vs.

1. The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort Saint George,
Chennai – 600 009.

2. The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.

... Respondents



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PRAYER :Writ Petition filed under Article 226 of the Constitution of India for issuance of ***Writ of Declaration***, to declare that passing of Teacher Eligibility Test not required for the teachers appointed prior to issue of G.O.Ms.No.181 School Education (C2) Department, dated 15.11.2011 and G.O.Ms.No.90 School Education (Q) Department dated 28.03.2012 and consequently to forbear the respondents and their subordinates to insist passing of Teacher Eligibility Test for the Petitioners to continue in service with all benefits.

W.P.(MD)No. 13368 of 2017

1. N.Manjula
2. V.Sivakami
3. K.Thaiyal Nayaki
4. T.Akila
5. P.Vidya
6. M.Paranthaman
7. P.Venkatesan
8. R.Panneerselvam
9. S.P.Balaji
10. S.Sundaravalli
11. K.Devi

... Petitioners

vs.



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1. The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
School Education Department,
Secretariat,
Fort Saint George,
Chennai – 600 009.
2. The Director of School Education,
DPI Campus,
College Road,
Chennai – 600 006.
3. The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of ***Writ of Mandamus***, directing the respondents to grant extension of period to acquire the qualification of passing of Teacher Eligibility Test (TET) to the petitioners based on the amendment to the provisions of Right of Children to Free and Compulsory Education Act, 2009 approved by the Government of India, by considering the representation submitted by the petitioners through Association, dated 13.04.2017.

In all Writ Petitions

For Petitioners	: Mr.G.Sankaran, Senior Counsel, for Mr.R.Deepak
For Respondents	: Mr.V.Om Prakash Government Advocate (Civil Side)



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COMMON ORDER

These writ petitions are filed seeking for declaration to declare that passing of Teachers Eligibility Test not required for the petitioners who were appointed prior to issue of G.O.Ms.No.90 School Education Department, dated 28.03.2012 and consequentially directing the respondents not to insist passing of Teacher Eligibility Test and continue to grant service benefits.

2. Heard Mr.G.Sankaran, for Mr.R.Deepak, learned Senior counsel appearing for the petitioner and Mr.V.Om Prakash, learned Government Advocate appearing for the respondents. Perused the material documents available on records.

3. Since the issue involved in these Writ Petitions are same and similar all the writ petitions are taken up together and disposed of by a Common order.

4. The W.P.(MD)No. 13248 of 2017 is filed by G.Sharmila, she is qualified with Diploma in Teacher Education and appointed in the 4th respondent



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Private Aided Non-Minority school. A vacancy arose in the Secondary Grade Teacher post due to retirement of one Mr.D.Jeyakodi on 31.12.2011. The 3rd respondent granted permission on 13.01.2012 to fill up the said post. The 4th respondent has conducted selection process through paper advertisement and the petitioner was selected and appointed to the said post, vide order, dated 23.01.2012. The respondents have also granted approval through order, dated 25.01.2012.

5. The W.P.(MD)No. 13249 of 2017 is filed by S.Swarnamugi, she is qualified with Diploma in Teacher Education in the year 2011 and appointed in the Private Aided Non-Minority school. A vacancy arose in the Secondary Grade Teacher post, after getting permission from the authorities to fill up the said post, the school had conducted selection process and the petitioner was selected and appointed to the said post, vide order, dated 30.04.2012. The respondents have granted approval with a condition that the petitioner should pass the TET within the prescribed time.



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6. The W.P.(MD)No. 13367 of 2017 is filed by V. Satheeskumar and two others who are qualified to be appointed as Secondary Grade Teacher and they were appointed on 23.08.2010, which is before the G.O.Ms.No.181 School Education Department dated 15.11.2011, hence insisting to pass TET based on the said G.O.Ms.No.181 is illegal. Therefore, the petitioners have filed the present writ petition for writ of Declaration to declare that passing of TET is not required for teachers appointed prior to G.O.Ms.No.181.

7. The W.P.(MD)No. 13368 of 2017 is filed by N.Manjula and ten others who are qualified to be appointed as B.T. Assistant/Secondary Grade Teacher and they were appointed on various dates. The respondents have called the teachers to write the ensuing Teachers Eligibility Test (TET) to be conducted by the TRB on 29/30th April 2017 and to clear the same failing which the petitioners would be terminated from service. Whereas the Central Government in the month of March 2017 has approve the amendment to the provisions of RTE Act, 2009 for granting extension of period for acquiring the minimum qualification by Academic Authority upto 31.03.2017. Hence the respondents



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have cannot direct the petitioners to write the exam in the present examination to be conducted on 29/30th April 2017, hence the writ petition.

8. The contention of the petitioners is the order granting permission to fill up or the order granting approval of appointment do not contain any condition regarding passing of Teachers Eligibility Test, as one of the criteria. The Right of Children to Free and compulsory Education Act, 2009 was enacted by the Central Government and under Section 1(3) it is stated that the Act shall come into force on such date as the Central Government may by notification in the Official Gazette, appoint.

9. The Central Government has issued Notification No. S.O. 428(E), dated 16.02.2010, in Gazette of India, Extraordinary, Part II, sec. 3(ii). 2. Ins. by Act 30, however the in the Gazette the effective date is mentioned as 01.04.2010, hence the Act came into force on 01.04.2010. The State Government adopted the said Act and notified in the Tamil Nadu Gazette on 24.02.2010. The said Act appointed National Council for Teachers Education (NCTE) as an academic authority under Section 23(1) of the Act. The NCTE issued a notification, dated



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23.08.2010 whereby it has prescribed minimum qualification for a person eligible to be appointed for the Class 1 to 8. As per notification, passing of Teachers Eligibility Test is one of the conditions. The State Government had framed Rules as per G.O.Ms.No.173 School Education Department, dated 18.11.2011 and notified in the Gazette on 12.11.2011 under section 38(1) of the Act.

10. Consequently, the Government has issued G.O.Ms.No.181 School Education Department, dated 15.11.2011, whereby the Teachers Recruitment Board was appointed as a Nodal Officer. In the said G.O., it is directed that the recruitment to the post of Secondary Grade Teachers will be followed based on state wide seniority in the Employment Exchange Registration till disposal of the SLP pending on the file of the Hon'ble Supreme Court. Whereas the Graduate Assistants/BT Assistants recruited by Teachers Recruitment Board for Classes 6 to 10 selection through written examination following Certificate Verification. Subsequently, the Government has issued G.O.Ms.No.90, School Education, dated 28.03.2012 clarified the earlier orders in G.O.Ms.No.181. In the said G.O.Ms.No.90, the Government clarified that the recruitment for Secondary Grade Teachers will be based on written examination



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i.e., Teachers Eligibility Test in accordance with the guidelines of NCTE. Hence, the recruitment will be based on TET meaning thereby the TET has been made compulsory for selection of post of Secondary Grade Teacher only. Hence, after issuance of G.O.Ms.No.90, any recruitment should be based on TET and not prior to the said G.O. Since the petitioner was appointed on 25.01.2012 and the G.O.Ms.No.90 came into effect on 28.03.2012 the petitioner is entitled to be considered for granting exemption. Since the respondents have declined to grant exemption, the petitioner has filed this writ petition claiming to declare the TET is not required for petitioners who were appointed prior to G.O.Ms.No.90, dated 28.02.2012 with consequential relief.

II. Further the learned counsel appearing for the petitioners submitted that the Government of India approved the Regulations for the Central Teachers Eligibility Test (CTET) applicable to CBSE schools, Kendriya Vidyalaya Schools etc. wherein the cutoff for implementation has been prescribed as 06.03.2012. Likewise in the State of Kerala, the prescribed cutoff date for implementation is 01.06.2012, for the State of Karnataka, the prescribed cutoff date is 28.04.2012 and for Maharashtra it is 13.02.2013. Since the CBSE school



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and the State of Kerala, Karnataka and Maharashtra has implemented TET qualification as per the Circular issued in the respective States, only on those dates as stated supra, hence the TET is made compulsory by the State of Tamil Nadu only through G.O.Ms.No.90 dated 28.03.2012. Therefore, the prescribed cut-off date should be only on 28.03.2012 and not prior to the said date. Therefore, the learned counsel for the petitioners prayed to allow these writ petitions.

12. The 2nd respondent has filed counter stating that the contention of the petitioners cannot be entertained since the petitioners are wrongly interpreting the two G.O.'s. The claim of the petitioner is that in G.O.Ms.No.181 dated 15.11.2011 the Government has stated that for selection of Secondary Grade Teachers the statewide seniority in Employment Exchange would be followed till the disposal of SLP. And for B.T. Assistants the selection would be based on written examination. Infact when such plea was taken by the teachers, the government had clarified by issuing G.O.Ms.No.90 dated 28.03.2012. It has been clarified that both Secondary Grade Teachers and the B.T. Assistants would be recruited based on the written examination i.e. TET as per the guidelines of



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NCTE. The TET qualified candidates would be recruited based on marks, communal rotation and Certificate verification. However, for Secondary Grade Teachers the statewide seniority in Employment Exchange registration would continue till disposal of SLP. The G.O.Ms.No.181 is the main G.O. and the G.O. Ms.No.90 is only a clarificatory G.O. Therefore, the claim of the petitioners that date of issuance of G.O.Ms.No.90 is the cutoff date is devoid of merits and is liable to be rejected. Moreover, the existing teachers were granted concession of five years time since the petitioners have not passed the TET within the prescribed time, the petitioners cannot be protected when it is mandatory to pass TET. Prescription of qualification is mandated under the Right to Free Education Act. Therefore, the petitioners cannot claim any benefit because the same is against the constitutional mandate. Therefore, the respondents prayed to dismiss the writ petition.

13. The same issued was agitated in W.P.No.28284 of 2021 batch before the Principal Bench and the learned Single Judge vide order dated 07.04.2022 had dismissed the batch of writ petitions consequently dismissed the claim of the writ petitioners. Against this judgment the petitioners therein had



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preferred a review application and the review applications were also dismissed. Under these circumstances and background, the present writ petitions were heard on merits.

14. The Right to Free Education Act was published in Government of India Gazette on 16.02.2010 stating that the Act would come into effect from 01.04.2010. The State of Tamil Nadu has republished the Act in the State Gazette on 24.02.2010 stating the said Act will come into effect from 01.04.2010 onwards.

15. Thereafter, the NCTE has issued notification on 28.03.2010 prescribing minimum qualification as Teachers Eligibility Test (TET) for both Secondary Grade Teachers and Graduate Teachers. Since the said notification is applicable to State of Tamil Nadu also, then the recruitment for Secondary Grade Teachers which were made on and after 28.03.2010 the TET is compulsory.

16. The contention of the petitioners is to fix the date of issuance of G.O.Ms.No.90 dated 28.03.2012. On perusal of G.O.Ms.No.90, it is seen the said



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G.O. is passed to clarify the G.O.Ms.No.181 dated 15.11.2011. The relevant portion is extracted hereunder:

“In the G.O. read above (i.e. G.O.Ms.No.181) the Government have changed the recruitment policy for recruitment of secondary Grade Teachers and Graduate Assistants. Henceforth the recruitment will be based on written examination, namely Teacher Eligibility Test in accordance with the guidelines issued by the National Council of Teacher Education. The qualifying candidates of the Teacher Eligibility Test will be recruited based on marks, communal rotation and certificate verification.

However, with respect to the recruitment of Secondary Grade Teachers, the state-wide seniority i.e. employment exchange registration will continue till the disposal of the Special Leave Petition filed in the Supreme Court.”

The State of Tamil Nadu issued G.O.Ms.No.181 dated 15.11.2011, indicating that the recruitment process is changed based on the NCTE notification, hence to implementing the same the Teachers Recruitment Board is appointed as a Nodal Agency for recruiting Secondary Grade Teachers and Graduate Teachers and to follow the statewide seniority in Employment Exchange. The said G.O. is not stating that TET would be implement from the



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date of the said G.O. In other words, the G.O. states that the TET is implemented based on NCTE notification and to conduct examinations TRB is appointed as nodal agency. Therefore, the date of issuance of G.O.Ms.No.181 dated 15.11.2011 cannot be taken to fix the cut-off date. If so, the G.O.Ms.No.90 dated 28.03.2012 was issued only to clarify the G.O.Ms.No.181 and hence the date of issuance of G.O.Ms.No.90 cannot be taken for fixing the cutoff date for TET qualification.

17. The said G.O.Ms.No.181 also indicates about the following Statewide Seniority in Employment Exchange. The background of passing this G.O. is that, earlier the District wide seniority was followed. Subsequently, the issue was considered by the Hon'ble Division Bench of this Court and it has been held the statewide seniority should be followed in Employment Exchange. Aggrieved persons had preferred SLP and the same was pending. Therefore, a confusion arose, when the *lis* is pending before the Hon'ble Supreme Court, whether the districtwide seniority ought to be followed or statewide seniority ought to be followed. In such circumstances, the G.O. came to be passed to cover the issue of Statewide seniority also. Therefore, the date of issuance of G.O.Ms.No.181 dated 15.11.2011 cannot be taken for fixing the cutoff date for



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TET qualification, if so the clarificatory G.O. issued in G.O.Ms.No.90 dated 28.03.2012 cannot be the date to fix the cutoff date. The petitioners cannot take a shelter under G.O.Ms.No.90 at all.

18. The next contention of the petitioners is that the Government of India approved the Regulations for the Central Teachers Eligibility Test (CTET) applicable to CBSE schools, Kendriya Vidyalaya Schools etc. wherein the cutoff for implementation has been prescribed as 06.03.2012. Likewise in the State of Kerala, the prescribed cutoff date for implementation is 01.06.2012, for the State of Karnataka, the prescribed cutoff date is 28.04.2012 and for Maharashtra it is 13.02.2013. Since the CBSE school and the State of Kerala, Karnataka and Maharashtra has implemented TET qualification as per the Circular issued in the respective States, only on those dates as stated supra, hence since the TET is made compulsory by the State of Tamil Nadu only through G.O.Ms.No.90, the cutoff date ought to be the date of issuance of G.O.Ms.No.90 i.e. 28.03.2012. As held supra the G.O.Ms.No.90 cannot be the cutoff date since the said G.O. was issued for a different purpose. The Tamil Nadu Government has not issued any separate G.O. indicating that TET is compulsory from the so and so date. In such



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circumstances the date of NCTE notification which made TET as compulsory should be the cutoff date.

19. On perusal of the NCTE Notification date 23.08.2010 it is seen that the NCTE has categorically held TET is a qualification for recruiting teachers for the Classes 1 to 8. Therefore, this Court is of the considered opinion that date of notification issued by the NCTE alone can be the cutoff date, because for the first time, through this notification it has been categorically held TET is necessary qualification for recruitment. Therefore, the date “**23.08.2010**” ought to be the cut-off date for making TET as mandatory.

20. However, it is seen in the subsequent Hon’ble Division Bench in W.A.No.313 of 2022 batch vide order dated 08.06.2023 has held that the NCTE has issued amendment Notification dated **29.07.2011** prescribing qualification for the post of Secondary Grade Teachers and Graduate Teachers and hence the cut-off date is date fixed as 29.07.2011. The relevant portion of the amendment notification prescribing qualification is extracted hereunder:



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"1. Minimum Qualifications:-

(i) Classes I to V

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2 - year Diploma in Elementary Education (by whatever name known)

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2-year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure) Regulations, 2002.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 - year Bachelor in Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2 - year Diploma in Education (Special Education)

OR

Graduation and two year Diploma in Elementary Education (by whatever name known)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

(ii) Classes VI-VIII

(a) Graduation and 2 - year Diploma in Elementary Education (by whatever name known)

OR

Graduation with atleast 50% marks and 1 - year Bachelor in Education (B.Ed.)

OR

Graduation with at least 45% marks and 1 - year Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 - year Bachelor in Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 - year B.A./B.Sc.Ed. or B.A.Ed./B.Sc.Ed.

OR

Graduation with at least 50% marks and 1 - year B.Ed. (Special Education)

AND



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(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

4. Teacher appointed before the date of this Notification:- The following categories of teachers appointed for Classes I to VIII prior to date of this Notification need not acquire the minimum qualifications specified in Para (1) above:

(a) A teacher appointed on or after the 3rd September, 2001 i.e. the date on which the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time) came into force, in accordance with that Regulation.

Provided that a teacher of class I to V possessing B.Ed. qualification, or a teacher possessing B.Ed. (Special Education) or D.Ed. (Special Education) qualification shall undergo an NCTE recognized 6 - month special programme on elementary education.

(b) A teacher of class I to V with B.Ed. qualification who has completed a 6-month Special Basic Teacher Course (Special BTC) approved by the NCTE; (c) A teacher appointed before the 3rd September, 2001, in accordance with the prevalent Recruitment Rules.

5.(a) Teacher appointed after the date of this Notification in certain cases:- Where an appropriate Government or local authority or a school has issued an advertisement to initiate the process of appointment of teachers prior to the date of this Notification, such appointments may be made in accordance with the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time).



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(b)The minimum qualification norms referred to in this Notification shall apply to teachers of Languages, Social Studies, Mathematics, Science, etc. In respect of teachers for Physical Education, the minimum qualification norms for Physical Education teachers referred to in NCTE Regulation dated 3rd November, 2001 (as amended from time to time) shall be applicable. For teachers of Art Education, Craft Education, Home Science, Work Education, etc. the existing eligibility norms prescribed by the State Governments and other school managements shall be applicable till such time the NCTE lays down the minimum qualification in respect of such teachers."

Based on this the Hon'ble Division Bench has held that the NCTE's amendment Notification dated **"29.07.2011"** should be the date for fixing the cut-off date for making TET as mandatory and compulsory for recruiting the Secondary Grade Teachers and Graduate Teachers for standards I to X.

21. It was also brought to the notice of this Court that the teachers who were recruited before 2011 are serving without TET qualification and they are entitled to all benefits including increments, promotion. Atleast the teachers recruited after 2011 be allowed to complete their service until their superannuation with all benefits including promotion. Some teachers were praying at least they may be allowed complete their service without promotion.



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This is elaborately dealt with by the Hon'ble Division Bench of this Court in W.P. (MD)No.11317 of 2022 wherein vide judgment dated 29.03.2023 it has been held that persons appointed in service before **23.08.2010** (the date on which the NCTE notified TET is necessary) are also mandated to qualify TET, that is why the breathing time to qualify TET within five years and extended for further four years was granted.

22. Subsequently, the Hon'ble Division Bench in W.A.No.313 of 2022 batch vide judgment, dated 02.03.2023 has held the teachers recruited prior to **29.07.2011** (the date on which the amended qualification issued by NCTE) are entitled to continue in the service with increments/incentives but without promotion to B.T. Assistant post and HM post unless and until they pass TET. As far as the teachers appointed after 29.07.2011 the teachers are not entitled to continue in service. The earlier Hon'ble Division Bench has held irrespective of their date of appointment all should possess TET if they want to continue in the service, but the subsequent Hon'ble Division Bench has held teachers appointed prior to the 29.07.2011 are entitled to continue in service without promotion and teachers appointed after 29.07.2011 should possess TET if they want to continue



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in service. This inconsistency was taken note of by another Hon'ble Division Bench in W.A.(MD)No.432 of 2023 and the Hon'ble Division Bench vide order dated 08.06.2023 has placed the papers to the Hon'ble Chief Justice to refer the issue to Full Bench.

23. From the above it is evident that the present writ petitioners are mandated to possess TET if they want to either continue in service or to continue in service with all benefits including promotion. The two Hon'ble Division Bench judgments is against the prayer of the present writ petitions, one is totally prohibiting the writ petitioners from service and the other is granting some relief for persons appointed prior to 29.07.2011. Therefore this Court is of the considered opinion if the petitioners are appointed prior to 29.07.2011 following the judgment rendered in W.A.No.313 of 2022, if they are eligible, the same may be granted. However this relief is also subject to the judgment that would be rendered in the Full Bench of this Court.



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24. For the reasons stated above,

i. The W.P.(MD)No. 13248 of 2017 filed by G.Sharmila was appointed on 23.01.2012, since it is subsequent to the cut-off date of 29.07.2011, hence the writ petition is dismissed.

ii. The W.P.(MD)No. 13249 of 2017 is filed by S.Swarnamugi appointed on 30.04.2012, since the appointment is subsequent to the cut-off date of 29.07.2011, hence the writ petition is dismissed.

iii. The W.P.(MD)No. 13367 of 2017 is filed by V. Satheeskumar and two others are appointed prior to G.O.Ms.No.181 dated 15.11.2011, but now the cut-off date is fixed as 29.07.2011 and if the petitioners are appointed prior to cut-off date i.e. 29.07.2011, then they are eligible for the benefits granted in W.A.No.313 of 2022. However this relief is subject to the outcome of the judgment of Full Bench. With this direction the writ petition is disposed of.

iv. The W.P.(MD)No. 13368 of 2017 is filed by N.Manjula and ten others who are qualified to be appointed as B.T. Assistant/Secondary Grade Teacher and they were appointed on various dates. The prayer is not to insist to write TET examination during 29/30th April 2017 and to grant extension of time. The prayer of extension of time was granted by Parliament itself and time was extended until 31.03.2019. The petitioner



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are entitled to the benefits granted in W.A.No.313 of 2022 batch. Hence the writ petition is disposed of in above terms.

v. No Costs. Connected miscellaneous petitions are closed.

25. Before parting with the Judgment, it is also brought to the notice of this Court that the teachers recruited in minority schools, it has been held the TET is not necessary and they are working in the said place without TET. There is clear discrimination between teachers who were working in Government schools, Non-Minority schools *Vs.* the teachers working in Minority schools. Whereas the teachers recruited in the Government schools and Non-Minority schools TET is necessary, for the teachers recruited in Non-Minority schools TET is not necessary. Even though it is stated that Right to Free Education Act is not applicable to minority institutions as held in Pramati's Case by the Hon'ble Supreme Court in Hon'ble Five Judges Bench, but the Hon'ble Eleven Judges Bench in T.M.A. Pai Foundation's case has held that the government is empowered to prescribe qualification to the teachers and it is applicable to all institutions. Infact while passing deployment orders because of this issue the Education Department is facing several problems. At times the teacher without



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TET is working in minority institutions is being transferred non-minority institutions, where TET is necessary. This Court is of the considered opinion that this is clear discriminatory, but ought to be resolved by Hon'ble Supreme Court or ought to be amendment in Parliament.

26. Then there are different cut-off dates to various teachers in the whole India and there is no uniformity in the applicability of TET qualification.

27. Likewise there are three different teachers facing this issue. One appointed prior to 29.07.2011, next appointed between 29.07.2011 to 31.03.2019. There are some teachers who had passed after the cut-off date i.e. 31.03.2019 and it has to be clarified whether they are eligible to continue in service.

28. Since the teachers are working for more than two decades (some of them a decade), that also ought to be considered. The Right to Free Education Act was enacted by Parliament, the State Governments and the Central government are not having any power to amend. The amendment for granting extension of time was enacted by Parliament by granting retrospective amendment. Hence, for



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all these reasons the only remedy is in the hands of Parliament. This Court hopes the concerned persons would take necessary steps to address these issues.

Index : Yes / No
Internet : Yes
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30.06.2023

To

1. The Director of Elementary Education,
College Road,
Chennai – 6.
2. The District Elementary Educational Officer,
Dindigul,
Dindigul District.
3. The Additional Assistant Elementary Educational Officer,
Vedasandur Union,
Dindigul District.



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S.SRIMATHY, J

ksa

Common Order made in
W.P.(MD)Nos. 13248, 13249,
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