



W.P.No.161 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

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and

W.M.P.No. 175 and 176 of 2024

- 1.E.P.Usha
- 2.B.L.Ramanujam
- 3.A.Prabha
- 4.P.Palanivel
- 5.K.Monisa
- 6.P.Sumathi
- 7.R.Vinoth
- 8.R.Poonkodi
- 9.R.Geetha
- 10.C.Raja Sekar
- 11.S.Glan Dinesh Kumar
- 12.S.Suguna
- 13.A.Mohammed Basha
- 14.C.Kareem Basha
- 15.S.Shanmugappriya
- 16.P.Elakkiadevi
- 17.K.Jaya Kumar
- 18.V.Joice Rani
- 19.P.Vijaya
- 20.R.Maheswaran
- 21.S.Swaminathan
- 22.K.Jeganathan
- 23.S.Geetha
- 24.S.Arulmozhi
- 25.R.Ravi
- 26.S.Priya
- 27.K.Ranjitha



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- 28.K.Reena
- 29.K.Karthiga Devi
- 30.S.Maheswari
- 31.K.Anusuya
- 32.K.Sumathi
- 33.N.Suthakar
- 34.R.Santhalakshmi
- 35.R.Saravana kumar
- 36.P.Hema
- 37.K.Sankar
- 38.M.Ranjith Kumar
- 39.B.Banupriya
- 40.V.Manikandan
- 41.A.Porkodi
- 42.M.Motcha Arockia Amala
- 43.S.Priyatharshini
- 44.R.Bharathi Devi
- 45.KSaridha
- 46.R.Devipriya
- 47.R.Reeta Joy
- 48.N.Kavitha
- 49.M.Narayanamoorthy
- 50.D.Rekha
- 51.K.Muruganantham
- 52.P.Nagarajan
- 53.S.Ranjitha
- 54.K.Saranya
- 55.P.Sumathi
- 56.T.Karthikeyan
- 57.R.M.Kalaimathi
- 58.R.Sathiyavathi
- 59.V.Rajamanickam
- 60.N.Rajalakshmi
- 61.P.Parameswari
- 62.P.Sasikala
- 63.D.Thiripura Sundari
- 64.S.Sathish
- 65.D.Kamalam
- 66.M.Mahadevan



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- 67.J.Backyaraj
- 68.K.Gowsigan
- 69.G.Sangeetha
- 70.M.Meganathan
- 71.S.Maryjeyaseeli
- 72.R.Sachithanandam
- 73.T.Karthik
- 74.M.Dheebha
- 75.S.Jothilakshmi
- 76.S.Selvameena
- 77.A.Muniswaran
- 78.G.Mahalakshmi
- 79.A.Geetha
- 80.A.Rajabharathi
- 81.T.Murugesan
- 82.T.Rathidevi
- 83.M.Krishnajayanthi
- 84.S.Kannika
- 85.T.Muththamizhselvi
- 86.A.Jasrin Hazria
- 87.B.Kalvikkarasi
- 88.P.Jothilakshmi
- 89.M.Kavitha
- 90.K.Muruganantham
- 91.A.Priyadharshini
- 92.S.Parkavi
- 93.J.Priyatharsini
- 94.S.Nandakumar
- 95.G.Narmadha
- 96.P.Selvam
- 97.K.Ramya
- 98.R.Ramesh
- 99.V.Revathi
- 100.T.Amuthavalli
- 101.I.Marieswari
- 102.M.Vasudevan
- 103.S.Sathyaraj
- 104.S.Eswari
- 105.S.Udayakumar



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- 106.S.Jeyamani
- 107.C.Rani
- 108.S.Arunachalam
- 109.R.Arun
- 110.M.Nithiya
- 111.S.Jothilakshmi
- 112.K.Karthikeyan
- 113.N.Murugan
- 114.A.Mahadevan
- 115.S.Sivaraman
- 116.L.Malar
- 117.G.Sangeetha
- 118.P.Kalaivani
- 119.T.Karthika
- 120.T.Vikram
- 121.M.Janakiraman
- 122.K.Jayalakshmi
- 123.C.Elumalai
- 124.S.Elumalai
- 125.K.Saranya Devi
- 126.R.Radha Lakshmi
- 127.J.Anitha
- 128.S.Selvi
- 129.M.Arun Kumar
- 130.S.S.Sundhari
- 131.S.M.Somasundaram
- 132.K.Karthigadevi
- 133.R.Santhi
- 134.S.Sharmila
- 135.S.Saravanan
- 136.K.Kannan
- 137.M.E.Anandhi
- 138.M.Dheebha
- 139.G.Balamahendiran
- 140.M.Ramya
- 141.K.Kannan
- 142.D.Mekala
- 143.D.Lourdes Infanta
- 144.S.Amal Jothi



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- 145.V.Anandhi
146.G.Christa Jaya Rani
147.I.Fatima
148.S.Sophia Mary
149.S.Rose Mary
150.A.Jenifer
151.S.Nageswari
152.R.Tamilmani
153.D.Rajivi
154.R.Revathy
155.P.Annadurai
156.S.Kalaimani
157.G.Lakshmi
158.D.V.Gnanasowndari
159.P.Ruckmani
160.S.Christ Vimalavathy
161.J.Praveena
162.S.Rajalakshmi
163.S.Banupriya
164.K.MD Uzaifa
165.J.Mariamani
166.C.Kanagarani
167.S.Chitra
168.K.Navaneethan
169.S.Tamil Rani
170.R.Meyyadurai
171.N.Premkumar
172.A.Mariamammal
173.V.Dhanalakshmi
174.R.Sumathi
175.J.Govindhammal

...Petitioners

-Vs-

- 1.The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
School Education Department,
Fort St.George, Secretariat,
Chennai – 600 006.



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

3.Teachers Recruitment Board (TRB),
4th Floor, DPI Campus,
College Road, Chennai – 600 006.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to G.O.Ms.No.149 School Education Department dated 20.07.2018 issued by the 1st Respondent and the Notification No.03/2023 dated 25.10.2023 issued by the 3rd Respondent and to quash the same and to consequently direct the Respondents to select and appoint the Petitioners to the post of BT Assistant based on the method of selection as prescribed in G.O.Ms.No.71 School Education Department dated 30.05.2014.

For Petitioners : Mr.K.Nithyashree

For R1 & R2 : Mr.S.Arumugam
Government Advocate

For R3 : Mr.R.Neelakandan
Additional Advocate General
assisted by Mr.C.Kathiravan
Standing Counsel

ORDER

This Writ Petition has been filed challenging G.O.Ms.No.149, School Education Department, dated 20.07.2018, issued by the first respondent



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and the Notification No.03/2023, dated 25.10.2023, issued by the third respondent with consequential direction to select and appoint the petitioners to the post of BT Assistant based on the method of selection as prescribed in G.O.Ms.No.71, School Education Department, dated 30.05.2014.

2. The petitioners have passed Teacher Eligibility Test (herein after referred as “TET”) in the year 2013 and thus qualified to be appointed as BT Assistant. However, as they were not appointed till date, they remain unemployed. The Union of India enacted the Right of Children to Free and Compulsory Education Act, 2009 with a view of providing free and compulsory education to all children, based on the rights guaranteed under Article 21-A of the Constitution of India. It came into force with effect from 01.04.2010. Further, by Notification dated 31.03.2010, the National Council for Teacher Education (herein after referred as “NCTE”) was appointed as the Academic Authority to lay down the minimum qualification for a person to be eligible for appointment as a teacher. The NCTE issued notification dated 23.08.2010, prescribing minimum qualification for being appointed as a teacher for Classes I to V (Secondary Grade Teachers in Tamil Nadu) and Classes V to VIII (BT Assistants in Tamil Nadu) which notification also prescribed TET as the minimum qualification for the post of teachers. Accordingly, the



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Government of Tamil Nadu framed the Tamil Nadu Right of Free and Compulsory Education Rules, 2011, vide G.O.Ms.No.173, dated 08.11.2011 and subsequently issued order in G.O.Ms.No.181, dated 15.11.2011, appointing the Teachers Recruitment Board (herein after referred as “TRB”) as the nodal agency to conduct TET examinations.

3. By G.O.Ms.No.252, School Education (Q) Department, dated 05.10.2012, the Government has adopted a particular method of selection and directed the third respondent to adopt the said method by giving weightage of marks for selection and appointment of Secondary Grade Teachers and Graduate Assistants. Aggrieved by the said method, writ petitions came to be filed before this Court in W.P.No.5590 of 2014, thereby challenging the G.O.Ms.No.252, dated 05.10.2012, which was allowed and as such, the Government cancelled the order in G.O.Ms.No. 252, dated 05.10.2012 and G.O.Ms.No.29, dated 14.02.2014. Thereafter, the first respondent issued G.O.Ms.No.71, dated 30.05.2014, thereby cancelled the above Government Orders and revised orders for fixing weightage and for distributing the weightage marks. The said Government Order was also challenged before this Court by way of writ petitions and the same was dismissed. Against the order passed by the learned Single Judge of this Court in W.P.No.5590 of 2014, dated



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29.01.2014, writ appeals were filed and the same was also dismissed and the order by the learned Single Judge of this Court was confirmed by the Hon'ble Division Bench of this Court. Further, this Court answered the question whether a TET is a qualifying examination or a competitive examination. The test conducted by the respondents is both qualifying and competitive in nature. It becomes a qualifying examination while fixing the qualifying marks. In other words, until and unless a candidate acquires the qualifying marks, he or she shall not be considered further. It also becomes a competitive examination when the said qualifying marks are considered for the purpose of overall performance towards the selection.

4. While being so, the first respondent issued another G.O.Ms.No.149, School Education (TRB) Department, dated 20.07.2018 stating that the earlier methods are now done away and that a competitive examination has to be held for TET eligible candidates for selection to the post of Secondary Grade Teachers and BT Assistants. It is in violation of the provisions of Central Act, viz., Right of Children Free and Compulsory Education Act, 2009. The regulations framed by NCTE, prescribing method of selection to the post of teacher, and further taking away the accrued right of the petitioners based on the Government orders in force prescribing method of



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selection, viz., the method of selection in G.O.Ms.No.71, dated 30.05.2014, is upheld by the Court of law. Therefore, the process of selection has already been commenced and concluded for awarding weightage mark by TRB. In fact, as per G.O.Ms.No.71, dated 30.05.2014, the Government conducted TET examination and certificate verification was also conducted in the month of July 2017. Therefore, the question of conducting separate examination for the selection to the post of teacher does not arise. Already G.O.Ms.No.71 was upheld upto the Hon'ble Supreme Court of India and thus the method of awarding weightage marks for educational qualification by rejecting all other contra averments as hypothetical was accepted and accordingly the respondents were directed to proceed with selection. Contrary to the said direction, now the present Government order was passed in G.O.Ms.No.149, dated 20.07.2018.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. A perusal of G.O.Ms.No.149, dated 20.07.2018 reveals that after enactment of Right of Children to Free and Compulsory Education Act, 2009, the NCTE was appointed as the Academic Authority to lay down the minimum qualification for a person to be eligible for appointment as a teacher. It issued a notification dated 23.08.2010 prescribing minimum qualification for



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being appointed as Secondary Grade Teachers and BT Assistants. It prescribed TET as minimum qualification. Therefore, it is mandatory for all Secondary Grade Teachers and BT Assistants in Tamil Nadu to qualify. The first respondent issued Government order in G.O.Ms.No.252, dated 05.10.2012, thereby adopted a particular method of selection. However, it was set aside and as directed by this Court, the first respondent passed G.O.Ms.No.71, dated 30.05.2014. Accordingly, the weightage marks was fixed in the following manner :

A. Tamil Nadu Teacher Eligibility Test Weightage for Secondary Grade Teachers.

- a) There shall be 100 marks in total
- b) The computation of 100 marks will be in the following manner
 - i. Higher Secondary Exam : 15 marks
 - ii. D.T.Ed./D.E.Ed., Exam : 25 marks
 - iii. Teacher Eligibility Test : 60 marks

c) The weightage so assigned as indicated in (b) above is to be distributed based on the actual percentage of marks obtained by the candidate in the qualifying examinations as shown below :-

Qualifying Examination	Weightage of marks	Percentage of marks obtained in the qualifying examination	Marks assigned
H.Sc.,	15	P%	$P*15/100$
D.T.Ed./D.E. Ed.,	25	Q%	$Q*25/100$
TET	60	R%	$R*60/100$



Qualifying Examination	Weightage of marks	Percentage of marks obtained in the qualifying examination	Marks assigned
Total	100		XXXXXX

B. Tamil Nadu Teacher Eligibility Test Weightage for Graduate Assistants

- a) There shall be 100 marks in total
- b) The computation of 100 marks will be in the following manner
- i. Higher Secondary Exam : 10 marks
 - ii. Degree Exam : 15 marks
 - iii. B.Ed., Exam : 15 marks
 - iv. Teacher Eligibility Test : 60 marks

c) The weightage so assigned as indicated in (b) above is to be distributed based on the actual percentage of marks obtained by the candidate in the qualifying examinations as shown below :-

Qualifying Examination	Weightage of marks	Percentage of marks obtained in the qualifying examination	Marks assigned
H.Sc.,	10	P%	$P \times 10/100$
Degree	15	Q%	$Q \times 15/100$
B.Ed.,	15	R%	$R \times 15/100$
TET	60	S%	$S \times 60/100$
Total	100		XXXXXX

7. Thereafter, by a letter dated 03.11.2017, the respondents decided to conduct competitive examination to fill up the post of teachers in both



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categories, viz., Secondary Grade Assistants and BT Assistants, since the TET is only the qualifying examination. Those who passed TET, were issued certificates and they were qualified to be appointed as a teacher. However, those who were secured higher marks only are appointed in the post of teacher. Therefore, they decided to conduct competitive examination to appoint the post of teacher, since there are differences between those who had completed degree and qualifying examination before and after. While comparing both those cases, the weightage marks depends upon their qualification and number of years. There are lot of differences. In order to rectify the said differences, the respondents decided to conduct competitive examination.

8. The Government of Tamil Nadu, vide G.O. Ms.No.71, School Education (TRB) Department, dated 30.05.2014, issued a criteria as to selection of candidates for appointment to the post of Secondary Grade Teachers and Graduate Assistants, in Government Schools from among those, who have cleared TET. However, the Public School Education Board/Directorate of School Education found very difficulties to fill up the posts of Secondary Grade Teachers and Graduate Teachers for the reason that based on the communal rotation in the available vacancies among the TET passed candidates fall short. Many candidates, though passed in TET, did not get appointment due to



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communal rotation. Further, TET had been conducted periodically and in every test, thousands of candidates have passed and get qualified for appointment to the posts of Secondary Grade Teachers and Graduate Assistants. The selection to the said posts were made based on the seniority list, by taking into account availability of vacancies and marks obtained in the TET and reservation. Therefore, it has become practically impossible to accommodate all the candidates, viz., those who had passed in the qualifying examination, as the number of vacancies is not on par with the number of candidates who passed the examination.

9. Therefore, a proposal was sent to the Government and, after discussion with the higher officials of the School Education Department, it was resolved to conduct TET separately and competitive examination separately for recruitment to the posts of Second Grade Teachers and Graduate Assistants. It was further resolved that to participate in the competitive examination, the candidates should have passed TET. That apart, there was disparity in treating the candidates, who passed in the TET earlier in point of time and later in point of time. Therefore, in various States, they are conducting separate examinations, viz., TET and competitive examination, for recruitment to



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improve the marks by various candidates. The Department is facing practical difficulties in preparing merit list and other data due to change in marks in every examination. Since, there is minimum mark fixed for qualifying in the TET, the candidates, who passed with minimum marks, are also expecting to get appointed as teachers.

10. Therefore, the Government has taken a policy decision in G.O.Ms.No.149, School Education (TRB) Department, dated 20.07.2018 to conduct a separate competitive examination for recruitment to the posts of Secondary Grade Teachers and Graduate Assistants. It is also made clear that one is TET, being the qualifying examination, and another is competitive examination, for the recruitment to the posts of Secondary Grade Teachers and Graduate Assistants. Further, it is not against the provisions of Right to Education Act or NCTE notification, as there is no prohibition to conduct separate competitive examination for recruitment to the post of Secondary Grade Teachers and Graduate Assistants. That apart, as per the Right to Education Act and NCTE notification, TET is mandatory, which is being followed by the State and only those candidates, who passed TET can participate in the competitive examination. Therefore, fixing higher qualification for the post of teachers is purely within the powers of the



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employer, viz., the State of Tamil Nadu, and it is not against any enactments.

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11. There cannot be any prejudice caused to any of the candidates who passed TET for the reason that weightage marks are being given as per the notification issued by the TRB in notification No.3/2023, dated 25.10.2023. That apart, the Government had taken a policy decision to conduct separate competitive examination as early as in the year 2018. Therefore, challenging the impugned order of the year 2018 itself would amount to a 'stale claim', which is not entertainable, at this length of time, that too, after the notification was issued by the TRB dated 25.10.2023. Pursuant to the said notification, the applications were received till 30.11.2023 about more than 40000 and the competitive examination is scheduled to be held on 04.02.2024. A policy decision can only be challenged on the ground of illegality or contrary to law or any constitutional prohibition. In the case on hand, no ground of *malafideness*, unreasonableness or arbitrariness and overwhelming public interest is made out. It is settled law that the Courts can interfere only the decision making process is vitiated by *malafides*, unreasonableness or arbitrariness and overwhelming public interest.

12. The Additional Advocate General relied upon the Judgment



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reported in *(2003) 2 SCC 632* in the case of *P.U.Joshi and Others Vs.*

Accountant General Ahmedabad and others, in which the Hon'ble Supreme Court of India held that the questions relating to the Constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertaining to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate.

13. Thus, it is clear that the State is competent to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including



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avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Therefore, the mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the Executive. It is not for Judicial Bodies to sit in judgment over the wisdom of the Executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision, falling exclusively within the purview of the Executive. Therefore, the Statutory authority is entitled to frame rules and lay down terms and conditions of service as also the qualifications essential for holding a particular post. If the action of the State is not bonafide or otherwise unfair, this Court can exercise its jurisdiction as prayed for. But neither any such plea was raised, nor was the same otherwise found to be existing. It is settled legal position that merely because a candidate is selected and kept in the waiting list, he or she does not acquire any absolute right to be appointed. It is open to the Government to make the appointment or not. As far as the petitioners are concerned, after qualifying in the TET, verification of the certificates were done. It does not confer any absolute right for them to join as a teacher.

14. In the case of ***C.Vijaya Baskar and others Vs. Government of***



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Tamil Nadu and another reported in ***2023 SCC online Mad 5573***, the

Hon'ble Division Bench of this Court held that the power of Judicial Review in the mode of recruitment, restructuring the cadres prescribing qualification, are matters that fall in the employers' domain and the scope of Judicial Review would be in a narrow campus. The Court would exercise its power of Judicial Review only if the State action is contrary to the Constitutional or statutory provisions or is vitiated by *malafides* or is arbitrary. Some leverage will have to be given to the employers to adopt to the methodology of recruitment.

15. In the case of ***Dr.Gurubaran and others Vs. Union of India and others*** reported in ***2023 SCC Online Mad 5399***, the Hon'ble Division Bench of this Court held that the Courts would be extremely slow in interfering with the policy decision, that too, concerning the academic and education field, unless it is shown that the policy decision is against the Statutes or is manifestly arbitrary. Therefore, this Court restructuring the cadres prescribing qualification are matters that fall in the employers' domain and the scope of Judicial Review would be in a narrow campus. Hence, this Court can exercise its power of Judicial Review only if the State action is contrary to the Constitutional or statutory provisions or is vitiated by *malafides* or is arbitrary. As discussed



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above, this Court finds no *malafide* or arbitrariness in passing of

G.O.Ms.No.149, dated 20.07.2018.

16. In view of the above, this Court is of the opinion that this writ petition lacks merits and it is liable to be dismissed. Accordingly, this Writ Petition stands dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

08.01.2024

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

- 1.The Principal Secretary to Government,
School Education Department,
Fort St.George, Secretariat,
Chennai – 600 006.
- 2.The Director of School Education,
DPI Campus, College Road,
Chennai – 600 006.
- 3.Teachers Recruitment Board (TRB),
4th Floor, DPI Campus,
College Road, Chennai – 600 006.



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