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W.P.Nos.693 & 695 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

CORAM:

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

W.P.Nos.693 and 695 of 2024

W.P.No.693 of 2024:-

R.Suresh Kumar

... Petitioner

-Vs-

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

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

3.The Chief Educational Officer,
Salem District.

4.The Gugai Higher Secondary School,
Represented by its Correspondent,
Linemedu, Gugai, Salem District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to pay the entire annual increment and selection grade due to the petitioner from the year 2011 and to fix his scale of pay in selection grade and continue to pay the same.



W.P.Nos.693 & 695 of 2024

W.P.No.695 of 2024:-

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P.Indumathi

...Petitioner

-Vs-

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

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

3.The Chief Educational Officer,
Salem District.

4.The Ramakrishna Sarada Higher Secondary School,
Represented by its Correspondent,
Subramania Nagar,
Salem District.

...Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to pay the entire annual increment and selection grade due to the petitioner from the year 2011 and to fix her scale of pay in selection grade and continue to pay the same.

In both W.Ps

For Petitioners : Mr.N.Kavitha Rameshwar



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For R1 to R3 : Mr.K.H.Ravikumar
Government Advocate

COMMON ORDER

These Writ Petitions have been filed for direction directing the respondents to pay the entire annual increment and selection grade due to the petitioner from the year 2011 and to fix his scale of pay in selection grade and continue to pay the same.

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

3. The petitioner in W.P.No.693 of 2024 was appointed as B.T.Assistant (History) by the proceedings dated 04.03.2011 in the pay band of 9300+34800+4400GP. His appointment was approved by the third respondent by the proceedings dated 08.06.2011. The petitioner in W.P.No.695 of 2024 was appointed as B.T.Assistant (Maths) by the proceedings dated 25.07.2011 in the pay band of 9300+34800+4400GP. Her appointment was approved by the third respondent by the proceedings dated 10.10.2011. Subsequent to their appointment, the requirement of pass in Teacher Eligibility Test (TET) came into force



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pursuant to the Right of Children to Free and Compulsory Education Act, 2009 viz., Act 35 of 2009. Subsequent to NCTE notification, TET became one of the essential eligibility criteria for appointment as a Teacher. A question arose as to whether those appointed prior to 29.07.2011, namely, the date of notification issued by NCTE, should also necessarily acquire a pass in TET for their continuance in service.

4. In this regard, various writ petitions were filed and the Hon'ble Division Bench of this Court in W.A.No.313 of 2022 and batch dated 02.06.2023 passed an order that those appointed prior to 29.07.2011 need not possess Teacher Eligibility Test. The relevant portion of the order is extracted hereunder:-

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 they will not be eligible for promotion.



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(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."

5. Thus, it is clear that those who were 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. However, in respect of future promotion aspects 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.



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6. Aggrieved by the same, the respondents preferred an appeal before the Hon'ble Supreme Court of India, in which the respondents did not challenge the direction given by the Hon'ble Division Bench of this Court for continuation of Teachers appointed prior to 29.07.2011, even without the Teacher Eligibility Test examination. Therefore, the petitioners are entitled for increment and other incentives though they did not possess TET qualification.

7. In view of the above, the third respondent is directed to pay all the increments, incentives and selection grade if any entitled by the petitioners forthwith and shall continue to pay the same.

8. With the above directions, these writ petitions are allowed.

There shall be no order as to costs.

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Internet: Yes

Index : Yes/No



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Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J.

mn

To

- 1.The Principal Secretary to Government,
School Education Department,
Fort St. George, Chennai - 600 009.
- 2.The Director of School Education,
DPI Campus, College Road,
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