



W.P.No.18471 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.07.2024

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.18471 of 2016

G. Parimala

... Petitioner

Vs

1. The Chief Educational Officer,
Panagal Building,
Saidapet,
Chennai 600 015
 2. The District Educational Officer,
North Chennai,
Egmore,
Chennai 600 008
 3. The Correspondent,
The Tarapore & Loganathan Higher Secondary School For Girls,
No. 6, II Cross Street, Venkateshapuram Colony,
Chennai 600 023
 4. Tmt. M. Sujatha
- ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking Writ of Certiorarified Mandamus to call for all the relevant records relating to the impugned proceedings in Oo.Mu.No.3811/A3/2012 dated 28.07.2012, and its consequential



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impugned proceedings A.thi. Mu.No.6356/A3/12 dated 26.10.2012 and A.thi. Mu.No.1184/A3/13 dated 28.02.2014 passed by the 3rd respondent herein and quash the same as arbitrary, unreasonable, improper, illegal, being violative of rules and regulations and the principles of natural justice and thereby directing the respondents to grant Selection Grade to the petitioner in the cadre of B.T. Assistant w.e.f 19.06.2012 with all consequential monetary and other service benefits without instating the petitioner to repay the 3rd incentive increment amount within the time frame to fixed by this Court.

For Petitioner : Mr. J. Jayamalan
for Mr. S.Nedunchezhiyan

For Respondents : M/s Rajarajeshwari
1 and 2 Government Advocate

Respondents : M/s Thilakavathi , Senior Counsel
3 and 4 for Mr. R Gopinath

ORDER

Originally, the above writ petition has been filed seeking to issue a writ of mandamus, directing the 3rd respondent to promote the petitioner to the post of PG Assistant in English in the vacancy arising from 01.06.2016 on preferential basis as per the provisions of Tamil



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Nadu Recognized Private School (Regulation) Act and Rules, by considering her representation dated 29.04.2016 within a time frame to be fixed by this Court .

2. Thereafter, the prayer has been amended by order dated 10.04.2024 as follows:

Writ petition has been filed seeking to issue a writ of certiorarified mandamus to call for the records relating to the impugned order issued by the 3rd respondent in Ref TLGHSS/255/2016 dated 23.05.2016 and to quash the same and consequently directing the 3rd respondent to promote the petitioner to the post of P.G. Assistant (English) in the vacancy arising from 01.06.2016 on preferential basis as per the provisions of Rule 15(4) (i) of Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 with consequential approval of appointment by the department, with all consequential and other attendant benefits.



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3. It is the case of the petitioner that she had completed her B.A degree in English in the year 2003 and her B.Ed in the year 2008. Thereafter, in the year 2010, she had completed her M.A degree in English. On 24.08.2010, she was appointed as B.T. Assistant in the third respondent's School in a regular sanctioned post. The third respondent School is a Government aided School and governed by the provisions of the Tamil Nadu Recognized Private School (Regulation) Act, 1973 and its Rules 1974. Her appointment was approved by the Department on 28.03.2011 and the petitioner has been discharging her duty diligently and sincerely.

4. It is her case that she had become eligible for promotion to the post of PG Assistant as she was qualified with M.A English degree. It is her further case that in the Government Aided School, the posts of PG Assistant are filled up from amongst the qualified teachers in the school by promotion based on merit and seniority. The persons



completing graduation and post graduation in the same subject or language are given preference as stipulated in Rule 15(6) of the Tamil Nadu Private Schools (Regulations) Rules 1974.

5. With effect from 01.06.2016, a vacancy was to arise for the post of PG Assistant in English. It is the contention of the petitioner that she alone is qualified for the said post. The fourth respondent had her graduation in B.Sc (Zoology) and had qualified with M.A.(English) as a cross major. The petitioner's affidavit proceeds on the basis that the fourth respondent was likely to be considered for promotion to the post of PG Assistant and that the third respondent was taking steps to promote her. Therefore, she has come forward with the above Writ Petition.

6. It is to be stated that though an amendment has been carried out, the affidavit does not contain the pleadings with reference to the same.



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7. The third respondent had filed a counter *inter-alia* contending that the fourth respondent had been promoted prior to the passing of the interim order by this Court in W.M.P.No.16178 of 2016 on 26.05.2016. The third respondent would further submit that the secondary grade teachers and graduate teachers who were appointed from 23.08.2010 had to pass the Teachers Eligibility Test (TET). By order dated 15.02.2017 in W.M.P.No.17030 of 2016 in W.P.No.16178 of 2016, the fourth respondent has been allowed to function, of course, with the **rider** that the appointment would be subject to the outcome of the writ petition.

8. The third respondent would submit that the petitioner was on leave from 18.04.2019 to 27.06.2023 stating that she had suffered an accident. However, since the post occupied by her was a sanctioned post and a medical certificate had not been produced for the entire period of leave, the third respondent was unable to submit the pay

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proposal to the second respondent.

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9. On 25.09.2023, the second respondent informed the first respondent about the need to regularize this leave and at this juncture, the petitioner had come forward to amend the writ petition. The petitioner has not cleared TET and her attempts to clear TET in 2012, 2017, 2019 and 2022 were unsuccessful. Further, her request for regularization of leave is still pending with the authorities. Considering the fact that she does not possess the requisite qualification, she cannot be considered for the promotion as PG Assistant. Therefore, they sought for dismissal of the writ petition.

10. The only point which requires the decision of this Court is as to who amongst the petitioner and the fourth respondent was qualified to be promoted as P.G Assistant. Both the petitioner as well as the fourth respondent have completed their post graduation in English. The fourth respondent was appointed on 19.03.2008 whereas



the petitioner was appointed on 24.08.2010 and therefore, the fourth respondent is senior to the petitioner. It is no doubt that Rule 15(6) of the Tamil Nadu Private Schools (Regulations) Rules 1974 provides that the preference should be given to persons who have obtained their graduation and P.G degrees in the same subject or language. The petitioner had obtained both under graduation and post graduation in English. However pursuant to the notification of G.O.Ms.No.181, School Education (C2) Department dated 15.11.2011, it has been informed that after the passing of the Right to Education Act, it is mandatory for all State Governments to recruit secondary grade and BT teachers only by conducting TET. Pursuant to this G.O, the teachers who, at the commencement of the RTE Act, do not possess minimum qualification shall acquire such minimum qualification within a period of 5 years. It is also made clear that the secondary grade teachers, graduate assistants (BT Assistant) are required to pass the TET. Though the notification was issued on 15.11.2011, it came into effect on 01.04.2010. The teachers who are appointed after



01.04.2010 had to compulsorily qualify TET. The petitioner was appointed on 24.08.2010 and therefore, she is required to compulsorily qualify the TET. The petitioner had produced the judgment of this Court reported in ***2017 SCC Online Mad 5921 / The State of Tamil Nadu, rep by its Secretary to Government Vs R.Arivazhagan*** wherein the issue before the Bench was the interim order of the learned Single Judge directing the respondents therein to grant temporary approval to the writ petitioners who had been appointed as teachers after 15.11.2011 without possessing the TET, for a period of 5 years, and to grant consequential benefits. After discussing G.O.Ms.181, the Bench had observed as follows:-

“43. Accordingly, to meet the ends of justice, the writ appeals and the writ petitions are disposed with the following directions:

(i) The Teachers herein, who have been appointed subsequent to the issuance of the Government Order, are granted one opportunity to appear for



the Teacher Eligibility Test to be conducted by the Teachers Recruitment Board and in the event of their passing in the Teacher Eligibility Test, their appointments shall be approved else, they have no other option but to quit the service/ousted from service;

(ii) Till the results are published, the Government shall pay the salary to the Teachers, who are in service of the aided institutions, for the services rendered by them and in the cases where salary was not paid the same shall be paid along with arrears, if any, forthwith;

(iii) Learned Advocate General submitted that salary has been paid to most of the Teachers and only a few were not paid, for want of particulars. In such a case, the Teachers whose salary have not been paid for want of particulars, they shall furnish the requisite particulars immediately, so to enable the Government to pay the salary immediately;



(iv) Insofar as W.P. No. 7593 of 2015 is concerned, though the writ petitioner has qualified with a pass in Teacher Eligibility Test during 2013, she has not been paid the difference of salary from the date of appointment, till the date of passing of the Teacher Eligibility Test. In view of the discussions aforesaid, the Government is directed to pay the difference of salary within a period of four weeks from the date of receipt of a copy of this order; and

(v) The Teachers Recruitment Board is directed to take note of the above observations and to issue notification for conducting Teacher Eligibility Test on or before the end of February 2017, indicating the date of exam to be either in the last week of March 2017 or in the first week of April 2017.”

The other judgment relied upon by the learned counsel was one reported in **(2023) 3 LW 112 [Director of School Education and Others v. M. Velayutham]** which was once again a batch of writ



petitions where the issues raised are as follows:

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“1. The key issues that arise for determination in these batch of writ appeals and writ petitions are:

(i) whether passing of the Teacher Eligibility Test (TET) is mandatory for promotion to the post of B.T. Assistant/Graduate Teacher, from the cadre of Secondary Grade Teacher (already in service).

(ii) whether non-possession/non-acquisition of a pass in TET by a teacher appointed prior to 29.07.2011 would affect his/her continuance in service and drawal of increment, without seeking for further promotion to the post of BT Assistant/Graduate Teacher.

The Bench observed the minimum qualifications as follows:-

2. By a notification dated 23.08.2010 issued in



exercise of powers conferred under sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009) (in short, “RTE Act”) and in pursuance of Notification No. S.O. 750 (E) dated 31.03.2010 issued by the Department of School Education and Literacy, Ministry of Human Resources Development, Government of India, the National Council for Teacher Education (in short, “the NCTE”) laid down certain minimum qualifications for a person to be eligible for appointment as a Teacher in Classes I to VIII in a school. Subsequently, by notification dated 29.07.2011, the NCTE made certain amendments to the said principal notification. The relevant clauses of the amended notification read thus:

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.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

*(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).

(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.”

The Bench observed as follows:

“100. 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.



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(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.

(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



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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.”

Therefore, by virtue of this judgment passed on 02.06.2023, passing TET has become mandatory and an eligibility criteria for appointment to the post of B.T. Assistant, even by promotion. The appointment of the fourth respondent was prior to the passing of this judgment and only the teachers who had appointed after 01.04.2010 had to compulsorily qualify TET.

11. Therefore, in the light of the petitioner not possessing a TET



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qualification, she has not qualified for promotion. Therefore, the Writ
Petition is dismissed. There shall be no order as to costs.

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Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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1. The Chief Educational Officer,
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Saidapet, Chennai 600 015
2. The District Educational Officer,
North Chennai,
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