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W.P.No.5186 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.5186 of 2020

and

W.M.P.No.6120 of 2020

G.Shobana

...Petitioner

-Vs-

- 1.The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.
- 2.The Chief Educational Officer,
Presidency Girls Higher Secondary School Campus,
Egmore, Chennai – 600 008.
- 3.The District Educational Officer,
Chennai North,
Villivakkam, Chennai – 600 049.
- 4.The Secretary,
A.N.M.Middle School,
Old No.2/1, New No.11, E.V.R. Street,
Kodungaiyur, Chennai – 600 118.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Mandamus, forbearing the respondents from insisting passing of Teacher Eligibility Test (TET) for the petitioner appointed as Secondary Grade Teacher in the fourth respondent school on 02.11.2011, prior to G.O.Ms.No.181, School Education



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Department, dated 15.11.2011 and consequently direct the respondents to continue to make payment of salary including annual increment, incentive increment and other service benefits and pass such further orders.

For Petitioner : Mr.S.Nedunchezhiyan

For R1 to R3 : Mr.T.M.Rajangam
Government Advocate

For R4 : No appearance

ORDER

This writ petition has been filed forbearing the respondents from insisting on passing of Teacher Eligibility Test (TET) for the petitioner appointed as Secondary Grade Teacher in the fourth respondent school on 02.11.2011, prior to G.O.Ms.No.181, School Education Department, dated 15.11.2011 and consequently direct the respondents to continue to make payment of salary, including annual increments, incentives and other service benefits.

2. The case of the petitioner is as follows:

2.1 The Petitioner, G.Shobana was appointed as Secondary Grade Teacher in 4th Respondent School, a Government Aided School, on 02.11.2011 which is a regular sanctioned post; arose due to retirement of



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incumbent Tmt.R.Seethamani on 30.06.2010. The appointment was made by the 4th respondent school after getting prior permission as per the proceedings of District Elementary Educational Officer, Chennai-6 dated 24.08.2011 without any condition. Further, the appointment of the Petitioner was duly approved by Department vide order of DEEO, Chennai-5 dated 22.08.2014. After advent of RTE Act, 2009, NCTE has been appointed as the academic authority under Section 23 (1) of the Act, issued Notification dated 23.08.2010 prescribing educational qualifications for teachers taking classes for Standards 1 to 8, which include passing of TET.

2.2 Consequently, the State Government was issued G.O.Ms.No.181, School Education Department, dated 15.11.2011 appointing TRB as Nodal Agency to conduct TET and to make an appointment for the post of B.T.Assistant based on TET. Thereafter, Government issued orders in G.O.Ms.No.90, School Education Department, dated 28.03.2012 by stating that henceforth the appointment to the post of teachers will be made based on TET marks. The appointment was made prior to G.O.Ms.No.181, School Education Department, dated 15.11.2011 and is protected as per the orders passed by the Hon'ble Supreme Court of India and the subsequent orders passed in G.O.Ms.No.244, School Education Department, dated 30.11.2013.



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Whereas, the Petitioner is not paid with annual increment from the date of appointment. Further, she is not sanctioned with incentive increment for the higher qualification acquired by her.

2.3 The fact remains that TET cannot be insisted for the teachers appointed prior to G.O.Ms.No.181 dated 15.11.2011 and G.O.Ms.No.90 dated 28.03.2012. In this regard, this Court passed number of orders not to terminate the service of teachers insisting on passing of TET. Hence, the writ petition has been filed.

3. Learned counsel appearing for the petitioner relied on the judgment passed by the Division Bench of this Court in a similar case in **W.A.Nos.3041 & 3023 of 2023 dated 28.11.2023**, wherein the Division Bench of this Court has followed the judgment of the earlier Division Bench of this Court in the case of **The Director of School Education D.P.I Campus, College Road, Chennai Vs. M.Velayutham (W.A.Nos.313 of 2022 etc., batch decided on 02.06.2023)**.

4. Learned counsel for the petitioner submitted that the petitioner has completed 10 years of service. Hence, she is eligible for annual increments, incentives and other service benefits



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WEB COPY 5. A counter affidavit was also filed by the second respondent on 07.01.2021 and the relevant portion is extracted hereunder for better appreciation and understanding:

“5. Regarding the averment of the petitioner in para 5 of the affidavit it is submitted that after the enactment of Right of Children to Free and Compulsory Education Act 2009 teachers appointed for whom recruitment process has been initiated prior to 23.8.2010 are exempted from passing Teacher Eligibility Test as per National Council of Teacher Education regulation 2001. However in the case of the petitioner, since she was appointed by the 4th respondent only on 2-11-2011 only after the cutoff date 23.08.2010, the petitioner is not entitled for any relief by granting exemption from Teacher Eligibility Test contrary to the Rules in Vogue. Further the Judgment and other relevant orders referred by the petitioner would be applicable only for the teachers appointed in Minority Aided Educational Institutions.

6. It is submitted that that National Council of Teacher Education has also been consulted and accordingly the Director of School Education has issued circulars to all Inspecting Officer to the effect that teachers appointed in Aided School prior to 31.03.2015 without Teacher Eligibility Test qualifications has to acquire Teacher Eligibility Test qualifications before 31.03.2019 vide Proceedings of the 2nd respondent in Rc No. 34116/D1/C4/2013 Dated: 10.2017.



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Therefore, the averment of the petitioner is hereby denied.”

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6. Heard both sides and perused the materials available on record.

7. Taking into account the ratio relied on by the learned counsel for the petitioner in the case of **H.Thahera Begum and another Vs. The State of Tamil Nadu represented by its Principal Secretary to Government, School Education Department, Fort St. George, Secretariat, Chennai – 600 009 (W.A.Nos.3014 & 3023 of 2023 dated 28.11.2023)** wherein the Division Bench of this Court held as follows:

“5. Applying the aforesaid ratio to the facts of the present case, wherein, the appellants / writ petitioners joined as B.T. Assistant on 22.09.2011 and 27.06.2011, this court is of the opinion that they are entitled for annual increments and incentives, without a pass in TET. However, for future promotional aspects, they must necessarily possess TET. Therefore, the order of the learned Judge is set aside and the respondent authorities are directed to consider the representations of the appellants in the light of the directions specified in the aforesaid judgment dated 02.06.2023, and pass appropriate orders, as expeditiously as possible.”

8. In view of the above ratio laid down by the Division Bench of this Court, TET is mandatory / compulsory only in regard to promotion. For grant



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of incentives, TET is not essential. Hence, the petitioner is entitled for annual increments, incentives and other service benefits since she has completed 10 years of service from the date of appointment, i.e., on 02.11.2011.

9. In the result, the **writ petition stands allowed with the above observations**. No costs. Consequently, connected miscellaneous petition is closed.

13.11.2024

cda

Index : Yes / No

Speaking/Non Speaking order

J.SATHYA NARAYANA PRASAD, J.

cda

To

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



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- 2.The Chief Educational Officer,
Presidency Girls Higher Secondary School Campus,
Egmore, Chennai – 600 008.
- 3.The District Educational Officer,
Chennai North,
Villivakkam, Chennai – 600 049.
- 4.The Secretary,
A.N.M.Middle School,
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