



WP No.7639 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 19.08.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

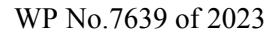
WP No. 7639 of 2023
and WP Nos.7796, 7797 and 7799 of 2023

R.Sakthivel

... Petitioner

VS.

1. Union of India,
Through its Secretary to Government,
Ministry of Human Resource and Development,
(Department of School Education),
New Delhi.
2. National Council for Teacher Education,
G-7, Sector -10, Dwarka,
New Delhi 110 075.
3. The State of Tamilnadu,
Rep. by its Principal Secretary to Government,
School Education (Pa.Ka5(1) Department,
Fort St.George, Chennai 600 009.
4. Teachers Recruitment Board (TRB),
4th Floor, DPI Campus,
College Road, Chennai 600 006.



- ## ... Respondents

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For Petitioner : Ms.N.Kavitha Rameshwar

For Respondents : Ms. P.J.Anitha
CGSC for R1

Mr.J.Harikrishna
Standing Counsel for R2

Mr.K.H.Ravikumar,
Government Advocate, for RR3, 5 to 8

Mr.C.Kathiravan
Standing Counsel, for R4

ORDER

This Writ Petition has been filed challenging the proceedings of the third respondent in G.O.[ID]No.134 School Education [Pa.Ka5(1)] Department dated 18.08.2021 as *ultravires* the Right to Children to Free and Compulsory Education Act, 2009 and the Rules framed thereunder and also the NCTE Notification dated 23.08.2010 and 29.07.2011 and for a consequential direction to the respondents forbearing them for transferring the Block Resource Teacher Educators (BRTE) as B.T. Assistants without possessing of TET pass eligibility.



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2. The grievance of the petitioner in the present Writ Petition is that as per G.O. Ms.No.16 dated 05.02.2002, the BRTes appointed under Sarva Shiksha Abhiyan Scheme are interchangeable with BT Assistant in Government School. Accordingly, the third respondent Government has been appointing 500 BRTes as B.T. Assistants by transfer every year. The requisite essential qualifications for both BRTes and B.T. Assistants are the same. However, after passing of the RTE Act and notifications issued by the NCTE, a TET pass is mandatory for appointment/promotion/transfer as B.T. Assistant. Therefore, according to the petitioner, the BRTes, who do not have TET qualification cannot be transferred and appointed as B.T.Assistants by the Government year after year without possessing TET pass. It is under these circumstances, the Government Order in G.O.(1D) No.134 dated 18.08.2021 has been put to challenge.

3. The sixth respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

6. I submit that it is pertinent to note that Block



Resource Teachers Educators BRTES) were appointed under Sarva Shiksha Abhiyan (SSA) scheme from the year 2002 until 2010 under [G.O.Ms.No. 16](#), School Education Department, dated 05.02.2002 onwards in the cadre of B.T. Assistants at Block Resource Centers and Cluster Resource Centers. It is also pertinent to note that they were all recruited through a selection process conducted by the Teachers Recruitment Board by following norms prevailing at the relevant point of time. I submit that all the Block Resource Teachers Educators (BRTes) were appointed with qualification of degree in respective subjects along with B.Ed degree.

7 I submit that as per G.O.Ms.No.52, School Education (c2) Department, dated 30.03.2006 the post of B.T. Assistant working in government schools and Block Resources Teacher Educators (BRTES) are interchangeable in nature by following the General and Special Rules applicable to permanent post of School Assistants in category 1 Class I of the Tamil Nadu School Education Subordinate Service. It shall apply to the holder of the temporary post of Block Resource Teacher Educators (BRTes) under Sarva Shiksha Abhiyan Scheme sanctioned from time to time.



Accordingly the senior most Block Resource Teacher Educators (BRTES) have been included in the eligible list of Block Resource Teacher Educators transfer to the post of B.T. Assistant in government schools based on needs for teaching 9th and 10th standard students

8 I submit that transfer of Block Resource Teacher Educators to B.T. Assistant at government school is like routine transfer. I submit that TET was made mandatory to the post of Graduate Assistant and B.T. Assistant pursuant to introduction of Right of Children to Free and Compulsory Education Act as rightly held by this Hon'ble Court and Hon'ble Apex Court, TET cannot be made mandatory for the teachers who were appointed before introduction of the said act. Accordingly in the present case Block Resource Teacher Educators were recruited from the year 2002-2010 i.e. prior to implementation of Right of Children to Free and Compulsory Education Act and therefore TET is exempted to Block Resource Teacher Educators as they were appointed much before the implementation of the said Act. I submit that it is pertinent to note that in the last recruitment conducted for the post of Block Resource Teacher Educators nearly 1000 candidates



have been selected and the said selection process were completed before introduction of Right of Children to Free and Compulsory Education Act ie. 23.08.2010 and subsequently due to administrative reasons there was delay in issuing posting orders. Infact by G.O.(Ms) No.181 School Education (C2) Department Dated 15.11.2011.government while issuing posting orders have elaborately dealt with the issue and granted exemption to the persons whose selection process were completed before 23.08.2010 and granted five years' time to clear TET exams for the persons whose selection process were not completed. In the present case all the BRTes selection was completed before 23.08.2010 and they were exempted from passing TET exams.

11. I submit that the only issue is that Block Resource Teacher Educators can be transferred and posted as B.T. Assistant at Government Schools without TET or not. I submit that TET was made as mandatory qualification to the post of Secondary Grade Teacher and B.T. Assistant pursuant to introduction of Right of Children to Free and Compulsory Education Act which came to effect w.e.f. 23.08.2010. After introduction TET any person who is appointed as Secondary Grade



Teacher and B.T. Assistant in government schools or in government aided schools, has been directed to pass TET exams conducted by the Tamil Nadu Teacher Recruitment Board within a period of s years and now persons who possess TET qualification and other educational qualifications are alone eligible to participate in the selection process. I submit that when the issue, was raised before this Hon'ble Court whether the persons who were selected prior to introduction of Right of Children to Free and Compulsory Education Act need to pass TET, this Hon'ble Court held that the TET is exempted for the persons who were selected or appointed prior to 23.08.2010. Accordingly government granted exemption to the respective candidates who were either appointed or got selected to the post of Secondary Grade Teacher or B.T. Assistant from passing TET and their services were also regularized.

12. I submit that in the present case admittedly BRTEs who were now been transferred to the post of B.T. Assistant in government schools were recruited between 2002-2010 and they were either selected or got appointed to their respective post before 23.08.2010 and therefore TET is not applicable to them. I submit



that pursuant to issuance of said G.O. (1D). No.134, School Education [Pa.Ka5(1)] Department, dated 18.08.2021 they were only been transferred to the interchangeable post as per adhoc rules framed under G.O. (Ms)No.52, School Education (C2) Department, dated 30.03.2006, for which TET cannot be made as mandatory as claimed by the writ petitioner herein. If TET is made applicable to them, then it would also applicable to all teachers who got appointment prior to 23.08.2010 without TET, which is against the orders passed by this Hon'ble Court.

4. Heard Ms.N.Kavitha Rameshwar, learned counsel appearing for the petitioner, Ms. P.J.Anitha, learned CGSC appearing for the first respondent, Mr.J.Harikrishna, learned Standing Counsel appearing for the second respondent, Mr.K.H.Ravikumar, learned Government Advocate appearing for respondents 3, 5 to 8 and Mr.C.Kathiravan, learned Standing Counsel, appearing for the fourth respondent.

5. The counter filed by the sixth respondent confines itself to the facts of the appointments made prior to 23.08.2010. The stand taken is that the



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BRTes, who have been transferred to the post of B.T. Assistants in Government Schools were all recruited between 2002 to 2010 and they were either selected or appointed to the respective post before 23.08.2010. Therefore, it has been contended that TET is not applicable to them.

6. The issue that is involved in the present case is no longer *res integra* and it has now been considered by the Division Bench of this Court in Writ Appeal Nos.313 of 2022 etc. dated 02.06.2023. For proper appreciation, paragraph 73 & 74 of the judgment are extracted hereunder:

*73. Further, it is made clear that all those appointed prior to 29.07.2011 are exempt from passing TET only for the purpose of continuance in the post of secondary grade teacher or BT Assistant without promotional prospects. Any appointments whether by direct recruitment or promotion or transfer made after 29.07.2011, will have to necessarily adhere to the minimum eligibility criteria of passing 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.*



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 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.

*(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*



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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 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 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.

7. In the facts of the present case, there is no scope for interfering with the action taken by the respondents in transferring BRTEs to the post of B.T. Assistants for those who were all recruited between 2002 to 2010 and were selected to the respective post before 23.08.2010. The problem arises only in those cases where such appointment/promotion/transfer has been



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made after 29.07.2011. The learned Government Advocate appearing on behalf of the respondents relied upon the adhoc arrangement that was made under G.O.Ms.52 dated 30.03.2006. This adhoc arrangement that was made will not override the judgment of the Division Bench which categorically holds that any appointment made to the post of B.T.Assistant after 29.07.2011, whether by direct recruitment or promotion or by way of transfer, must necessarily pass TET. In view of the same, when a BRTE is interchanged and transferred as a B.T.Assistant after 29.07.2011, to hold the position of the B.T. Assistant, the concerned candidate must have passed TET.

8. Even though the post of BRTE and B.T.Assistant are interchangeable, it is not as if the same person will be holding a dual post. At any given point of time, the concerned person may be holding the post as BRTE or as B.T.Assistant. Therefore, when the person is adorning the role of BRTE and is intended to be changed as B.T.Assistant, it involves a transfer to the post of B.T.Assistant. Once that happens, automatically the mandate prescribed by the Division Bench will come into operation and for



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all those transfers made after 29.07.2011, for holding the post of B.T.Assistant, TET becomes mandatory.

9. The above clarification will suffice and the same is to be kept in mind by the official respondents when they undertake the exercise of interchangeability between BRTEs and B.T.Assistants.

10. This Writ Petition is disposed of with the above observation. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

19.08.2024

jv

Index: Yes/No

Internet: Yes/No

speaking order/ Non Speaking order

Neutral Citation: Yes/No

To

1. The Secretary to Government,
Union of India,
Ministry of Human Resource and Development,
(Department of School Education),
New Delhi.

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2. National Council for Teacher Education,
G-7, Sector -10, Dwarka,
New Delhi 110 075.
3. The Principal Secretary to Government,
Government of Tamilnadu,
School Education (Pa.Ka5(1) Department,
Fort St.George, Chennai 600 009.
4. Teachers Recruitment Board (TRB),
4th Floor, DPI Campus,
College Road, Chennai 600 006.
5. The Commissioner of School Education,
Directorate of School Education,
DPI Camus, College Road,
Chennai 600 006.
6. The Joint Director of School Education (Personnel)
DPI Campus, College Road,
Chennai 600 006.
7. The Director of School Education,
Directorate of School Education,
DPI Campus, College Road,
Chennai 600 006.
8. The State Project Director,
Samagra Shiksha,
DPI Campus, Nungambakkam,
Chenna 600 006.



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jv

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