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W.P.Nos.8862 and 8864 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM:

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

W.P.Nos.8862 and 8864 of 2024

- | | |
|------------|--|
| 1. Rathika | ... Petitioner in W.P.No.8862 of 2024 |
| 2. Santhi | ... Petitioner in W.P.No.8864 of 2024 |

-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 Joint Commissioner/Chairman,
School Committee,
Hindu Religious and Charitable Endowment Board,
Nagapattinam.
4. The District Education Officer,
Tiruvarur,
Tiruvarur District.
5. The Assistant Commissioner cum School Secretary,
Kovilur Arulmigu Periyannayagi
Girls Higher Secondary School,
Muthupettai, Tiruvarur District. ... Respondents **in both W.Ps**



W.P.Nos.8862 and 8864 of 2024

Common 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 increments and selection grade due to the petitioner from the year 2011 and to fix the scale of pay in selection grade and continue to pay the same.

In both W.Ps

For Petitioners : Mr.R.M.Makesh Kumaravel

For R1, R2 and

R4 : Mr.P.Gurunathan
Additional Government Pleader

For R3 : Mr.S.Ravichandran
Additional Government Pleader (HR and CE)

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.



W.P.Nos.8862 and 8864 of 2024

3. The petitioners were appointed as Maths Teacher and Science Teacher in the fifth respondent School on 24.02.2011. Both were qualified with degree in Maths and Chemistry and Bachelor of Education. Both had joined in the service of the fifth respondent School on 01.03.2011. However, the fifth respondent issued proceedings stating that their appointments were being kept in abeyance, on the ground that the fourth respondent had called for particulars of Roaster Point with regard to their appointments, stating that the Communal Roaster System was not followed during their appointment. Therefore, the petitioners along with others approached this Court by way of writ petitions.

4. As per the interim order passed by this Court, the petitioners were continued in service. Therefore, their services are deemed to be regularized since from their date of appointment. Though the fifth respondent sent a proposal to the fourth respondent to approve the revised salary structure, it was not considered so far. Further, they were not considered for annual increment and selection grade promotion from the year 2011.



W.P.Nos.8862 and 8864 of 2024

WEB COPY

5. Subsequent to their appointment, the requirement of pass in Teacher Eligibility Test (TET) came into force 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.

6. 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



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W.P.Nos.8862 and 8864 of 2024

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.

(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."

7. 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



W.P.Nos.8862 and 8864 of 2024

of original appointment, they must necessarily possess TET, failing which they will not be eligible for promotion.

8. 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.

9. In view of the above, the fourth 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.



W.P.Nos.8862 and 8864 of 2024

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

There shall be no order as to costs.

28.03.2024

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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WEB COPY



W.P.Nos.8862 and 8864 of 2024

G.K.ILANTHIRAIYAN. J.

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To

- 1.The Principal Secretary to Government,
The State of Tamil Nadu,
School Education Department,
Fort St. George, Chennai - 600 009.
- 2.The Director of School Education,
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Chennai - 600 006.
3. The Joint Commissioner/Chairman,
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W.P.Nos.8862 and 8864 of 2024

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