



W.P.No.12504 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.01.2024

PRONOUNCED ON : 01.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.12504 of 2022

and

W.M.P.Nos.11975 & 11977 of 2022

J.Anitha

...Petitioner

-Vs-

The Director of Social Welfare
O/o.Director of Social Defence
Social Defence Department
300, Purusawalkkam High Road
Kellys
Chennai – 10

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned Proceedings issued by the respondent in No.7913/A2/2013 dated 09.03.2022 and to quash the same and consequently directing the respondent not to insist passing of Teachers Eligibility Test (TET) against the petitioner working as a Probation Officer in Social Defence Department.



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For Petitioner

: Mr.G.Sankaran
Senior Counsel for
Mr.S.Nedunchezhiyan

For Respondent

: Dr.T.Seenivasan
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the respondent dated 09.03.2022 and also to direct the respondent not to insist passing of Teachers Eligibility Test.

2. The petitioner was selected and appointed to the post of Tamil Pandit Grade-I in Tamil Nadu Social Defence Subordinate Service by the appointment order dated 15.04.2013. The petitioner joined in the post of Tamil Pandit in Government Children Home, Panchapalli, Dharmapuri District on 25.04.2013. Her appointment was through selection conducted by direct recruitment to the post of Tamil Pandit Gr.I by Tamil Nadu Public Service Commission vide notification No.04/2012 dated 02.04.2012. Subsequently, the petitioner was promoted to the post of Middle School Head Master vide proceedings dated 23.03.2017. Thereafter, she was



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promoted to the post of Probation Officer on 02.01.2018 vide proceedings issued by the respondent dated 28.12.2017. After completion of nine years of service as Probation Officer, the respondent issued impugned proceedings dated 09.03.2022 stating that the Government has clarified that a teacher working in Children Home in Social Defence Department is required to pass Teachers Eligibility test as per G.O.Ms.No.181, School Education Department dated 15.11.2011.

3. Mr.G.Sankaran, learned Senior Counsel appearing on behalf of the petitioner submitted that the petitioner was appointed as Tamil Pandit Gr.I, Government Children Home coming under the control of Social Defence Department for the students admitted in Children Home. The Social Defence Department had established Government Children Home for imparting education for children and admission to the children home is being made based on the circular issued by Child Welfare Committee constituted in every district. Therefore, Government Children Home coming under the Social Defence Department cannot be equated with regular school coming under the School Education Department. The petitioner was



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appointed as Tamil Padnit in the Government Children Home through Tamil Nadu Public Service Commission without reference to passing of Teachers Eligibility Test. Thereafter, her service was regularized and she had successfully completed her probationary period. Thereafter, she was promoted to the post of Middle School Head Master and further promoted to the post of Probation Officer. The petitioner completed all departmental examinations meant for probationary officer. In the order of appointment, there was no condition to pass Teachers Eligibility Test. As per the notification issued by the TamilNadu Public Service Commission, the qualification for the post of Tamil Pandit Gr.I is degree in Tamil and B.T., or B.Ed., Degree of a University in the State of TamilNadu. Therefore, the petitioner is not required to passing of Teachers Eligibility Test. The vacancy arises for the post Tamil Pandit Gr.I for the year 2010-2011. Further, the notification issued by the TNPSC referred to the vacancies for the year 2010-2011. Therefore, it is prior to the G.O.Ms.No.181, School Education Department dated 15.11.2011. Hence the question of insisting passing of Teachers Eligibility Test does not arise. In support of his contention, he relied upon the judgment in the case of ***Bedanga Talukdar vs***



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***Saifudaullah khan and others* reported in (2011) 12 Supreme Court Cases**

85 wherein it is held as follows:

"29. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of

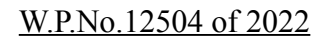


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India."

3.1. He also relied upon another judgment in the case of ***T.R.Kapur and others vs State of Haryana and others*** reported in **1986 (Supp) Supreme Court Cases 584** wherein it is held as follows:

"16. It is well settled that the power to frame rules to regulate the conditions of service under the proviso to Article 309 of th Constitution carries with it the power to amend or alter the rules with a retrospective effect: B.S. Vadhera V Union of INdia, Rajkumar vs Union of India, K.Nagaraj vs State of A.P. and State of J & K vs Triloki Nath Khosa. It is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they cane be changed retrospectively. This rule is however subject to a well recognized principle that the benefits acquired under the existing rules cannot be taken away by an



4. The respondent filed counter affidavit and submitted that after the post of Tamil Pandit, the petitioner gave her willingness dated 17.10.2017 for the promotion to the post of Middle School Headmaster. Thereafter, the petitioner was promoted as Middle School Headmaster and remained in that post till 23.03.2017. Once again, the petitioner revised her decision and gave her willingness dated 23.10.2017 to the post of Probation Officer. The Probation Officer has higher scale of pay than the Middle School Headmaster. In view of the request made by the petitioner, her name has been included



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in the panel for the post of Probation Officer and reverting her as Tamil Pandit and elevated her as Probation Officer by order dated 28.12.2017. The G.O.Ms.No.181, School Education (C2) Department dated 15.11.2011 was issued throughout the State with effect from 23.08.2010. Accordingly, in the State of TamilNadu Secondary Grade Teachers (those teaching classes I to V) are required to have minimum qualification of D.T.Ed., and Graduate Assistant (BT Assistant). Those teaching classes VI to VIII are required to have minimum qualification of B.Ed., They should also pass Teachers Eligibility Test (TET) forthwith. As per Right to Education Act, 2009, the Secondary Grade Teacher /Tamil Pandit who are all appointed after the year 2011 must clear the Teachers Eligibility Test. The Government had also clarified by letter No.18474/SW8(2)/2017-9 Social Welfare and Women Empowerment Department dated 07.02.2022 that the Secondary Grade Teacher/School Assistant/Tamil Pandit who are recruited on or after 23.08.2010 through Employment Exchange and TamilNadu Public Service Commission should compulsorily pass the Teachers Eligibility Test and the same was properly communicated to all Secondary Grade Teachers/Tamil Pandit/B.T.Assistant including the petitioner by letter dated 28.02.2022.



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Further, the Secondary Grade Teacher/House Master/Tamil Pandit who are working in the Department are also coming under the Tamil Nadu Social Defence Subordinate Service Special Rules, must follow the rules which implemented in the School Education Department as per G.O.No.78 Social Welfare and Nutritious Meal Programme dated 15.03.1994.

5. This Court passed order in W.P.No.28284 of 2021, etc., batch cases dated 07.04.2022 and held that:

- "i) The relief sought for by the petitioners is rejected*
- ii) The respondents are directed to ensure strict compliance of the instructions issued by the Principal Secretary to Government, School Education Department, Chennai-9 vide No.2343/Ms/2019-1 dated 02.05.2019 failing which appropriate action shall taken in accordance with law.*
- iii) The respondent are also directed to ensure strict compliance of the Guidelines issued by NCTE dated 11.02.2021 by conducting TET Examination once in every year so as to enable the teachers to qualify themselves in TET.*
- iv) It is open to the 1st respondent to seek appropriate before the 5th Respondent if required."*

6. The Right of Children to Free and Compulsory Education Act,



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2009(Act 35 of 2009) came into force in the State of Tamil Nadu with effect from 01.04.2010. The Constitutional validity of the RTE Act was questioned before the Hon'ble Apex Court in the case of *Unaided Private Schools of Rajasthan vs Union of India* reported in (2012) 6 SCC 1, wherein in paragraph 64 of the judgment, the Hon'ble Apex Court held that the RTE Act shall apply to the following schools:

"64. Accordingly, we hold that the Right of Children to Free and Compulsory Education Act, 2009 is constitutionally valid and shall apply to a school established, owned or controlled by the appropriate Government or Local authority; an aided school including aided minority school(s) receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority; a school belonging to specified category; and an unaided non-minority school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.

7. As per Section 23(1) of the RTE Act, a person who seeks appointment in the schools covered under the RTE Act, to possess minimum qualification as laid down by the Academic Authority Section 23 of the RTE



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Act, reads as under:

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"23. Qualifications for appointment and terms and conditions of service of teachers

i) Any person possessing such minimum qualifications, as laid down by an academic authority, authorized by the Central Government, by notification, shall be eligible for appointment as a teacher.

ii) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualification required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.

iii) The salary and allowances payable to, and the terms and conditions of service of, teacher shall be such as may be prescribed."

Clause (5) of the NCTE amended notification dated 27.09.2011 reads as under:

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"5(a) Teacher appointed after the date of of this

Notification in certain cases:

Where an appropriate Government or local authority or a school has issue 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 apply to teachers of Languages, Social Studies, Mathematics, Science, etc., In respect of teacher for Physical Education, the minimum qualification norms for Physical Education Teachers referred to in NCTE Regulation dated 3.11.2001 (as amended from time to time) shall be applicable. For Teachers of Art Education, Craft Education, Home Science, World Education etc., the existing eligibility norms prescribed by the State Government and other school managements shall be applicable till such time the NCTE lays down the minimum qualifications in respect of such teachers."

8. Accepting the recommendation and the notification issued by the NCTE, the Government of TamilNadu have issued G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011, which reads as



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follows:

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"The Right of Children to Free and Compulsory Education Act, 2009 was enacted by the Parliament in 2009 to provide for free and compulsory education to all children of the age of 6-14 years. The act was published in the Gazette of India on 27th August 2009. Subsequently, the said Act was republished by the Government of TamilNadu in the Tamil Nadu Government Gazette on 24th February 2010. The said Act came into force with effect from 1st April 2010.

2. As per sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (RTE) the National Council for Teacher Education (NCTE) has been appointed as the Academic Authority by Government of India. The said Academic Authority has indicated to all the States that the teachers to be recruited in future for the elementary segment should have passed the "Teacher Eligibility Test"(TET) to be conducted by the appropriate Government in accordance with the guidelines framed by the National Council for Teacher Education for the purpose.

3. The said section clearly specifies that teachers who at the commencement of this Act, do not possess minimum qualifications as prescribed by the Academic Authority authorized by the Central Government shall acquire such minimum qualifications within a period of 5 years. Hence, the "Teacher



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Eligibility Test (TET)" would have to be conducted for recruiting teachers for the primary and upper primary classes. The teachers working in unaided private schools are required to pass Teacher Eligibility Test within 5 years. In the State of Tamil Nadu, Secondary Grade Teachers (those teaching classes I to V) are required to have minimum qualifications of D.T.Ed., and Graduate Assistants (BT Assistant) (those teaching classes VI to VIII) are required to have minimum qualification of B.Ed., They should also pass Teacher Eligibility Test forthwith.

4. However, with the passing of the RTE Act, it is now mandatory for all the State Governments to recruit Secondary Grade and BT Teachers only by conducting a Teacher Eligibility Test.

iii. The teachers Recruitment Board is designate as the Nodal Agency for conducting of Teacher Eligibility Test and recruitment of Teachers.

8. Guidelines for conducting Teacher Eligibility Test is enclosed in the Annexure to the Government Order."

9. However, the Hon'ble Division Bench of this Court in the judgment made in W.A.No.1126 of 2015 etc., batch by order dated 24.01.2017, held as follows:

"Accepting the recommendation and the Notification



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issued by the National Council for Teacher Education, the Government of Tamil Nadu have issued G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011."

10. It is made clear that teachers who have been appointed subsequent to the issuance of G.O.Ms.No.181 has been given one opportunity to appear for the Teachers Eligibility Test to be conducted by the Teachers Recruitment Board and in the event of passing in the Teachers Eligibility Test, their appointments shall be approved. They have no other option to quit service/restored from service.

11. The order made in W.P.No.28284 of 2021 etc batch has been communicated to all the Secondary Grade Teachers/Tamil Pandit/B.T.Assistant including the petitioner vide letter No.7913/A2/2013 dated 08.04.2022. Therefore, the Department has only channelized the orders as a routine to pass the TET exam which is mandatory for the Secondary Grade Teacher as pronounced by the Hon'ble Supreme Court of India and this Court and Government of TamilNadu. Admittedly, the petitioner was selected and appointed to the post of Tamil Pandit Gr.I in Tamil Nadu Social Defence Subordinate Service by appointment order



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issued by the Director of Social Defence Department. Her appointment was made through selection conducted by the TamilNadu Public Service Commission. Subsequently, she was promoted to the post of Middle School Headmaster by proceedings dated 15.03.2017. However, the petitioner revised her decision and gave her willingness dated 23.3.2017 to the post of Probation Officer since it has higher scale of pay than the Middle School Headmaster. Considering the request made by the petitioner, included the petitioner's name in the panel of Probation Officer by reverting her as a Tamil Pandit and promoted her as Probation Officer vide proceedings No.6438/A1/2017 dated 28.12.2017. The order of promotion to the post of probation officer was issued with condition that the petitioner shall pass the departmental examination i.e., Account Test for Subordinate Officer-Part-I, The Jail Test for Prisons - Officer-Part-II under the Juvenile Justice Act. The petitioner passed the departmental examination within a period stipulated in the order of promotion. Therefore, the impugned order cannot be sustained as the petitioner is now working as Probation Officer, and District Level Independent Officer with different duties and responsibilities. That apart, on perusal of the impugned order dated 09.03.2022 revealed that the petitioner



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was shown as B.T. Assistant and it was served to the Superintendent of Government Observation Home for Children, Salem. Whereas, the petitioner was promoted to the post of Probation Officer as early as 28.12.2017 itself. Apart from her qualification to be appointed as Tamil Pandit, she is also qualified with M.A., M.Phil., Ph.d.,. The petitioner is also qualified with National Eligibility Test conducted by University Grant Commission and also State Eligibility Test. Therefore, the Teachers Eligibility Test is not required for the post of Probation Officer and the impugned order passed by the respondent cannot be sustained and is liable to be quashed.

12. Accordingly, the impugned order passed by the 2nd respondent in No.7913/A2/2013 dated 09.03.2022 is quashed and the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Internet: Yes/No
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To

The Director of Social Welfare
O/o.Director of Social Defence
Social Defence Department
300, Purusawalkkam High Road
Kellys
Chennai – 10



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G.K.ILANTHIRAIYAN,J.
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