



W.A.No.392 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.02.2024

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.392 of 2024
AND
C.M.P.No.2643 of 2024

T.Chitra Devi

.. Appellant

Vs.

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

2.The Chief Educational Officer
Kancheepuram District
Kancheepuram

3.The District Educational Officer
St. Thomas Mount, Chrompet
Kancheepuram District

4.The Secretary
Jaigopal Garodia National Higher Secondary School
East Tambaram
Chennai 600 059

5.Teachers Recruitment Board
Rep. by its Chairman
College Road, Nungambakkam
Chennai 600 006



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6.Union of India

Rep. by its Secretary to Government

Department of School Educational and Literacy

Ministry of Human Resource development

217-C, Shastri Bhawan

New Delhi 110 001

7.National Council for Teacher Education (NCTE)

Rep. by its Member Secretary

G-7, Sector-10, Dwaraka

New Delhi 110 075

.. Respondents

Writ appeal filed under Clause 15 of the Letters Patent against the order dated 29.04.2022 passed in W.P.No.34653 of 2019.

For Appellant : Mr.S.Neduchezhiyan

For Respondents : Mrs.Mythreye Chandru
Special Government Pleader (Education)

JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

This writ appeal arises out of the order dated 29.04.2022 passed by the learned Judge in W.P.No.34653 of 2019.

2.The aforesaid writ petition was preferred by the appellant herein, praying for a writ of mandamus, forbearing the respondents from insisting passing of Teacher Eligibility Test (TET) for her appointment as B.T. Assistant (English) in the fourth respondent school on 15.06.2011 prior to issuance of



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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 increment, incentive and other service benefits.

3.It was the case of the appellant before the writ court that the fourth respondent school is a Government aided private school and she was appointed as B.T. Assistant (English) *vide* order dated 31.05.2011 and she joined duty in the 4th respondent School on 15.06.2011 against the sanctioned vacancy. While so, she was not paid any annual increment right from the date of her appointment and also not sanctioned incentive increment for her higher qualification. That apart, from August 2019, the 4th respondent had stopped the payment of salary to the appellant on the premise that she has to pass Teachers Eligibility Test (“TET” in short). According to the appellant, TET cannot be insisted in respect of appointments already made prior to issuance of G.O.Ms.No.181, School Education Department dated 15.11.2011, and therefore, insisting upon passing of TET for paying salary and other benefits to the appellant is totally arbitrary and unreasonable.

4.Referring to the constitutional validity of the Right of Children to Free and Compulsory Education Act, 2009 (“RTE Act” in short), Notification of the



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Government of India dated 31.03.2010 issued under Section 23(1) of the RTE Act and the Guidelines framed by the National Council for Teacher Education, the Writ Court held that accepting the recommendation and the Notification issued by the NCTE, the Government of Tamil Nadu have issued G.O.Ms.No.181 dated 15.11.2011, which makes it very clear that TET shall be conducted by the Teachers Recruitment Board in accordance with the guidelines framed by NCTE and that, it has been stated in the G.O. that teachers appointed prior to the G.O. will be given five years time to acquire the minimum qualification. Accordingly, the learned Judge dismissed the writ petition, by order dated 29.04.2022, which is impugned herein, at the instance of the writ petitioner.

5.Today, when the matter was taken up for consideration, the learned counsel appearing for both sides, in union, submitted that the issue involved herein is covered by a common judgment passed by the very same Bench earlier in *The Director of School Education D.P.I. Campus, College Road, Chennai vs. M. Velayutham (W.A.No.313 of 2022 etc., batch decided on 02.06.2023)*. The key issues for determination and also the resultant portion of the said judgment, read as under:



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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."

WHETHER TET IS A NECESSARY MANDATE FOR TEACHERS APPOINTED IN MINORITY SCHOOLS

71.1. A perusal of the orders impugned in the writ petitions leading to these writ appeals would indicate that the fact that the teachers, in respect of whom approval of appointment was sought for by the school, did not possess TET pass eligibility was not a ground for refusal for grant of appointment approval, nor was it an issue raised before the learned Single Judge at the time of disposal of the writ petitions. Only in the writ appeals, the State Government has raised an additional ground that the teachers whose appointment approval was sought for, did not possess TET. Notwithstanding the same, it is hereby clarified that by virtue of the judgment of the Constitution Bench of the Hon'ble Supreme Court in Pramati Educational and Cultural Trust & Ors. v. Union of India, [(2014) 8 SCC 1], wherein, it was held that the RTI Act, 2009 insofar as it applies to minority schools, aided or unaided, covered under Article 30(1) is ultravires the Constitution, meaning thereby that the 2009 Act will not apply to minority schools, the eligibility of TET pass as required for appointment of teachers in non-minority schools, will not apply to minority schools. In other words, the approval of appointment of teachers in minority schools, both aided and unaided, cannot be refused or rejected on the ground that they do not possess a pass in TET. Further, this specific issue is also pending consideration before the Supreme Court and the law laid down by the Supreme Court in Pramati Educational and Cultural Trust, cited supra, holds the filed as on today. For these reasons, the order of the Learned Judge in the writ petitions is affirmed and the above four writ appeals are dismissed.

"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



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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 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."

6.A reading of the above judgment would make it clear that any appointment made to Graduate Teacher / B.T. 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.



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7. Applying the aforesaid ratio to the facts of the present case, wherein, the appellant / writ petitioner joined as B.T. Assistant on 15.06.2011 in the fourth respondent school, this court is of the opinion that she is entitled for continuance of service with annual increments and incentives, without a pass in TET. However, for future promotional aspects, the appellant must necessarily possess TET. Therefore, the order of the learned Judge is set aside and the respondent authorities are directed to consider the claim of the appellant in the light of the directions issued in the aforesaid judgment dated 02.06.2023, and pass appropriate orders, as expeditiously as possible.

8. Accordingly, the writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D, J.] [M.S.Q, J.]
07.02.2024

Neutral Citation : Yes/No
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To
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Kancheepuram District
Kancheepuram



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5.The Chairman
Teachers Recruitment Board
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6.The Secretary to Government
Union of India
Department of School Educational and Literacy
Ministry of Human Resource development
217-C, Shastri Bhawan
New Delhi 110 001

7.The Member Secretary
National Council for Teacher Education (NCTE)
G-7, Sector-10, Dwaraka
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