



W.P.Nos.28284, 28287, 28288, 28291 of 2021
W.P.Nos.1813, 2128, 2126 & 6634 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESEVED ON: 24.03.2022

DELIVERED ON: 07.04.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.28284, 28287, 28288, 28291 of 2021
and W.P.Nos.1813, 2128, 2126 & 6634 of 2022

W.P.No.28284 of 2021

K.Vasudevan

.. Petitioner

vs.

- 1.The Principal Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai-600 009.
- 2.The Commissioner of School Education,
DPI Campus, College Road,
Chennai-600 006.
- 3.The Director of School Education,
Chennai Central District,
DPI Campus, College Road,
Chennai-600 006.
- 4.The Secretary,
Kumarajah Muthiah Higher Secondary School,
New No.4, Old No.7 Crescent Avenue Road,
Gandhi Nagar, Adyar, Chennai-20.



W.P.Nos.28284, 28287, 28288, 28291 of 2021
W.P.Nos.1813, 2128, 2126 & 6634 of 2022

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5. The Union of India,
Rep by its Secretary,
Ministry of Education, 124-C, Shastri Bhawan,
New Delhi-110 001.
(R4 suo motu impleaded vide order dated
15.03.2022)

.. Respondents

Prayer in W.P.No.28284 of 2021: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to sanction annual increment to the petitioner in the post of B.T. Assistant (Maths) in the 4th respondent school from the year 2012 as well as the incentive increment for having acquired B.Sc., (Maths) without reference to passing of Teachers Eligibility Test (TET) with all consequential and other attendant benefits, based on the representation submitted by the petitioner dated 17.12.2021.

For Petitioners

W.P.Nos.28284, 28287,
28288 and 28291 of 2021 : Mr.Vimal B.Crimson
W.P.No.1813 of 2022 : Mr.R.Kamaraj
W.P.Nos.2126, 2128 &
6634 of 2022 : Mr.G.Sankaran

For Respondents

Respondents 1 to 3 : Mr.S.Silambanan,
Additional Advocate General
assisted by Mr.V.Nanmaran,
Additional Government Pleader
For R5 in W.P.Nos.28284, : Mr.R.Sankaranarayanan,
28287, 28288, 28291 of 2021 Assistant Solicitor General
For R6 in W.P.Nos.1813, 2126 assisted by
& 2128 of 2022 Mr.T.L.Thirumalaisamy,



W.P.Nos.28284, 28287, 28288, 28291 of 2021
W.P.Nos.1813, 2128, 2126 & 6634 of 2022

COMMON ORDER

WEB COPY The issue involved in these writ petitions are one and the same and as such, they are taken up together and disposed of by this common order.

2. The prayer in these writ petitions is for a Mandamus directing the respondents to sanction annual increment to the petitioners in the B.T. Assistant posts as well as incentive increment for having acquired Post Graduation, without reference to passing of Teachers Eligibility Test (TET) with all consequential and other attendant benefits, based on the representation submitted by the petitioners.

3. After the advent of Right of Children to Free and Compulsory Education Act, 2009 [in short 'RTE Act'], the National Council for Technical Education (NCTE) was appointed as academic authority under Section 23(1) of the Act, who issued Notification dated 23.08.2010 prescribing educational qualification for teachers taking classes for Standards I to VIII, which include passing of Teachers Eligibility Test [TET] to be conducted by the appropriate Government as one of the eligibility condition prescribed therein. Subsequently, NCTE issued notification dated 27.09.2011, amending the



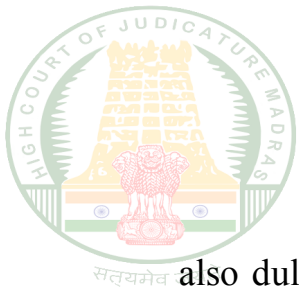
W.P.Nos.28284, 28287, 28288, 28291 of 2021
W.P.Nos.1813, 2128, 2126 & 6634 of 2022

WEB COPY

earlier notification dated 23.08.2010. As per the NCTE notification, passing of TET, conducted by the appropriate Government has to be considered as one of the eligibility condition for appointment to the post of teachers for taking classes to Standards I to VIII.

4. Consequently, State Government has issued G.O.Ms.No.181, School Education Department, dated 15.11.2011, appointing Teachers Recruitment Board [TRB] as Nodal Agency to conduct TET and also to make appointment to the post of Secondary Grade Teachers based on TET.

5. The petitioners were appointed prior to 2011 and their appointment was also duly approved by the Department without any condition much prior to G.O.Ms.No.181 dated 15.11.2011 and they were paid with annual increments from the date of their initial appointment, but suddenly the third respondent herein stopped the payment of annual increment in the post of B.T. Assistant on the premise that the petitioners have to pass TET Test. It is the grievance of the petitioners that TET cannot be insisted as per G.O.Ms.No.181, School Education Department dated 15.11.2011, in respect of appointment already made prior to the aforesaid Government order and



W.P.Nos.28284, 28287, 28288, 28291 of 2021

W.P.Nos.1813, 2128, 2126 & 6634 of 2022

WEB COPY

also duly approved by the Department and therefore, insisting upon passing of TET is totally arbitrary and unreasonable and therefore, they have filed the present writ petitions seeking for a direction to the respondents to sanction annual increment to the petitioners in the post of B.T. Assistants as well as incentive increment for having acquired Post Graduation without reference to passing of TET with all consequential and other attendant benefits, based on the representation submitted by the petitioners.

6. The District Education Officer, Central Chennai, Chennai-15 has filed individual counter affidavits stating that the State Government has carefully examined the issue on the line of the orders of the Hon'ble Supreme Court in SLP(C)No.18227-18228 dated 28.08.2008 and NCTE Guidelines and issued the following orders in respect of change of policy for recruitment of Secondary and B.T. Teachers:

- (i) In respect of Secondary Grade Teachers, the Statewide seniority in Employment Exchange Registration will continue to be followed till the disposal of the SLP filed in the Supreme Court of India.
- (ii) In respect of Graduate Assistants (B.T. Teachers recruited by TRB for the Classes VI to X in all Middle Schools, High & Higher Secondary Schools, selection through written examinations (Teachers Eligibility Test) in accordance with the guidelines framed by National Council for Teachers



WEB COPY



W.P.Nos.28284, 28287, 28288, 28291 of 2021
W.P.Nos.1813, 2128, 2126 & 6634 of 2022

Education and Certificate Verification will be followed.

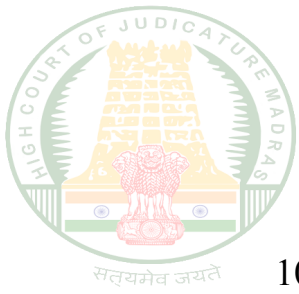
(iii) The Teachers Recruitment Board is designated as a Nodal Agency for Teachers Eligibility Test and recruitment of Teachers.

It is further stated in the counter affidavit that the third respondent has stopped the payment of annual increment to the petitioners, since the petitioners did not possess and qualify the written examinations (TET) in accordance with the guidelines framed by NCET and in the absence of TET qualification, incentives cannot be granted to the petitioners.

7. Heard the learned counsel for the parties and perused the entire materials placed before it.

8. The point for consideration is whether the petitioners / teachers, who did not possess the minimum qualification of pass in TET as per RTE Act, 2009, prior to the date of commencement of RTE Act, 2009, are entitled to annual increments and to continue in service as Teachers?

9. ***The Right of Children to Free and Compulsory Education Act, 2009*** (Act 35 of 2009) (for brevity RTE Act) came into force in the State of Tamil Nadu with effect from 01.04.2010.



W.P.Nos.28284, 28287, 28288, 28291 of 2021

W.P.Nos.1813, 2128, 2126 & 6634 of 2022

WEB COPY

10. The constitutional validity of the RTE Act was questioned before the Hon'ble Apex Court in *Unaided Private Schools of Rajasthan v. Union of India [(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, which reads as under:

"64. Accordingly, we hold that the Right of Children to Free and Compulsory Education Act, 2009 is constitutionally valid and shall apply to the following:

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) 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;

(iii) a school belonging to specified category; and

(iv) 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."

In the light of the aforesaid decision of the Hon'ble Supreme Court, RTE Act is applicable to the recognized School imparting elementary education and includes a School established, owned or controlled by the appropriate Government or a local authority, an aided school receiving aid or grants, a school belonging to specified category and also unaided school not receiving any kind of aid or grants.



W.P.Nos.28284, 28287, 28288, 28291 of 2021
W.P.Nos.1813, 2128, 2126 & 6634 of 2022

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11. 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 Act reads as under:

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

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

(2) 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 qualifications 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.

(3) The salary and allowance payable to, and the terms and conditions of service of, teacher shall be such as may be prescribed"

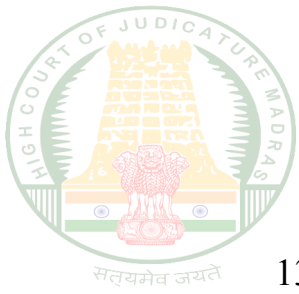
Proviso to Section 23(2) of the RTE Act made it clear that teachers, who, at the commencement of the Act, does not possess minimum qualifications



W.P.Nos.28284, 28287, 28288, 28291 of 2021
W.P.Nos.1813, 2128, 2126 & 6634 of 2022

**as laid down under sub-Section (1), shall acquire such minimum
WEB COPY
qualifications within a period of five years.**

12. The Government of India, by its notification dated 31.3.2010 issued under Section 23(1) of RTE Act, authorised NCTE as the Academic Authority, to lay down the minimum qualification for a person to be eligible for appointment as a teacher. Pursuant to the aforesaid notification, the NCTE has laid down minimum qualification for a person to be eligible for appointment as a Teacher for the classes I to VIII in "school" referred to in clause 2(n) of the RTE Act by the notification dated 23.8.2010, and one of the minimum qualifications laid down therein is that a pass in TET to be conducted by the appropriate Government in accordance with the guidelines framed by NCTE for the purpose. The notification came into effect from 23.8.2010. Clause (5) of the NCTE notification dated 23.8.2010 made it clear that if the process of appointment of Teachers was initiated prior to the date of notification by issuing advertisement, such appointments to be made in accordance with NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001.



W.P.Nos.28284, 28287, 28288, 28291 of 2021
W.P.Nos.1813, 2128, 2126 & 6634 of 2022

WEB COPY

13. Thus, a pass in TET, to be conducted by the appropriate Government, in accordance with the Guidelines framed by the NCTE, was made as an essential condition for appointment as a teacher, both for Classes I to V and for Classes VI to VIII. Thereafter, NCTE also issued a set of Guidelines, by their Memorandum, dated 11.02.2011, for the conduct of TET. Paragraph 9 of the said Guidelines issued on 11.02.2011 stipulated that a person who scores 60% and more in TET will be considered as having passed the examination. Paragraph 9 also contained a small leverage for the grant of concession and it reads as follows:

"9. A person who scores 60% or more in the TET exam will be considered as TET pass. School managements (Government, local bodies, government aided and unaided)

(a) may consider giving concessions to persons belonging to SC/ST, OBC, differently abled persons, etc. In accordance with their extant reservation policy;

(b) should give weightage to the TET scores in the recruitment process; however, qualifying the TET would not confer a right on any person for recruitment/employment as it is only one of the eligibility criteria for appointment."

Para 11 of the Guidelines issued by NCTE dated 11.02.2011 stipulates the frequency of conduct of TET and validity period of TET Certificate and the same is extracted hereunder:



W.P.Nos.28284, 28287, 28288, 28291 of 2021
W.P.Nos.1813, 2128, 2126 & 6634 of 2022

WEB COPY

“11. *The approached Government should conduct a TET at least once every year.* The validity period of TET qualifying certificate for appointment will be decided by the appropriate Government subject to a maximum of seven years for all categories. But there will be no restriction on the number of attempts a person can take for acquiring a TET Certificate. A person who has qualified TET may also appear again for improving his/her score”.

14. Thereafter, by notification dated 29.7.2011, the NCTE amended its earlier notification dated 23.8.2010. Clause (5) of the amended notification dated 27.9.2011 reads as under:

5(a) Teacher appointed after the date of this Notification in certain cases:-

Where an appropriate Government or local authority or a school has issued 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 teachers for Physical Education, the minimum qualification norms for Physical Education teachers referred to in NCTE Regulation dated 3rd November, 2001 (as amended from time to time) shall be applicable. For teachers of Art Education, Craft Education, Home Science, Word 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.”



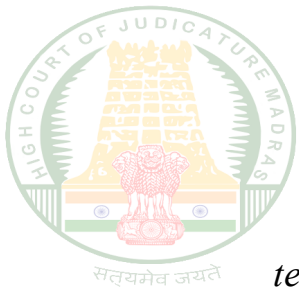
W.P.Nos.28284, 28287, 28288, 28291 of 2021
W.P.Nos.1813, 2128, 2126 & 6634 of 2022

WEB COPY15. Accepting the recommendation and the Notification issued by the NCTE, the Government of Tamil Nadu have issued G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 which reads as follows:-

“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 Tamil Nadu 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 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



W.P.Nos.28284, 28287, 28288, 28291 of 2021
W.P.Nos.1813, 2128, 2126 & 6634 of 2022

WEB COPY

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.

5.

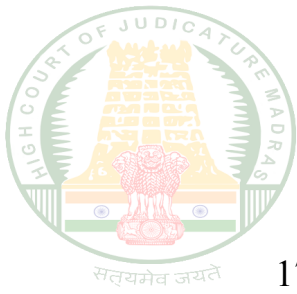
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iii The Teachers Recruitment Board is designate as the Nodal Agency for conducting of Teacher Eligibility Test and recruitment of Teachers.

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

16. A bare reading of the G.O. extracted above would make it clear that TET examination shall be conducted by the Teachers Recruitment Board in accordance with the guidelines framed by NCTE. It prescribed a set of guidelines for the conduct of TET in the Annexure. It has also specified that teachers appointed prior to the issue of G.O.Ms.No.181 dated 15.11.2011 will be given five years time to acquire the minimum qualification.



W.P.Nos.28284, 28287, 28288, 28291 of 2021

W.P.Nos.1813, 2128, 2126 & 6634 of 2022

17. A Division Bench of this Court in the judgment dated **24.01.2017**

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made in W.A.Nos.1126 of 2015 etc. batch, [The State of Tamil Nadu &

Others v. R.Arivazhagan and another] pertaining to writ appeals which have

been filed by the Government challenging the interim direction of a learned

Single Judge directing the respondents therein / educational authorities to

grant temporary approval to the writ petitioners, who have been appointed as

teachers after 15.11.2011 i.e., after the issuance of G.O.Ms.No.181, School

Education (C2) Department dated 15.11.2011, held as follows:

“42. Accordingly, to meet the ends of justice, the writ appeals and the writ petitions are disposed with the following directions :

(i) The Teachers herein, who have been appointed subsequent to the issuance of the Government Order, are granted one opportunity to appear for the Teacher Eligibility Test to be conducted by the Teachers Recruitment Board and in the event of their passing in the Teacher Eligibility Test, their appointments shall be approved else, they have no other option but to quit the service/ousted from service;....”

In the aforesaid cases, the Division Bench of this Court has permitted that the

Teachers, who have been appointed subsequent to the issuance of the

Government Order, are granted one opportunity to appear for the TET to be

conducted by the Teachers Recruitment Board and in the event of their

passing in the TET, their appointments shall be approved else, they have no



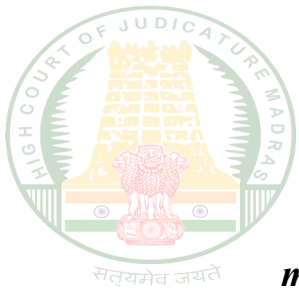
W.P.Nos.28284, 28287, 28288, 28291 of 2021
W.P.Nos.1813, 2128, 2126 & 6634 of 2022

सत्यमेव other option but to quit the service/ousted from service.

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18. In the cases on hand, the contention of the petitioners is that their appointments were approved by the authorities / Department prior to the Government Order in G.O.(Ms.)No.181, School Education (C2) Department dated 15.11.2011 and therefore, it is unreasonable and unfair and on the part of the educational authorities to insist upon pass in TET for sanction of increments. It is to be pointed out at this juncture that Section 23 of the RTE Act, 2009 has initially granted time limit for a period of five years for completion of TET. Subsequently, the Ministry of Human Resources Development, Department of School Education and Literacy, vide Gazette Notification dated 17.10.2017, in exercise of powers conferred under Section 38 of the RTE Act, made the following amendment to Section 23 of the RTE Act, which reads as follows:

"The Right of Children to Free and Compulsory Education Act, 2009 (Principal Act) was amended by the Right of Children to Free and Compulsory Education (Amendment) Act, 2017 and a new proviso was inserted in sub-section (2) of Section 23 of the Principal Act relating to qualifications for appointment and terms and conditions of service of teachers. The inserted new proviso reads as "Provided further that every teacher appointed or in position as on the 31st March 2015, who does not possess



W.P.Nos.28284, 28287, 28288, 28291 of 2021

W.P.Nos.1813, 2128, 2126 & 6634 of 2022

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minimum qualifications as laid down under sub-section (1) shall acquire such minimum qualification within a period of four years from the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017.”

19. Thereafter, The Principal Secretary to Government, School Education Department, Government of Tamilnadu / first respondent, vide D.O. Letter No.2343/MS/2019-1 dated 30.01.2019 addressed to the Ministry of Human Resource Development, Department of School Education & Literacy, Government of India, New Delhi, has sought for further extension of two years for completion of TET. In response to the same, the Under Secretary to Government, Ministry of Human Resource Development, Department of School Education & Literacy has sent a communication to the first respondent dated 27.02.2019, informing that it would not be possible to consider any request related to extension of deadline for training of untrained in-service elementary teachers. Thereafter, the Principal Secretary to Government, School Education Department, Chennai-9, vide Letter No.2343/MS/2019-1 dated 02.05.2019 has issued instruction to Director of School Education, Elementary Education and Matriculations Schools that since the Government of India, Ministry of Human Resource Development, Department of School Education has not extended the time limit, requested to



W.P.Nos.28284, 28287, 28288, 28291 of 2021
W.P.Nos.1813, 2128, 2126 & 6634 of 2022

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take necessary action relating to teachers who have not acquired minimum qualification as prescribed in Section 23 of RTE Act, 2009 and ensure compliance and a report on action taken may be sent to the Government before commencement of the academic year.

20. The fact remains that despite lapse of many years i.e., almost twelve years after the enactment of RTE Act, 2009, the said statutory provision has not been complied with, the petitioners and teachers are allowed to continue in service without possessing the minimum eligibility condition of pass in TET, as per Section 23 of the RTE Act, 2009 and also as per the RTE (Amendment Act), 2017. It is mandatory for the teachers, who did not possess the minimum qualification of pass in TET prior to RTE Act, 2009 to acquire the same within the period of nine years i.e., within 31.03.2019. Thus, the teachers, who do not possess the minimum qualification of pass in TET are not entitled to continue their service in the schools/educational institutions. ***Therefore, the issue is answered as against the writ petitioners.***

21. Education is a process of acquiring knowledge and skills in general,

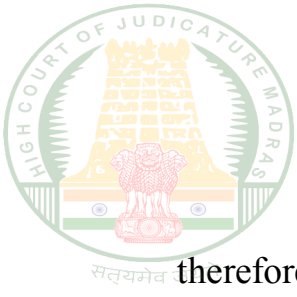


W.P.Nos.28284, 28287, 28288, 28291 of 2021
W.P.Nos.1813, 2128, 2126 & 6634 of 2022

WEB COPY

and the field of teachers' education is special. Quality teachers' education is the need of the hour. Effective teaching depends on the teacher with updated knowledge, skills and technology. The main purpose of the Teacher Eligibility Test (TET) is to assess the candidate's aptitude for the profession, that is, to assess the teachers whether they have adequate teaching competency and a positive attitude towards teaching or not. The rationale for including the TET as a minimum eligibility criterion for a person to be appointed as a teacher is to bring national standards and benchmark for quality in the recruitment process and to lay special emphasis on teachers' quality. It is necessary to ensure teachers with the essential aptitude and ability are recruited to meet the challenges of teaching and for the benefit of student community at large, the teachers should be competent enough with national standards. This would ensure that despite alternate pathways open to become teachers, standards of teaching are maintained.

22. It is one of the contentions of the learned counsel for the petitioners that as per Clause 11 of the NCTE guidelines dated 11.02.2011, the appropriate Government should conduct TET at least once in every year, but the State Government is not conducting TET examination every year,



W.P.Nos.28284, 28287, 28288, 28291 of 2021

W.P.Nos.1813, 2128, 2126 & 6634 of 2022

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therefore, appropriate direction may be given to the State Government to suitably instruct Teachers Recruitment Board for conducting TET examination every year, so as to enable the teachers to qualify themselves in TET.

23. In response to the same, Mr.S.Silambanan, learned Additional Advocate General, on instructions, that Teachers Recruitment Board has notified for conducting TET examinations in the month of June 2022 and teachers, who have not qualified themselves in TET, shall participate in the ensuing TET examinations.

24. Mr.R.Sankaranarayanan, learned Additional Solicitor General, on instructions, would submit that the extended time limit of further period of four years as per the RTE (Amendment) Act, 2017, had expired on 31.03.2019 and the Central Government has not considered any request for further extension of time and would add that only by way of amendment to Section 23 of the RTE Act, further extension of time can be made and if such request is mooted out by the State Government, it is for the Central Government to consider the same.



W.P.Nos.28284, 28287, 28288, 28291 of 2021
W.P.Nos.1813, 2128, 2126 & 6634 of 2022

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25. The claim of the writ petitioners herein is that their appointments were already approved by the department and now insisting upon them to pass in TET is totally arbitrary and unreasonable and therefore, the respondents ought not to have stopped annual increments paid to the petitioners. The third respondent has clearly stated in the counter affidavit that since the petitioners do not possess the minimum qualification of pass in TET as per the guidelines of TET and in the absence of TET, no incentives can be granted to the petitioners.

26. As discussed above and recording the stand taken by the third respondents in the counter affidavit and that despite lapse of nearly 12 years from the date of the notification of the Act, the petitioners did not acquire the minimum qualification of pass in TET and therefore, in the light of Section 23 of the RTE Act, the petitioners are not entitled to any annual increment and the relief sought for by the petitioners is liable to be rejected.



W.P.Nos.28284, 28287, 28288, 28291 of 2021
W.P.Nos.1813, 2128, 2126 & 6634 of 2022

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27. In view of the aforesaid reasons and discussions, this Court passes the following order:

(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 Letter No.2343/MS/2019-1 dated 02.05.2019, failing which appropriate action shall be taken in accordance with law.

(iii) The respondents 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 first respondent to seek appropriate remedy before the fifth respondent, if required.

28. *These writ petitions stands dismissed with the above directions.*

No costs.

07.04.2022

Index : Yes / No
Internet : Yes / No
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WEB COPY



W.P.Nos.28284, 28287, 28288, 28291 of 2021
W.P.Nos.1813, 2128, 2126 & 6634 of 2022

D.KRISHNAKUMAR. J

Jvm

To

- 1.The Principal Secretary to Government,
School Education Department,
Secretariat, Fort St.George, Chennai-600 009.
- 2.The Commissioner of School Education,
DPI Campus, College Road, Chennai-600 006.
- 3.The Director of School Education,
Chennai Central District,
DPI Campus, College Road, Chennai-600 006.
- 4.The Secretary,
The Union of India,
Ministry of Education, 124-C, Shastri Bhawan, New Delhi-110 001.

Common Order in
W.P.No.28284, 28287, 28288, 28291 of 2021
and W.P.Nos.1813, 2128, 2126 & 6634 of 2022

07.04.2022