

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.868 of 2021

Sri Sajal Deb

---Petitioner

Versus

The State of Tripura and 4 Ors.

---Respondents

WP(C) No.90 of 2022

Sri Bidhu Bhusan Choudhury

---Petitioner

Versus

The State of Tripura and 4 Ors.

---Respondents

WP(C) No.134 of 2022

Sri Bhajan Sen and Anr.

---Petitioner

Versus

The State of Tripura and 4 Ors.

---Respondents

WP(C) No.165 of 2022

Sri Pranab Bhowmik

---Petitioner

Versus

The State of Tripura and 4 Ors.

---Respondents

WP(C) No.278 of 2022

Sri Sukanta Debnath and Anr.

---Petitioners

Versus

The State of Tripura and 4 Ors.

---Respondents

WP(C) No.279 of 2022

Sri Dipak Chandra Das

---Petitioner

Versus

The State of Tripura and 4 Ors. ---Respondents

WP(C) No.280 of 2022

Sri Manoj Kumar Debbarma and 2 Ors. ---Petitioners

Versus

The State of Tripura and 4 Ors. ---Respondents

WP(C) No.307 of 2022

Sri Ardhendu Sekhar Paul and 171 Ors. ---Petitioners

Versus

The State of Tripura and 4 Ors. ---Respondents

WP(C) No.314 of 2022

Sri Bimal Majumder and 174 Ors. ---Petitioner(s)

Versus

The State of Tripura and 4 Ors. ---Respondents

WP(C) No.429 of 2022

Sri Tapas Debbarma and 40 Ors. ---Petitioners

Versus

The State of Tripura and 4 Ors. ---Respondents

WP(C) No.434 of 2022

Sri Kamal Ranjan Debnath and 5 Ors. ---Petitioners

Versus

The State of Tripura and 4 Ors. ---Respondents

WP(C) No.439 of 2022

Sri Ardhendu Nath and Anr. ---Petitioners

Versus

The State of Tripura and 4 Ors. ---Respondents

WP(C) No.531 of 2022

Sri Firuj Kumar Debbarma and 39 Ors.

---Petitioners

Versus

The State of Tripura and 4 Ors.

---Respondents

PRESENT

In WP(C) No.134 of 2022

For the petitioner (s) : Mrs. Kiran Suri, Sr. Advocate.
Mr. D. Sarkar, Advocate.
For the respondent (s) : Mr. S.S. Dey, Advocate General
Mr. D. Bhattacharya, G.A.
Mrs. A. Chakraborty, Advocate.

In WP(C) No.868 of 2021

For the petitioner (s) : Mr. Somik Deb, Sr. Advocate
Mr. A. Baran & Mr. K.Debnath, Advocate.
For the respondent (s) : Mr. S.S. Dey, Advocate General
Mr. D. Bhattacharya, G.A.
Mrs. A. Chakraborty, Advocate.

In WP(C) No.165 of 2022

For the petitioner (s) : Mr. Somik Deb, Sr. Advocate
Mr. A. Baran & Mr. K.Debnath, Advocate.
For the respondent (s) : Mr. S.S. Dey, Advocate General
Mr. D. Bhattacharya, G.A.
Mrs. A. Chakraborty, Advocate.

In WP(C) No.90 of 2022

For the petitioner (s) : Mr. Somik Deb, Sr. Advocate

Mr. A. Baran & Mr. K. Debnath, Advocate.

For the respondent (s) : Mr. S.S. Dey, Advocate General
Mr. D. Bhattacharya, G.A.
Mrs. A. Chakraborty, Advocate.

In WP(C) No.278 of 2022

For the petitioner (s) : Mr. S. Lodh, Advocate
For the respondent (s) : Mr. S.S. Dey, Advocate General
Mr. D. Bhattacharya, G.A.
Mrs. A. Chakraborty, Advocate.

In WP(C) No.279 of 2022

For the petitioner (s) : Mr. S. Lodh, Advocate
For the respondent (s) : Mr. S.S. Dey, Advocate General
Mr. D. Bhattacharya, G.A.
Mrs. A. Chakraborty, Advocate.

In WP(C) No.280 of 2022

For the petitioner (s) : Mr. S. Lodh, Advocate
For the respondent (s) : Mr. S.S. Dey, Advocate General
Mr. D. Bhattacharya, G.A.
Mrs. A. Chakraborty, Advocate.

In WP(C) No.434 of 2022

For the petitioner (s) : Mr. S. Lodh, Advocate
For the respondent (s) : Mr. S.S. Dey, Advocate General
Mr. D. Bhattacharya, G.A.
Mrs. A. Chakraborty, Advocate.

In WP(C) No.439 of 2022

For the petitioner (s) : Mr. S. Lodh, Advocate
For the respondent (s) : Mr. S.S. Dey, Advocate General
Mr. D. Bhattacharya, G.A.
Mrs. A. Chakraborty, Advocate.

In WP(C) No.307 of 2022

For the petitioner (s) : Mr. P. Roy Barman, Sr. Advocate
Mr. Samarjit Bhattacharjee, Advocate,
Mr. K. Nath & Ms. N. Ghosh, Advocates.

For the respondent (s) : Mr. S.S. Dey, Advocate General
Mr. D. Bhattacharya, G.A.
Mrs. A. Chakraborty, Advocate.

In WP(C) No.314 of 2022

For the petitioner (s) : Mr. P. Roy Barman, Sr. Advocate
Mr. Samarjit Bhattacharjee, Advocate,
Mr. K. Nath & Ms. N. Ghosh, Advocates.

For the respondent (s) : Mr. S.S. Dey, Advocate General
Mr. D. Bhattacharya, G.A.
Mrs. A. Chakraborty, Advocate.

In WP(C) No.429 of 2022

For the petitioner (s) : Mr. T. D. Majumder, Sr. Advocate
Mr. K. Roy, Mr. T. Halam, Mr. D. Kalai,
Advocates,

For the respondent (s) : Mr. S.S. Dey, Advocate General
Mr. D. Bhattacharya, G.A.
Mrs. A. Chakraborty, Advocate.

In WP(C) No.531 of 2022

For the petitioner (s) : Mr. T. D. Majumder, Sr. Advocate
Mr. K. Roy, Mr. T. Halam, Mr. D. Kalai,
Advocates,

For the respondent (s) : Mr. S.S. Dey, Advocate General
Mr. D. Bhattacharya, G.A.
Mrs. A. Chakraborty, Advocate.

Date of hearing : **30.01.2023**

Date of delivery of Judgment
& Order : **23.05.2023**

Whether fit for reporting : **Yes**

HON'BLE MR. JUSTICE ARINDAM LODH**JUDGMENT & ORDER**

Petitioners are the teachers appointed at Elementary Level under 'Sarba Siksha Abhiyan' Scheme, now renamed as 'Samagra Siksha Abhiyan' (for short, "SSA"), a project introduced by Central Government. By means of filing this batch of writ petitions the petitioners have prayed for regularization of their services with regular pay scale with all other allied benefits including pension, without being insisted for passing of the T-TET examination. The petitioners have also challenged the notification dated 30.09.2021 [Annexure-12 to WP(C) No.868 of 2021] issued by the Government of Tripura with further prayer to revoke/rescind the same. It is the plea of the petitioners that since they were not having minimum qualification as prescribed under NCTE (determination of minimum qualification for recruitment of teachers in schools) Regulations, 2001(as amended from time to time) at the time of their recruitment, they are illegally and arbitrarily insisted upon by the respondents to qualify/pass T-TET examination for the purpose of their regularization in service.

2. On consent of the learned counsel representing the petitioners of this bunch of writ petitions as well as the learned counsel appearing on behalf of the respondents, writ petitions bearing nos. *WP(C) No.868 of 2021, titled as Sri Sajal Deb Vs. The State of Tripura and 4*

Ors. and WP(C) No.134 of 2022, titled as Sri Bhajan Sen and Anr. Vs. The State of Tripura and 4 Ors., have been taken up for hearing and final disposal as lead cases.

3. **Brief Facts:-**

3.1. All the petitioners of this batch of writ petitions were appointed on contract basis. Some of the petitioners, for example, the petitioners in WP(C) No.868 of 2021 graduated with a Degree in Bachelor of Science (Pure Science) from the Tripura University in the year 2003 and thereafter, they completed the course of Diploma in Elementary Education (for short, “D.El.Ed”) on December, 2016 from the Indira Gandhi National Open University (IGNOU).

The petitioner no.1, namely, Bhajan Sen, one of the petitioners in of WP(C) No.134 of 2022 obtained Master Degree (MA) in the year 1993. Thereafter, during the course of his service as Contract Teacher at Upper Primary Level, the petitioner no.1 completed the course of Diploma in Elementary Education (“D.El.Ed.”, for short) in 2017, from IGNOU, Agartala. Pursuant to the issuance of the notification dated 10.02.2010 [Annexure-3 to WP(C) No.868 of 2021], the petitioners became aspirant for appointment to the post of Upper Primary Teacher as well as Primary Teacher under the Education Department, Government of

Tripura. On being selected, offers of appointment were issued in favour of them on different dates of the year 2010.

In WP(C) No.868 of 2021, offer of appointment was issued vide memorandum dated 04.10.2010 [Annexure-4 to the WP(C) No.868 of 2021] in favour of the petitioner Sajal Deb.

In WP(C) No.134 of 2022, offers of appointment were issued in favour of the petitioners vide Memos dated 01.02.2010 and 20.02.2004 with honorarium of Rs.7,560/- and Rs. 2,145/- respectively for a period of one year. However, such engagements of the petitioners were subject to the following conditions:-

- “1. The engagement shall be of only 1 (one) year on a fixed monthly honorarium as given above.*
- 2. The person so engaged shall be terminated from the engagement automatically on expiry of one year from the date of engagement.*
- 3. Continuation of engagement for another year shall be subject to satisfactory Performance of the person in the 1st year of the engagement.*

The expenditure involved on this account shall be debitable against fund available under SSA during 2010. ”

3.2. From time to time by way of pay revision, the honorarium of the petitioners was enhanced. But, the services of the petitioners have

neither been regularized nor the benefit of regular pay scale has been granted to them.

3.3. The petitioners, have *inter alia*, prayed for **regularization of their services** with **regular pay scale** including the benefit of **pension** and **other consequential benefits**, and thus call for an end of their services as teachers on contract basis under SSA project.

3.4. The petitioner, namely Sajal Deb of WP(C) No.868 of 2021 had filed a writ petition, in a representative capacity, which was registered as WP(C) No.329 of 2015 before this Hon'ble High Court.

3.5. After hearing the rival submissions advanced by learned counsel appearing for the parties, a Division Bench of this Court had disposed of the said writ petition by a judgment and order dated 23.02.2021, operative portion of which is extracted hereunder, for convenience, *in extenso*:-

“53. We are, therefore, of the view that the petitioners must receive the remuneration in regular scale of pay assigned to the primary/upper primary Government teachers. The State Government also has a policy of initial appointment of a teacher on fixed pay basis for a period of 5 years. The same rule can be applied in the present case also. In case of all the petitioners thus from the date of the petitions or upon completion of 5 years of service whichever is later, they shall be placed in regular corresponding scales of pay for the Government teachers. However, this pay fixation would be for a notional purpose from the appropriate date till the date of this judgment, of course with notional release of

increments as per the rules. Actual difference in salary would be paid effective from the date of this judgment.

54. *The petitioners would have a right to be regularised after 10 years of continuous and uninterrupted engagement from initial appointment. It would be up to the Government to consider them for regularisation either in existing vacant posts of Government teachers or to sanction new posts as SSA teachers by creating such cadre if so advised. **It would be open for the Government to frame a scheme providing for further terms and conditions on which such regularisation shall be done.** However, any such scheme shall contain a clause that the service upon completion of 5 years from initial engagement or the date of filing the petition whichever is later, (when as per this judgment the petitioners would notionally start receiving pay in regular scales) till date of regularisation, the services rendered by the petitioners shall count towards their pensionary benefits.*

55. *We are conscious of the legal issues concerning regular teachers in the Government schools which is a fall out of the Division Bench judgment of this Court in case of Tanmoy Nath and others vrs. State of Tripura and others reported in (2014) 2 TLR 731, where as per further orders passed by the Supreme Court, all those teachers who were terminated on account of the judgment of the High Court, would have a right to compete for fresh selections with age relaxation granted to them up to 31.03.2023. We have, therefore, left for the Government to regularize these petitioners either against the existing posts or on new posts which may be sanctioned.*

56. *These directions shall be carried out within a period of six months from today.”*

3.6. The petitioners submitted repeated representations to the Director, Elementary Education and State Project Director, Samagra Siksha, Tripura to comply the judgment and order dated 23.02.2021 and

to regularize their services and also to facilitate their pension as per directions ordained in the said judgment.

3.7. The petitioners in this batch of writ petitions also have taken a plea that, for appointment to various posts, purely on monthly fixed pay basis under the Directorate of School Education, Government of Tripura. The said Directorate issued a notification bearing reference No.F1(1-48)-SE/E(NG)/2010 dated 25.08.2010 [Annexure-10 to WP(C) No.134 of 2022], thereby inviting applications wherein the professional qualification i.e., B.Ed/D.El.Ed was not sought for.

3.8. Since the services of the appointees under notification dated 25.08.2010, were neither regularized nor being given the benefit of regular pay scale, they presented a host of writ petitions before this court, and by a common judgment dated 18.12.2020, those writ petitions were allowed, which attained finality since it remained unchallenged.

3.9. In compliance of such judgment and order dated 18.12.2020, the Directorate of Secondary Education, Government of Tripura issued a Memorandum dated 06.08.2021 extending the benefit of regular pay scale to those Assistant Teachers who were appointed in the year 2012, and completed their continuous 5(five) years' service on of fixed pay basis. It is pleaded that in such a case the respondents did not insist the requirement of T.TET examination.

3.10. It is contended that the petitioners have been treated differently for the reason that in purported compliance of the judgment and order dated 23.02.2021 (Annexure-6), the State Project Director, Samagra Siksha, Tripura had issued a notification dated 30.09.2021, whereunder the SSA Teachers have been divided into 3(three) broad categories, namely, Categories-I, II and III, with further sub-divisions of Category-III into III(A), III(B) & III(C) for providing the benefit of regularization and regular scale of pay.

3.11. The plea of the petitioners is that the professional qualification *vis-à-vis* the criteria to qualify in T-TET examination are not required for their regularization and other ancillary benefits since they were appointed prior to 23.08.2010, i.e., the cut-off date mentioned therein for extending the benefit of regularization.

3.12. After the introduction of the scheme under notification dated 30.09.2021 by the Government of Tripura, the petitioners of WP(C) No.329 of 2015 and WP(C) No.212 of 2016, initiated contempt proceedings which were registered as Cont. Cas(C) No.66 of 2021 and Cont. Cas(C) No.68 of 2021, respectively, for alleged non-compliance of the judgment dated 23.02.2021 passed by the Division Bench of this Court as quoted here-in-above.

The said contempt applications were dismissed with the following observations:-

“On the other hand, the learned counsel appearing for the contempt petitioners-original writ petitioners contend that the scheme framed by the State is not in consonance with the directions issued by the Division Bench of this Court and suffers from various other legal infirmities.

We are of the considered view that since the State has framed the scheme dated 30th September, 2021 which has been appended as annexure-1 to the response filed before the Court, we condone the delay in making of the scheme and are of the considered view that the State having framed the scheme nothing further needs to be done in the present contempt petitions.

However, while dismissing the present contempt petitions we grant liberty to the contempt petitioners, if they are so advised to challenge the scheme framed by the State of Tripura dated 30th September, 2021 on any ground that they may feel appropriate and the dismissal of the present contempt petitions shall not amount to an affirmation of the scheme framed by the State in the said regard. We are compelled to record this finding in order to enable any person who may be aggrieved by the scheme to challenge the said scheme and not to prejudge the scheme or give approval of the scheme in any manner. However, we conclude by stating that we find no ground for initiating any contempt petition in the present nature. The judgment referred hereinabove by the Division Bench was passed in rem.

With the observations as noted hereinabove, both the contempt petitions stand dismissed. If any individual has any grievance, they are free to raise such grievances.”

4. From the aforesaid observations and directions, it comes to fore that the Division Bench of this Court has allowed the scheme to be introduced, however, liberty is given to challenge the scheme if they are

aggrieved of the same and the contempt petitions have been dismissed without making further remarks on the merit of the scheme.

5. The State-respondents have pleaded that they have formulated the scheme vide notification dated 30.09.2021, in terms of the direction passed by the Division Bench of this Court in WP(C) No.329 of 2015 and WP(C) No.212 of 2016 and in consonance with the NCTE Regulations, 2001(as amended from time to time) and NCTE Notifications dated 31.03.2010 published on 05.04.2010 and 25.08.2008 read with the Right of Children to Free and Compulsory Education (Amendment Act, 2017) Acts, Rules, and Guidelines as well.

6. I have heard Mrs. Kiran Suri, learned Senior Counsel assisted by Mr. D. Sarkar, learned counsel appearing for the petitioners in WP(C) No.134 of 2022;

Mr. Somik Deb, learned Senior Counsel assisted by Mr. Abir Baran, learned counsel appearing for the petitioners in WP(C) No.868 of 2021, WP(C) No.90 of 2022, WP(C) No.165 of 2022;

Mr. P. Roy Barman, learned Senior Counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the petitioners in WP(C) No.307 of 2022 and WP(C) No.314 of 2022;

Mr. T. D. Majumder, learned Senior Counsel assisted by Mr. Kaushik Roy, learned counsel appearing for the petitioners in WP(C) No. 429 of 2022 and WP(C) No.531 of 2022;

Mr. S. Lodh, learned counsel appearing for the petitioners in WP(C) No.278 of 2022, WP(C) No.279 of 2022, WP(C) No.280 of 2022, WP(C) No.434 of 2022 and WP(C) No.439 of 2022; and

Also heard Mr. S. S. Dey, learned Advocate General assisted by Mr. D. Bhattacharya, learned G.A. and Mrs. A. Chakraborty, learned counsel appearing for the respondents.

7. Submissions on behalf of the petitioners:-

7.1. The entire gamut of the submissions of learned counsels appearing on behalf of the petitioners is that the in-service untrained teachers who have been recruited, prior to 23.08.2010 with academic qualification, without professional qualification, at the time of initial entry into the service are required to obtain professional qualification (B.Ed/D.El.Ed/B.El.Ed.) only, and they are exempted from qualifying T-TET examination as embodied in notification dated 18.06.2012 issued by the NCTE. According to Mrs. Suri, learned Senior Counsel and Mr. Somik Deb, learned Senior Counsel, the said notification dated 18.06.2012 had taken into account the proposal of the Government of Tripura for relaxation of the requirement of minimum qualification for

appointment as teachers as provided under sub-section (2) of Section-23 of the Right of Children to Free and Compulsory Education Act, 2009 (for short, “RTE Act, 2009”). Learned Senior Counsel, however, contended that the said relaxation was granted up to 31.03.2015 subject to certain conditions including the condition that the State Government shall take all steps to increase the institutional capacity for preparing persons with essential qualifications prescribed under NCTE Regulations, 2001, to ensure that only qualified persons are appointed as teachers after 31.03.2015 and this exemption was thereafter extended by a further Memorandum dated 19.08.2017 wherein it was provided that those teachers who were already engaged must acquire the qualifications of a trained teacher as prescribed by NCTE within the stipulated time on 31.03.2019. It was further contended to acquire the prescribed qualifications. The Government of India also recognized certain online courses through which the prescribed qualification could be obtained.

7.2. The learned Senior Counsels appearing on behalf of the petitioners referring to Section 23(3) of the RTE Act and Rule 11 read with Rule 20(3) of the RTE Rules tried to persuade this Court that it would be fallacious to contend that there is distinction between the petitioners who were appointed under the Centrally Sponsored Scheme, namely, SSA and the Science Graduate Teachers who were appointed

against the posts created by the Education Department, Government of Tripura.

7.3. According to learned counsels for the petitioners, the petitioners of this batch of writ petitions also were appointed under Recruitment Rules promulgated in the year 1971 wherein neither B.Ed/D.Ed.Ed nor T-TET was there. Learned counsels in the same tune have argued with vehemence that while framing Regulations, 2001, the NCTE never prescribed TET to make the persons eligible for appointment of Teachers.

7.4. Learned Senior Counsels for the petitioners have seriously attacked the policy of the State Government dated 30.09.2021 on the ground that a bare reading of this notification would show that it contemplates futuristic action, and would not have any application with respect to any action already performed. According to Mr. Deb, learned Senior Counsel a subordinate legislation is always prospective and cannot be retrospective. As such, NCTE notification dated 11.02.2011 should have prospective effect in the present cases. Since the appointments were made prior to 11.02.2011, therefore, the State Government by no stretch of imagination need to adhere to the guidelines in the matter of recruitment of the SSA teachers framed by the NCTE by notification dated 11.02.2011.

7.5. A plain reading of Section 23(1) of the Act would show that this is all inclusive (minimum qualifications) which includes academic qualification, professional qualification, TET qualification. Section 23(2) is the power to relax conferred on to the Central Government, which only pertain, professional qualification. The proviso appended that too is only relatable to Section 23(2) and not the entire context of Section 23. The NCTE had published notifications extending the time for completion of in-service teachers' training and also provided that the D.El.Ed. course would be equivalent to the TET course provided it is obtained within certain time period.

7.6. Objections raised by the State-respondents as regards the regularisation of the services of the petitioners for not possessing requisite educational qualifications is not a valid objection for two reasons; *firstly*, the Government itself being the recruiting agency had prescribed minimum qualifications in the Recruitment Rules. These qualifications were published in the recruitment notification. The respondents cannot take the plea that the petitioners did not possess these qualifications. Several years later the Government cannot raise the legality and propriety as regards the recruitments of the petitioners as Teachers on the ground that they failed to acquire the educational qualifications prescribed by NCTE.

8. On culmination of the entire submissions advanced by learned counsels appearing on behalf of the petitioners, the principal issue revolves round this batch of writ petitions is that whether acquisition of T-TET pass certificate is required for regularisation of the service of the petitioners since the selections of the petitioners were made prior to 23.08.2010. Further, what is culled out from the submissions of learned counsels for the petitioners is that the main grievance revolves round the inclusion of the words “at the time of recruitment” embodied in Category-II of the notification dated 30.09.2021 issued by the Government of Tripura.

9. **Submissions on behalf of the State-respondents.**

9.1. State Government is under obligation to abide by the educational notifications issued time to time by the NCTE, the authorized agency of the Central Government to issue such notifications in exercise of its power conferred under Section 23(2) of the RTE Act. Learned Advocate General appearing on behalf of the State of Tripura emphatically contended that the Government had framed the scheme vide Notification dated 30.09.2021 for regularization of the SSA Contractual Teachers in compliance of the directions passed by a Division Bench of this Court in earlier round of litigation, instituted by Sajal Deb, one of the petitioners of this batch of writ petitions.

9.2. The teachers recruited under the State Recruitment Rules, 1971 cannot be compared with the teachers appointed under SSA scheme. In compliance with the judgment and order passed by the Division Bench of this Court, the eligible teachers appointed under SSA scheme have been granted regular pay scale. The scheme for regularization of SSA teachers published under notification dated 30.09.2021 by the Government of Tripura conforms the educational qualification prescribed under the NCTE Regulations, 2001(as amended from time to time) *vis-à-vis* the notifications issued by the NCTE subsequent thereto. T-TET pass certificate is a mandate in view of the notifications issued time to time by NCTE to fulfill the object the Government of India intended to achieve. It is the fundamental duty of the State to implement the provisions of RTE Act in its true perspective. The notification dated 30.09.2021 dividing the SSA teachers into 3(three) broad categories does not in any way offends Article 14 and 16 of Constitution of India. The present batch of writ petitions has no merit and deserves to be dismissed.

10. **Analysis.**

10.1. Keeping in mind the aforesaid submissions advanced by learned counsels appearing for the parties and the main challenge posed in this bunch of writ petitions as regards policy decision of Government of

Tripura as regards the regularization of SSA contract teachers, in my considered view, it would be expedient to first refer the said policy decision of the Government issued vide notification dated 30.09.2021, which may be reproduced here-in-below:-

“Government of Tripura
State Project Directorate
Samagra Shiksha
Shiksha Bhavan, Agartala, Tripura

No.F.12(1207)-SE/LA/2015(L-2)/9193-9261

Dt.30th September 2021

Notification

Subject: Scheme to comply with the Judgment & Order of the Hon'ble High Court of Tripura Dt. 23.02.2021 in WP(C) No.329/2015 and WP(C) No.212/2016.

Erstwhile Sarva Shiksha Abhiyan (SSA) was launched in Tripura in the year 2001-02. Under SSA, primary teachers and upper primary teachers were engaged on contract basis from 2003-04 onwards. Contractual period for such teachers was for 1(one) year which was deemed extended from time to time, on a continuing basis.

Besides, “Rastriya Madhyamik Shiksha Abhiyan” (RMSA) was launched in 2009-10. From 1st April, 2018 the Integrated Scheme “Samagra Shiksha Abhiyan” was introduced subsuming both SSA and RMSA.

Seeking regularization of contract teachers engaged under erstwhile SSA, [now, working under Samagra Shiksha since 1st April,2018] Writ Petitions WP(C) No.329/2015 and WP(C)No.212/2016 were filed in the Hon'ble High Court of Tripura.

By the Judgment & Order Dt.23.02.2021 in WP(C) 329 of 2015 and WP(C) 212 of 2016, the Hon'ble High Court of Tripura issued the following directions.

Para 53 of the Judgment & Order states that “We are, therefore, of the view that the petitioners must receive the remuneration in regular scale of pay assigned to the primary/upper primary Government teachers. The State Government also has a policy of initial appointment of a teacher on fixed pay basis for a period of 5 years. The same rule can be applied in the present case also. In case of all the petitioners thus from the date of petitions or upon completion of 5 years of service whichever is later, they shall be placed in regular corresponding scales of pay for the Government teachers. However, this pay fixation would be for a notional purpose from the appropriate date till the date of this judgment, of course with notional release of increments as per the rules. Actual difference in salary would be paid effective from the date of this judgment.”

Para 54 of the Judgment & Order states that “The petitioners would have a right to be regularised after 10 years of continuous and uninterrupted engagement from initial appointment. It would be up to the Government to consider them for regularisation either in existing vacant posts of Government teachers or to sanction new posts as SSA teachers by creating such cadre if so advised. It would be open for the Government to frame a scheme providing for further terms and conditions on which such regularisation shall be done. However, any such scheme shall contain a clause that the service upon completion of 5 years from initial engagement or the date of filing the petition whichever is later, (when as per this judgment the petitioners would notionally start receiving pay in regular scales) till date of regularisation, the services rendered by the petitioners shall count towards their pensionary benefits.”

Para 55 of the Judgment & Order states that, “We are conscious of the legal issues concerning regular teachers in the Government schools which is a fall out of the Division Bench, judgment of this Court in case of Tanmoy Nath and others vrs. State of Tripura and others reported in (2014) 2 TLR 731, where as per further orders passed by the Supreme Court, all those teachers who were terminated on account of the judgment of the High Court, would have a right to compete for fresh selections with age relaxation granted to them up to 31.03.2023. We have, therefore, left for the Government to regularize these petitioners either against the existing posts or on new posts which may be sanctioned.”

Para 56 of the Judgment & Order states that “These directions shall be carried out within a period of six months from today.”

The Hon’ble High court of Tripura permitted the State Government to frame a scheme providing for further terms and conditions on which regularization of SSA teachers are to be done.

Further, Para 49 of the Judgment & Order states that “Coming to the last of the Government’s objection regarding qualification of the teachers, to begin with we are not inclined to go into individual qualifications held by every teacher which of course would be a subject matter for the Government to examine. We only propose to clear certain legal issues. If we understand correctly the objection raised by the Government is that they do not possess TET pass certificate. The petitioners have pointed out that they have all cleared D.El.Ed Examinations successfully and for which they have been granted certificates by the recognised institutions. The petitioners contend that on account of insufficient number of teachers and insufficient number of institutions to impart teachers’ training to such unqualified teachers in the State, the NCTE had published notifications extending the time for completion of in-service teachers training and also provided that the D.El.Ed Course would be equivalent to the TET course provided it is obtained within certain time period.....”

The contention of the petitioners as cited in para-49 with respect to equivalence of D.El.Ed to TET is not based on facts. In the notification of NCTE dt. 23.08.2010 passing of TET was made mandatory for the post of primary teachers and upper primary teachers in addition to the other prescribed minimum academic and professional (i.e. D.El.Ed/B.Ed.) qualifications and nowhere has TET been equated to D.El.Ed.

Under these circumstances, for the purpose of regularization of SSA contract teachers, a scheme has been framed. Pertinent to be mentioned here that, in the scheme for regularization of the SSA teachers, on the basis of status of acquisition of qualifications, contract teachers have been grouped into following categories:

Category	Description
I	SSA contract teachers who have been qualified in the Tripura Teachers' Eligibility Test(T-TET) and have not joined as regular teachers till 23.02.2021 (i.e. date of Judgement & Order).
II	SSA contract teachers who were appointed on or after qualifications in accordance with NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools Regulation, 2001(as amended from time to time), at the time of recruitment.
III	SSA contract teachers who will not be covered under the (I) and (II) of the above
III(A)	SSA Contract teachers who as on date possess the requisite academic & professional qualifications (D.El.Ed/B.Ed) but have not cleared T-TET
	SSA Contract teachers who as on date have not acquired the professional qualifications (D.El.Ed/B.Ed) and neither have cleared T-TET.
	SSA Contract teachers who have not yet acquired the requisite academic qualifications (i.e. XIIth Pass with 50% marks) for getting admission in professional qualifications courses (D.El.Ed/B.Ed) and neither have cleared T-TET.

Particulars of the framed scheme is cited below:

- (I) **For SSA teachers who have been qualified in the Tripura Teachers' Eligibility Test (T-TET) and have not joined as regular teachers till 23.02.2021 (i.e. date of Judgment & Order)**

These contract teachers are fully qualified in terms of the RTE Act,2009 and NCTE Regulations, 2010 and thus they are found eligible for regularisation with other benefits as directed in the order of the Hon'ble High Court of Tripura dt.23.02.2021.

- a) They will receive remuneration in regular scale of pay assigned to the primary/upper primary Government teachers.

- b) They will be placed in corresponding regular pay scale from the date of Writ Petition or upon completion of 5 years whichever is later.
- c) Pay fixation would be for a notional purpose from the date appropriate for contract teacher in accordance to the Judgment and Order, till the date of judgment with notional release of increments.
- d) Actual difference in salary would be paid from the date of judgment.
- e) From the date of petition or upon completion of 5 years whichever is later till the regularization, the services rendered by the petitioners shall be counted towards pension benefits.
- f) All benefits accruing from Judgment & Order dt. 23.2.2021 will be granted to them.

NB: Contract teachers who qualified in the T-TET but not yet completed 10(Ten) years of continuous and uninterrupted engagement from initial appointment will get the above benefits soon after completion of 10 (Ten) years of engagement.

(II) For SSA contract teachers who were appointed on or after 03.09.2001 but prior to 23.08.2010, with the minimum qualifications in accordance with NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulation, 2001 (as amended from time to time), at the time of recruitment.

As these teachers were recruited in terms of NCTE Regulations, 2001 thus they do not fall in the ambit of NCTE Regulations, 2010 and do not require to qualify in the Teachers Eligibility Test. These contract teachers are fully qualified in terms of the RTE Act, 2009 and NCTE Regulations and thus they are found eligible for regularization with other benefits as directed in the order of the Hon'ble High Court of Tripura dt. 23.02.2021.

- a) They will receive remuneration in regular scale of pay assigned to the primary/upper primary Government teachers.
- b) They will be placed in corresponding regular pay scale from the date of Writ Petition or upon completion of 5 years whichever is later.
- c) Pay fixation would be for a notional purpose from the date appropriate for contract teacher in accordance to the Judgment and Order, till the date of judgment with notional release of increments.
- d) Actual difference in salary would be paid from the date of judgment.
- e) From the date of petition or upon completion of 5 years whichever is later till the regularization, the services rendered by the petitioners shall be counted towards pension benefits.
- f) All benefits accruing from Judgment and Order dt. 23.02.2021 will be granted to them.
- g) There will be no insistence from them to qualify in T-TET Examination as they have been exempted from the same by NCTE notification dt.23.08.2010.

NB: Contract teachers who possess such qualifications by have not yet completed 10 (Ten) years of continuous and uninterrupted engagement from initial appointment will get the above benefits soon after completion of 10 (Ten) years of engagement.

(III) SSA contract teaches who will not be covered under the (I) and (II) of the above

- (A) Contract teachers who as on date possess the requisite academic & professional qualifications (D.El.Ed/B.Ed) but have not cleared T-TET
- a) They will receive remuneration equivalent to regular scale of pay assigned to the primary/upper primary Government teachers. They will be entitled to basic pay in regular scale. An annual increase of salary @ 3% per annum on 1st July of every year will be granted to them.
 - b) They will be placed in corresponding regular pay scale from the date of Writ Petition or upon completion of 5 years whichever is later.
 - c) Pay fixation would be for a notional purpose from the date appropriate for contract teacher in accordance to the Judgment and Order, till the date of judgment with notional release of increments.
 - d) Actual difference in salary would be paid from the date of judgment.
 - e) State Government will arrange coaching center facilities to these contract teachers for preparation with respect to T-TET Examination.
 - f) Regularization with all allied benefits will be accorded towards them with effect from the date of passing the T-TET examination, in strict accordance with Judgment and Order dt. 23.02.2021.
 - g) Age relaxation will be given to them for as many years as may be required by a particular teacher, so that he/she may be recruited given he/she clears T-TET in next 5(Five) years i.e. till end of academic year 2025-26.
 - h) State Government will also legally examine whether for those SSA teachers who have cleared Central Teachers' Eligibility Test (C-TET) can be accepted as equivalent to clearing Tripura Teachers' Eligibility Test (T-TET), by consulting NCTE.
- (B) Contract teachers who as on date have not acquired the professional qualifications (D.El.Ed/B.Ed) and neither have passed T-TET.
- a) Those contract teachers who till date have not acquired D.El.Ed/B.Ed will be accommodated in the Teacher Training Institute of the State for undergoing such courses, without undergoing any entrance test or selection process, on the basis of marks on the assumption that they possess 50% in XIIth Class. Also, the course design will be so prepared that they can study in D.El.Ed and teach in schools to earn their salary simultaneously.
 - b) After acquisition of D.El.Ed/B.Ed qualifications, they will be facilitated for admission in coaching center with respect to T-TET examination and all benefit under III(A) will accrue to them also on attaining of D.El.Ed/B.Ed.

(C) Contract teachers who have not yet acquired the requisite academic qualifications (i.e. XIIth Pass with 50% marks) for getting admission in professional qualifications courses (D.El.Ed/B.Ed) and neither have passed T-TET.

- a) Those contract teachers who have not acquired requisite academic qualifications i.e. XIIth pass with 50% marks will be facilitated to undergo relevant courses in NIOS.
- b) After acquisition of XIIth pass with 50% marks, they will be facilitated for professional courses and coaching center for T-TET examination with other measures as prescribed in III(A) and III(B) of the above, with all constituent benefits in accordance with III(A) and III(B) of above.

In Para 49 of the Judgment & Order dt. 23.02.2021, reference has been made to the contention of the petitioners before the Hon'ble High Court that all the concerned contract teachers have cleared D.El. Ed Examinations successfully.

But, as per the information available with the Department as on date, there some contract teachers who have neither acquired the professional qualifications (D.El.Ed/B.Ed) nor have cleared T-TET. Some SSA contract teachers have not yet acquired the requisite academic qualifications (i.e. XIIth Pass with 50% marks) for even getting admission to professional qualification courses (D.El.Ed).

- (D) For the contract teachers pertaining to III(B) and III(C) the process of acquiring D.El.Ed/B.Ed should be completed within 5(Five) years i.e. by the end of academic session 2025-26. In case of failure to do so, the State Government will be constrained to take measures as per the directions conveyed vide letter no. DO No. 17-22017-EE/17 Dt. 03.08.2017 of the Additional Secretary (EE-II), MHRD, GoI.
- (E) Teachers in category III(B) and III(C) would continue as contractual employees for 5 (five) years or till they acquire educational and training qualifications whichever is earlier.

(By giving five year's time, the State Government is going beyond the provisions of RTE Act, NCTE norms and letter dated 03.08.2017 cited above which clearly states that 1st April, 2019 shall be last date for teachers to acquire requisite minimum qualifications as mandated by RTE Act, 2009).

In view of these constraints, for the SSA contract teachers presently under the category III(B) and III(C), regular scale of pay has not been proposed.

Further, District Education Officers (DEOs) will be provided separate formats for each category of the contract teachers as specified in the scheme. DEOs will take necessary action for the collection of filled up formats from the SSA contract teachers under their respective jurisdiction and will verify their

year of engagement, academic and professional qualifications and forward the same to the State Project Directorate for next course of action.

This scheme has been issued with the approval accorded by the Government of Tripura and the Governing Council of Samagra Shiksha Abhiyan Rajya Mission, Tripura.

(Chandni Chandran, IAS)
State Project Director
Samagra Shiksha,
Tripura.”

10.2. For deciding the primary issues involved in this batch of writ petitions, Category-II of the notification dated 30.09.2021 is important and relevant. At the cost of repetition, but, for convenience, the said Category-II is again extracted here-in-below:-

*“For SSA contract teachers who were appointed on or after 03.09.2001 but prior to 23.08.2010, with the minimum qualification in accordance with NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulation, 2001 (as amended from time to time), **at the time of recruitment.**”*

10.3. The language of Category-II makes it clear that the teachers, who were recruited in terms of NCTE Regulations, 2001, do not fall within the ambit of the NCTE Notifications, 2010 and do not require to qualify in the Teachers Eligibility Test (“TET”). According to policy decision of the Government of Tripura, these Contractual Teachers are eligible for regularisation with other benefits as directed by this Court vide order dated 23.02.2021.

11. In this batch of writ petitions, all the petitioners were appointed on or after 03.09.2001, but prior to 23.08.2010. According to policy decision of the Government, dated 30.09.2021, these contract Teachers must be having minimum qualifications as prescribed under the NCTE Regulations, 2001 at the time of their recruitment. In view of this, it is necessary to have a look into the NCTE Regulations, 2001, which is reproduced here-in-below:-

“National Council for Teacher Education

*F. No. 9-2/2001/NCTE
I.G.I. Stadium, I.P. Estate
New Delhi – 110002*

New Delhi, 3rd September, 2001

In exercise of the powers conferred under clause (d)(i) of sub-section (2) of Section 32 read with Section 12(d) of the National Council for Teacher Education Act, 1993 (73 of 1993), the Council hereby makes the following Regulations:

1. Short title and commencement

These Regulations may be called the NATIONAL COUNCIL FOR TEACHER EDUCATION (DETERMINATION OF MINIMUM QUALIFICATIONS FOR RECRUITMENT OF TEACHERS IN SCHOOLS) REGULATIONS, 2001.

They shall come into force on the date of their publication in the Official Gazette.

2. Applicability

These Regulations shall be applicable for recruitment of teachers in all formal schools established, run or aided or recognised by Central or State Government and other authorities for imparting education at elementary (primary and upper primary/middle school), secondary and senior secondary stages.

3. Qualifications for Recruitment

i) *The qualifications for recruitment of teachers in educational institutions mentioned in Section 2 above shall be as given in the First and Second Schedules to these Regulations. The qualifications prescribed in the First Schedule shall apply for recruitment of teachers for teaching school subjects. The qualifications prescribed in the Second Schedule shall apply for recruitment of teachers for Physical Education.*

ii) *For recruitment of teachers for co-curricular activities such as work experience, art education, etc., existing qualifications or such other qualifications as may be prescribed by the concerned government shall apply.*

iii) *For promotion of teachers from one level to the next level of teaching, minimum qualification as given in the Schedules for the concerned level would be required.*

4. Amendment of Recruitment Rules

The existing recruitment rules may be modified within a period of three years so as to bring them in conformity with the qualifications prescribed in the Schedules. Meanwhile, teachers appointed as per the existing recruitment qualifications, subsequent to the issue of these Regulations, will be required to acquire qualifications as prescribed in the Schedules.

5. Power to relax

Where the Council is satisfied, on receipt of reference from the concerned Government, that special circumstances exist warranting relaxation of some of the provisions of the regulations for sometime it may grant relaxation of that provision to such extent and subject to such conditions as it may consider necessary in a just and equitable manner.

6. Interpretation

If any question arises relating to interpretation of these Regulations or equivalence of various teachers' training programmes, decision of the Council shall be final.

(S.K.RAY)

Member Secretary

First Schedule to the National Council for Teacher Education
(Determination of Qualifications for Recruitment of Teachers)
Regulations 2001

Recruitment qualifications for recruitment of teachers in educational institutions mentioned in Section 2 of the Regulations

LEVEL	MINIMUM ACADEMIC AND PROFESSIONAL QUALIFICATIONS
<u>I Elementary</u> <i>a. Primary</i>	i. Senior Secondary School certificate or Intermediate or its equivalent ; and ii. Diploma or certificate in basic teachers' training of a duration of not less than two years. OR Bachelor of Elementary Education (B.El.Ed.)
<i>b. Upper Primary (Middle school section)</i>	i. Senior Secondary School certificate or Intermediate or its equivalent ; and ii. Diploma or certificate in elementary teachers training of a duration of not less than two years. OR Bachelor of Elementary Education (B.El.Ed.) OR Graduate with Bachelor of Education (B.Ed.) or its equivalent course.

*** **

11.1. All the petitioners herein were appointed at Elementary Level i.e. Primary and Upper Primary (Middle School Section) after 03.09.2001 and prior to 23.08.2010. A plain reading of Clause 3 read with First Schedule of NCTE regulations, 2001 as quoted here-in-above, it comes to fore, that to get appointed as teachers at primary level one must have (i) Senior Secondary School Certificate or Intermediate or its equivalent; and (ii) Diploma or Certificate in basic teachers' training of a duration of not less than two years or Bachelor of Elementary Education (B.El.Ed.). For appointment to the post of Upper Primary Level one must possess (i) Senior Secondary School certificate or Intermediate or its

equivalent; and (ii) Diploma or Certificate in elementary teachers training of a duration of not less than two years or Bachelor of Elementary Education (B.El.Ed.) or Graduate with Bachelor of Education (B.Ed.) or its equivalent.

11.2. It is further clarified under “Note” of NCTE Regulations, 2001 that for appointment of teachers for primary classes, basic teachers’ training programme of 2(two) years duration is required, and B.Ed is not a substitute for basic teachers training.

11.3. On close reading of the policy decision of the State Government under notification dated 30.09.2021, according to me, it is in the line of NCTE Regulations, 2001 and NCTE Notifications, 2010 (principal notification) as amended vide notification dated 29.07.2011. Under the said amendment a new sub-clause has been inserted as 5(b) in Clause 5 of NCTE regulations, 2010. No change has been carried out in Clause 5 of principal notification except it is inserted as 5(a) in regulations, 2011.

11.4. I have taken note of the submission of Mrs. Suri and Mr. Deb, learned Senior Counsels for the petitioners as regards their objection that the words “**at the time of recruitment**” embodied in category-II of the States’ notification dated 30.09.2021 is inconsistent and an arbitrary

criteria contrary to the spirit of NCTE Regulations, 2010 *vis-à-vis* notification dated 18.06.2012.

11.5. Under clause (g) of Category-II of the said notification extracted here-in-above there will be no insistence for the teachers to qualify in T-TET examination as they have been exempted from the same by NCTE notification dated 23.08.2010.

12. Referring to para-5 of the notification dated 23.08.2010, learned Senior Counsels for the petitioners emphatically contended that the said notification gives an exemption to the State Governments or local authorities from the requirement of TET if the advertisement to initiate the process of appointment of teachers was issued prior to the notification dated 23.08.2010, which is explained and clarified by the communication dated 05.09.2013. Therefore, according to learned Senior Counsels, for the candidates who have to be appointed based on advertisements and selection process initiated prior to 23.08.2010, passing of TET is not required. It is further contended that Para-5 of the notification dated 23.08.2010 also indicates that process of appointment of teachers initiated prior to 23.08.2010 has to be in accordance with NCTE Regulations, 2001 which provides academic and professional qualification. However, the Ministry of Human Resource Development, Government of India vide notification dated 18.06.2012 has accorded relaxation to the State Government of Tripura for a period up to 31.03.2015 for appointment of teachers under relaxed professional qualification norms. The relaxation is

subject to the condition that teachers appointed under relaxed qualification norms shall acquire the minimum qualification within a period of 2(two) years from appointment (Para-2(vi) of the notification dated 18.06.2012).

12.1. To summarize, learned Senior Counsels appearing on behalf of the petitioners have mainly harped upon the following eventualities in support of their plea that T-TET examination or passing of T-TET criteria is not required at all for regularization of the petitioners and for providing them all allied service benefits including:-

- I. If a particular post of SSA Teacher has been created, before 23.08.2010;*
- II. If a particular vacancy of SSA Teacher has arisen before 23.08.2010;*
- III. If a selection process is initiated, for filling up such vacancy of SSA Teacher prior to such date (23.08.2010);*
- IV. If an advertisement is issued for filling up such vacancy of SSA Teacher prior to such dated (23.08.2010). ”*

12.2. In view of the aforesaid submissions, the notification dated 23.08.2010 appears to play a pivotal role and is relevant to examine and decide the question of consistency between the State's notification dated 30.09.2021 and NCTE notifications issued time to time including the notification dated 23.08.2010. For this purpose, it is worthy to start with Para-5 of the notification dated 23.08.2010 which may be reproduced hereunder since it will assist the Court in its quest to find out an

answer relating to issue of consistency between State's notification and NCTE notifications.:-

“5. 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)”

It is pertinent to mention herein that Clause 5(a) of regulations, 2011 is pari materia to Clause 5 stated above.

12.3. This notification dated 23.08.2010 had been clarified by the communication dated 05.09.2013 as claimed by the petitioners which may be reproduced hereunder:-

*“VRINDA SARUP
ADDITIONAL SECRETARY
Tele: 23383226
Fax: 23070584*

D.O. No.1-17/2010-EE(4) (Pt.)I.

5th September, 2013

Dear

Please refer to your letter No.F.13(3-60)-SE/GL-I/2013(L-I) dated 20th August, 2013 regarding appointment of teachers in elementary schools for which advertisements were issued by the Government of Tripura in 2002, 2006, 2009.

2. The National Council of Teacher Education (NCTE) had notified minimum qualification for appointment of teachers on 23rd August, 2010(copy enclosed). The notification provided for academic qualification, professional qualification i.e. Diploma in Elementary Education/B.Ed. for appointment of teachers for class I-V and classes

VI-VIII respectively. It also made it mandatory for candidates to pass Teacher Eligibility Test(TET) to be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE. Para 5 of the notification gives an exemption to State governments or local authority from the requirement of TET if the advertisement to initiate the process of appointment of teachers was issued prior to the notification of 23rd August, 2010. Therefore, for the candidates who have to be appointed based on advertisements and selection process initiated prior to 23rd August, 2010, passing TET is not required.

3. The para 5 of notification of 23rd August, 2010 also indicates that the process of appointment of teachers initiated prior to 23rd August, 2010 has to be in accordance with NCTE(determination of minimum qualification for recruitment of teachers in schools) Regulations 2001(as amended from time to time). The NCTE Regulation of 2001 provides for an academic and professional qualification. The Ministry of HRD vide notification of 18th June, 2012 has granted relaxation to the State Government of Tripura for a period up to 31st March, 2015 for appointment of teachers under relaxed professional qualification norms. The relaxation is subject to the condition that teachers appointed under relaxed qualification norms shall acquire the minimum qualification within a period of two years from appointment (para 2(vi) of the notification dated 18th June, 2012).

4. It is for the Government of Tripura to appoint teachers who have the requisite academic qualification as stipulated in NCTE Regulations 2001 and get these teachers trained within two years of their appointment.

5. It would not be possible for the Government of India to consider any relaxation in academic qualification at all.

6. Any TET relaxation for teacher recruitment process initiated after NCTE notification of 23rd August, 2010 also will not be possible.

Yours sincerely,

-Sd illegible

(Vrinda Sarup)''

12.4. From a plain reading of the above communication, it is clear that exemption has been given to those teachers who were appointed as

teachers prior to 23.08.2010 provided that they must possess the qualification as prescribed under NCTE Regulations, 2001.

12.5. On careful reading of the said communication dated 05.09.2013, it comes to fore that in case the recruitment process for appointment of teachers for classes I-V and classes VI-VIII, TET was not required, but, this relaxation was made subject to the condition that teachers appointed under relaxed qualification norms would have to acquire the minimum qualification within a period of two years from the year of appointment as stipulated in Para(vi) of the notification dated 18.06.2012 which may be extracted herein, for convenience, in *extenso*:-

“2. The relaxation granted under this notification shall be valid for a period upto 31st March, 2015, subject to fulfillment of following conditions, namely:-

i.

ii.

iii.

iv.

v.

vi. The State Government and other school management shall ensure that teachers who are appointed under relaxed qualification norms acquire the minimum qualification specified in the said notification within a period of two year of appointment.”

12.6. It is noticed that notification dated 18.06.2012 issued by the Ministry of HRD, Government of India in pursuance of a proposal made

by the State of Tripura, in my opinion, sub Paras-(i), (vii) and (viii) are also relevant herein which is produced here-in-below:-

“2. (i) the State Government of Tripura shall conduct the Teacher Eligibility Test as specified in the said Notification as amended from time to time, of the Council in accordance with the Guidelines for conducting Teacher Eligibility Test, dated the 11th February, 2011 issued by the Council and those persons who pass the Teacher Eligibility Test be considered for appointment as a teacher in classes I to VIII;

(vii) the State Government shall take steps to increase the institutional capacity for preparing persons with specified qualifications so as to ensure that only qualified persons are appointed as teachers in classes I to VIII after the 31st March, 2015 and for this purpose the State Government shall prepare a strategy for increasing the institutional capacity for teacher preparation in the State and submit the same to the Central Government within a period of two months, and thereafter, submit a Report to the Central Government in every six months with regard to the steps taken, including increasing capacity in existing teacher education institutions, establishment of new teacher education institutions, and other steps, to implement the strategy for increasing teacher preparation capacity in the State; and (viii) the relaxation specified in this notification shall be one-time and no further relaxation under sub-section(2) of section 23 shall be granted to the State of Tripura.”

12.7. It is further noticed that clarifying the notification dated 18.06.2012, the Ministry of HRD, Government of India by communication dated 05.09.2013 had categorically stated that TET was mandatory for teachers and those persons who qualify TET would be considered for appointment as teacher under clauses (i) to (viii). It is further mentioned in the said communication dated 05.09.2013 that it was for the Government of Tripura to appoint Teachers who possess the

requisite academic qualification as stipulated in NCTE Regulations, 2001 and got those teachers trained within two years of their appointment and it would not be possible for the Government of India to consider any relaxation in academic qualification at all.

12.8. Here, it will be pertinent to mention the minimum qualifications prescribed by the National Council for Teachers Education (NCTE) under notification dated 23.08.2010, which was notified in exercise of the powers conferred by sub-section(1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009(for short, RTE Act, 2009) and in pursuance of notification dated 31.03.2010 issued by the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India, the National Council for Teacher Education (NCTE):-

**“NATIONAL COUNCIL FOR TEACHER EDUCATION
NOTIFICATION**

New Delhi, the 23rd August, 2010

***F.No.61-03/20/2010/NCTE/(N&S).**—In exercise of the powers conferred by Sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009(35 of 2009), and in pursuance of Notification No.S.O.750(E) dated 31st March, 2010 issued by the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India, the National Council for Teacher Education (NCTE) hereby lays down the following minimum qualifications for a person to be eligible for appointment as a teacher in class I to VIII in a school referred to in clause (n) of Section 2 of the Right of Children to Free*

and Compulsory Education Act, 2009, with effect from the date of this Notification:-

1. Minimum Qualifications.-

(i) Classes I-V

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2- year Diploma in Elementary Education (by whatever name known)

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2- year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure), Regulations 2002

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4- year Bachelor of Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2- year Diploma in Education (Special Education)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

(ii) Classes VI-VIII

(a) B.A/B.Sc and 2- year Diploma in Elementary Education (by whatever name known)

OR

B.A/B.Sc. with at least 50% marks and 1-year Bachelor in Education (B.Ed)

OR

B.A/B.Sc. with at least 45% marks and 1-year Bachelor in Education (B.Ed), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4- year Bachelor in Elementary Education (B.El.Ed)

OR

Senior Secondary(or its equivalent) with at least 50% marks and 4-year BA/B.Sc.Ed.

OR

B.A/B.Sc. with at least 50% marks and 1-year B.Ed.(Special Education)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

2. Diploma/Degree Course in Teacher Education.- *For the purposes of this Notification, a diploma/degree course in teacher education recognized by the National Council for Teacher Education(NCTE) only shall be considered. However, in case of Diploma in Education(Special Education) and B.Ed(Special Education), a course recognized by the Rehabilitation Council of India(RCI) only shall be considered.*

3. Training to be undergone.- *A person –*

(a) with B.A/B.Sc. with at least 50% marks and B.Ed. qualification shall also be eligible for appointment for class I to V upto 1st January, 2012, provided he undergoes, after appointment, an NCTE recognized 6-month special programme in Elementary Education.

(b) with D.Ed(Special Education) or B.Ed(Special Education) qualification shall undergo, after appointment, an NCTE recognized 6-month special programme in Elementary Education.

4. Teacher appointed before the date of this Notification.- *The following categories of teachers appointed for classes I to VIII prior to date of this Notification need not acquire the minimum qualifications specified in Para(1) above.:*

(a) A teacher appointed on or after the 3rd September, 2001 i.e. the date on which the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time) came into force, in accordance with that Regulation.

Provided that a teacher of class I to V possessing B.Ed qualification, or a teacher possessing B.Ed(Special Education) or D.Ed(Special

Education) qualification shall undergo an NCTE recognized 6-month special programme on elementary education.

(b) A teacher of class I to V with B.Ed qualification who has completed a 6-month Special Basic Teacher Course (Special BTC) approved by the NCTE;

(c) A teacher appointed before the 3rd September, 2001, in accordance with the prevalent Recruitment Rules.

5. 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).*

HASIB AHMAD, Member-Secy.

[ADVT III/4/131/10-Exty.]”

12.9. On plain reading of NCTE notification dated 23.10.2010 together with NCTE Regulations, 2001(as amended from time to time), it is seen that under notification dated 23.08.2010 the Central Government and the NCTE for the first time had introduced criteria that one must pass in Teachers Eligibility Test(TET), to be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE for appointment of teachers at elementary level (classes I-V and classes VI-VIII).

12.10. Drawing my attention to Paragraphs-4 and 5 of the notification dated 23.08.2010, learned Senior Counsel for the petitioners strenuously argued that under the said paragraphs it was clearly stated that

the teachers appointed for classes I-VIII on or after 03.09.2001, i.e. the date on which NCTE Regulations, 2001 (as amended from time to time) came into force and teachers of classes I-V with B.Ed. qualification having completed six months special basic teacher course (Special BTC) approved by the NCTE and recruitment process initiated by an appropriate Government under Regulation, 2001(as amended from time to time) were not required to pass TET.

12.11 In view of aforesaid submissions, Clause 4 of NCTE notifications, 2010 requires further analysis. Clause 4 classifies 3(three) categories of teachers, who “need not acquire minimum qualifications specified in Para (1) above”. Para(1) means Para(1) of notifications, 2010, which prescribes “minimum qualification”. Para(1)(b) specifies the requirements to pass TET.

Without any sort of hesitation, I may hold the expression “in accordance with that Regulation” embodied in Clause 4(a) of NCTE notifications, 2010 means and connotes the essential requirements laid down under NCTE Regulations, 2001

As it is quoted and already discussed in the preceding paragraphs that NCTE Regulations, 2001 prescribes both academic and professional qualification (D.Ed./B.El.Ed./B.Ed.) as mentioned in the “First Schedule” of the said regulation.

Under Clause 4(a) of NCTE notification, 2010, it is stated that a teacher who is recruited /appointed on or after 03.09.2001 in accordance with NCTE Regulations, 2001 does not require minimum qualification as specified in Para (1)(b) of NCTE notifications, 2010 prescribing to qualify/pass TET.

Again, under Clause 5 of NCTE notifications, 2010 read with Clause 5(a) of NCTE amended notification dated 29.07.2011, it is categorically stated that where an appropriate Government or local authority or a school has issued advertisement to initiate the process of appointment of teachers prior to the NCTE notification, 2010, such appointments may be made in accordance with the NCTE Regulations, 2001 as amended from time to time.

12.12. Now, the cardinal question is whether the petitioners of this batch of writ petitions possess minimum qualifications as prescribed under NCTE Regulations, 2001 at the time of their recruitment to claim the benefit of exemption from qualifying T-TET.

13. Upon hearing the learned counsels for the petitioners, it is admitted position that none of the petitioners had acquired the prescribed minimum qualifications, because, at the time of their initial recruitment, they did not possess the required qualifications like D.El.Ed. or certificate in basic teachers' training of a duration of not less than two years or

Bachelor of Elementary Education (B.El.Ed.) or Graduate with Bachelor of Education (B.Ed.) or its equivalent. It is further noted that appointment of teachers for primary classes, basic teachers training programmes of two years' duration is required and B.Ed is not a substitute for basic Teachers training programs.

14. On conjoint reading of NCTE Regulations, 2001 and sub paras (a) and (b) of para 4 and 5 of the notification dated 23.08.2010, I may unhesitantly hold that exemption from qualifying/passing T-TET has only been given to those teachers who were having minimum qualifications as prescribed in NCTE regulations, 2001 at the time of their initial recruitment.

15. Now, it is to be seen whether the policy decision taken by the Government of Tripura under notification dated 13.09.2021 suffers from the vice of unreasonableness or unarbitrariness. In pursuance of the judgment and order passed by the Division Bench of this Court, the Government of Tripura has framed the scheme, and the SSA Teachers, i.e. the petitioners herein who were appointed on contract basis under the SSA project have been grouped into following categories:-

<i>“Category</i>	<i>Description</i>
<i>I</i>	<i>SSA contract teachers who have been qualified in the Tripura Teachers’ Eligibility Test (T-TET) and have not joined as regular teachers till 23.02.2021(i.e. date of</i>

		<i>Judgment & Order).</i>
<i>II</i>		<i>SSA contract teachers who were appointed on or after 03.09.2001 but prior to 23.08.2010, with the minimum qualifications in accordance with NCTE(Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulation, 2001(as amended from time to time), at the time of recruitment.</i>
<i>III</i>		<i>SSA contract teachers who will not be covered under the (I) and (II) of the above</i>
	<i>III(A)</i>	<i>SSA Contract teachers who as on date possess the requisite academic & professional qualifications (D.El.Ed/B.Ed) but have not cleared T-TET</i>
	<i>III(B)</i>	<i>SSA Contract teachers who as on date have not acquired the professional qualifications (D.El.Ed/B.Ed) and neither have cleared T-TET.</i>
	<i>III(C)</i>	<i>SSA Contract teachers who have not yet acquired the requisite academic qualifications(i.e. XIIth Pass with 50% marks) for getting admission in professional qualifications courses (D.El.Ed/B.Ed) and neither have cleared T-TET.”</i>

Category-I is not relevant to decide the present controversy because none of the petitioners has qualified in the Tripura Teachers Eligibility Test (T-TET). Category-II is relevant herein which is to be examined whether it is in consonance with paras-4 and 5 of the notification dated 23.08.2010.

16. The primary objection raised by the learned counsel for the petitioners was the use of words and expression “at the time of recruitment” embodied in Category-II of the Scheme formulated by the State vide notification dated 23.02.2021.

There is no dispute in the Bar that all the petitioners of this batch of writ petitions were appointed under SSA project on contract basis on or after 03.09.2001, i.e. the cut-off date of introduction of NCTE Regulations, 2001 and prior to 23.08.2010. The policy makers under Category-II have decided that such teachers who were recruited in terms of NCTE Regulations, 2001 were not required to qualify in the Teachers Eligibility Test (TET) since these contract Teachers were fully qualified in terms of NCTE Regulations, 2001 and they are eligible for regularization with ancillary benefits as directed by this Court vide order dated 23.02.2021.

16.1. However, the use of the words “at the time of recruitment” embodied in Category II excludes the petitioners since at the time of their recruitment/appointment as SSA contract Teachers they were not having the qualifications, like B.El.Ed/D.El.Ed/B.Ed.

16.2. Further, the words “in accordance with that regulation” as embodied in sub-para-(a) of para-4 of the notification dated 23.08.2010

mean and connote that the teachers appointed for classes I-VIII prior to 03.09.2001 need not acquire minimum qualifications as specified in Para-1 of the said notification dated 23.08.2010 where the TET pass criteria has been introduced. Para-5 of the NCTE notification dated 23.08.2010 also suggests that in case of any recruitment process for appointment of teachers was initiated prior to the date of 23.08.2010, such appointments may be made in accordance with the NCTE Regulations, 2001. This Para-5 was sought for relaxation by the Government of Tripura vide communication dated 20.08.2013 addressed to the Ministry of HRD, Government of India. The relevant contents seeking for relaxation under the said communication dated 20.08.2013 may be re-produced here-in-below, for convenience, in *extenso*:-

“3. This may also be pointed out that though in 2001 itself, the NCTE guidelines provided for certain basic required educational qualifications for recruitment of Primary Teachers, the State Government at the material time could not adhere to the said guidelines of NCTE because the department at that time considered to follow only the prevailing recruitment rules applicable for recruitment of primary school teachers.

4. Lastly, I would submit that we are presuming that Teacher Eligibility Test (TET) is not applicable for the State Government in the current process of recruitment of primary school teachers according to para 5 of Notification of NCTE issued on 23rd August, 2010 because the advertisement to initiate the process of appointment of Primary Teachers was issued prior to 23.08.2010. We are seeking

relaxation only in the educational qualifications as prescribed by NCTE for primary teachers.

5. I am directed to again request you kindly to consider our case on priority and allow necessary relaxation in the educational qualifications for recruitment of teachers at the primary level so that could satisfy the norms and standards as prescribed in the RTE Act, 2009 and solve the prevailing serious problem of acute shortage of primary teachers in the Government run schools in the State of Tripura.”

16.3. In response to the said communication dated 20.08.2013, the competent authority, i.e. Ministry of HRD communicated to the Principal Secretary, Government of India, Tripura vide communication dated 05.09.2013 stating, *inter alia*, that:-

“3. The para 5 of notification of 23rd August, 2010 also indicates that the process of appointment of teachers initiated prior to 23rd August, 2010 has to be in accordance with NCTE(determination of minimum qualification for recruitment of teachers in schools) Regulations 2001(as amended from time to time). The NCTE Regulation of 2001 provides for an academic and professional qualification. The Ministry of HRD vide notification of 18th June, 2012 has granted relaxation to the State Government of Tripura for a period up to 31st March, 2015 for appointment of teachers under relaxed professional qualification norms. The relaxation is subject to the condition that teachers appointed under relaxed qualification norms shall acquire the minimum qualification within a period of two years from appointment (para 2(vi) of the notification dated 18th June, 2012).”

16.4. So, even if the Government of Tripura is permitted to appoint teachers in terms of NCTE Regulations, 2001, but was asked to train those teachers appointed in terms of NCTE Regulations, 2001 and accordingly, all possible measures were taken by the Government so that they can

acquire professional qualification as laid down under NCTE Regulations, 2001 to enable them to appear and qualify in TET, one of the essential mandatory requirements to get appointed as teacher as prescribed under notification dated 23.08.2010. Added to it, in para 2(i) of the notification dated 18.06.2012, it is clearly stated that “*those persons who pass the Teacher Eligibility Test be considered for appointment as a Teacher in Classes I-VIII*”. It is reiterated that under this notification, Government of Tripura was asked to take steps to increase the institutional capacity for preparing persons with specified qualifications so as to ensure that only qualified persons are appointed as Teachers in classes I-VIII after 31.03.2015.

17. In view of the above, in my considered view, it is hard to digest the submission of learned counsel for the petitioners that the expression mentioned in Category-II that the teachers who were appointed on or after 03.09.2001, but prior to 23.08.2010, having minimum educational qualification as prescribed under NCTE Regulations, 2001, do not require to qualify TET at the time of recruitment. The group of teachers having both academic and professional qualifications, like Diploma or D.El.Ed. or B.El.Ed at the time of recruitment, in my opinion, reasonably form a separate class, and for this reason, to bring them under separate category, is in accordance with the spirit of the Right of Children

to Free and Compulsory Education Act, 2009, the notification dated 23.08.2010, the notification dated 18.06.2012 and in conformity with the clarification given by the Ministry of HRD vide communication dated 05.09.2013.

18. Again, the contract Teachers, who as on today, possess the requisite academic qualifications, i.e. D.El.Ed/B.Ed, but have not cleared TET, have been classified as a separate group under sub category (A) of category III because they are differently situated than those of SSA contract Teachers mentioned under Category-I and Category-II. For this group of contract teachers, the State Government has decided that they would be accorded the benefit of regularization along with all allied service benefits with effect from the date of passing the T-TET examination, which, in the opinion of this Court, is also in conformity with the notification dated 31.03.2010 issued by the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India, the National Council for Teacher Education (NCTE), and formation of a separate class for these SSA contract Teachers who possess the requisite academic and professional qualifications, i.e. D.El.Ed/B.El.Ed, etc, but, have not cleared T-TET, cannot be said an arbitrary exercise of power.

19. After going through the judgments and orders passed by this Court, it comes to fore that the Court had just passed an order upon the State Government to formulate the scheme for the purpose of regularization of the teachers with all other allied benefits, but, nowhere the Court had fixed the terms of the scheme. Needless to say that the Court in exercise of its discretionary and extraordinary power as vested upon it under Article 226 of the Constitution of India cannot dictate the policy makers as regards the terms and conditions to be mentioned in the scheme. It is within the domain of legislative power. The Court can only examine whether such scheme meets the requirement and spirit ingrained in Article 14 of the Constitution of India.

20. In the light of above analysis on the RTE Act and various notifications and communications concerning the teachers who were appointed between the period commencing from 03.09.2001 and prior to 23.08.2010 and the subsequent notifications issued time to time by NCTE, in the opinion of this Court, the notification dated 30.09.2021 formulating the scheme by the Government of Tripura does not in any way offends Article 14 of the Constitution of India. Moreso, the scheme framed by the State under said notification dated 30.09.2021 provides further opportunities to the petitioners to clear T-TET by academic year 2025-26 and has also kept the doors open for the SSA teachers who even today

have not been able to acquire professional qualifications i.e. D.El.Ed/B.El.Ed/B.Ed as required under 2001 Regulations.

21. In the light of above discussions, I do not find any merit in the submissions of learned Senior Counsels for the petitioners that the policy decision of the Government of Tripura vide notification dated 30.09.2021 formulating the scheme and the way the SSA contract Teachers categorized suffers from the vice of discrimination and offends Article 14 of the Constitution of India. Accordingly, the submissions of learned counsels appearing for the petitioners are repelled.

22. More importantly, all the notifications as mentioned in the preceding paragraphs of this judgment have been issued to fulfill the object the legislature intended to achieve, that is, to impart quality education to the children and to maintain uniformity in teaching. It is evident that the policy decision of the Government is not to compromise with the quality of teachers, but to appoint teachers with uniform quality so that the children across the State are taught by same standard of teachers.

23. Lastly, on meticulous reading of the notifications issued time to time by NCTE read with the communication exchanged between the State Government and Ministry of HRD, it can easily be said that none of the notifications suggests that the teachers appointed on or after

03.09.2001 and prior to 23.08.2010, i.e. the cut-off date without having professional qualification as prescribed under NCTE Regulations, 2001, but, obtained professional qualification after the said cut-off date have been given exemption from qualifying in TET. Only those teachers who were having both academic and professional qualification as laid down in NCTE Regulations, 2001 at the time of recruitment, and appointed on or after 03.09.2001 but prior to 23.08.2010 have been given exemption. In addition, the teachers appointed between the afore-stated period without having professional qualification have been given opportunities to acquire professional qualification and last extension has been given under RTE(Amendment) Act, 2017 (for short, “Act of 2017”) which provides that every teacher appointed or in position as on 31st March, 2015, who does not possess minimum qualification as laid down under subsection(1) of said Section, shall acquire such minimum qualifications within a period of further 4(four) years commencing from the date of notification of the Act of 2017. I am not in agreement with the submissions of learned counsels appearing on behalf of the petitioners that the in-service teachers acquiring professional qualification after the cut-off date have automatically brought them within the ambit of exemption category and to encompass them within the category of qualified teachers as laid down under NCTE notification, dated 23.08.2010.

24. In line of aforesaid conclusions, I am of the firm view that to claim regularization with all service benefits, the SSA contract Teachers

who have acquired professional qualification as laid down in NCTE Regulations, 2001 after the cut-off date (i.e. 23.08.2010) must qualify/pass T-TET(Tripura Teachers' Eligibility Test) and mere acquisition of professional qualifications (D.El.Ed., B.El.Ed., B.Ed.) or any certificates of academic training would not entail their services to be regularized by the State.

25. For the reasons stated and discussed here-in-above, I do not find any merit in the claim of the writ petitioners agitated in this batch of writ petitions. Since I have already held in the preceding paragraphs that the notification dated 30.09.2021 classifying the SSA contract Teachers under different categories does not suffer from vice of arbitrariness and discrimination, in this circumstance, I do not find any ground to interfere with the said notification dated 30.09.2021.

26. Accordingly, the writ petitions filed by the petitioners stand dismissed and thus, disposed of by this common judgment.

However, there shall be no order as to cost.

JUDGE