

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.A.Nos.1126, 1127, 1585, 1765 & 1797 of 2015,
47, 636 & 1034 of 2016

W.P.Nos.3158, 3249, 3252, 5969, 5970, 5971, 5987 to
5989, 7300, 7301, 7305 to 7307, 16203, 16206, 16996,
17475, 17476, 18483, 19326, 21688, 22903 to 22907,
23465 to 23467, 24180 to 24182, 26859 to 26861, 27429,
31531 to 31538, 31556, 31732 to 31737, 31829 to 31832,
31842, 31887 to 31892, 31893, 31907 to 31911, 31995,
31996, 31998, 31999, 32037, 32042 to 32046, 32048 to
32050, 32106, 32107, 32294 to 32296, 32311, 32338,
32345, 32499 to 32503, 32504 to 32506, 32508, 32763
to 32765, 32983, 33266, 34585, 35061 of 2013, 837, 838,
1432, 1831 to 1833, 6140, 6420, 7804, 7805, 9368, 13730
to 13735, 14596, 14785, 14894, 26201 & 27502 of 2014,
1926, 4006, 7593, 7699 to 7704, 7744, 8180, 8181, 8551
to 8553, 12083, 12579 to 12581, 13137, 17879, 18392,
18393, 19220, 21580, 21481, 22891 & 39317 of 2015

W.A.(MD).Nos.927, 928 & 929 of 2013 &
W.P.(MD).Nos.9618, 14632, 16026 & 16027 of 2012, 400,
2535, 4523, 6416, 7041, 7045, 7592, 9808, 10461, 11062,
11074, 11076, 11452 to 11454, 11457, 11812, 18356,
18357, 18644, 18645 to 18651, 18749, 18750, 18807
to 18816, 18832, 18846, 18847, 18886 to 18890, 18891,
18892, 18893 to 18895, 18897 to 18898, 19005 to 19010,
19012, 19017, 19106 to 19109, 19116, 19122, 19125 to
19128, 19132, 19152, 19153, 19169, 19175, 19181, 19182,
19186, 19188, 19189, 19190, 19192, 19193, 19211 to
19214, 19225, 19254, 19257, 19264, 19289, 19313, 19347
to 19353, 19355, 19374, 19986 to 19989 of 2013, 1334,
3960, 4820, 11509, 11510 & 13485 of 2014 & 8916 of 2015
&

Connected Miscellaneous Petitions

W.A.No.1126 of 2015

1. The State of Tamil Nadu
rep. by its Secretary to Government
School Education Department
Secretariat, Fort St. George
Chennai 600 009.
2. The Director of Elementary Education
DPI Campus, College Road
Chennai 600 006.
3. The District Elementary Educational Officer
Villupuram, Villupuram District.
4. The Assistant Elementary Educational Officer
Kolianur & Post
Villupuram Taluk & District. .. Appellants

Vs.

1. R.Arivazhagan
2. The Manager
Bharathi Aided Middle School
Sahadevanpettai
Valavanur 605 108
Villupuram District. .. Respondents

Writ Appeal under Clause 15 of Letters Patent against the order dated 29.4.2015 made in M.P.No.1 of 2015 in W.P.No.13254 of 2015.

For Appellant/ Government	: Mr.R.Muthukumarasamy Advocate General Assisted by Mr.T.N.Rajagopalan, Spl.G.P.
For Teachers Recruitment Board	: Mr.K.Venkataramani Addl. Advocate General Assisted by Mr.T.N.Rajagopalan, Spl.G.P.

For Petitioners in WP/	:	Mr.K.H.Ravikumar
Contesting Respondents		Mr.G.Sankaran
in W.As.		Mr.L.Chandrakumar
		Mr.M.Sundar
		Mr.C.Jegadish
		Mr.V.Thirupathi

J U D G M E N T

HULUVADI G.RAMESH,J

The writ appeals 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, without the possession of TET, for a period of five years and to grant consequential benefits.

2. Some of the writ petitions have been filed by the Teachers who have been appointed prior to or after the issue of G.O.Ms.No.181 dated 15.11.2011 and who have qualified themselves with Teacher Eligibility Test seeking payment of salary for the period from the date of appointment till the date of passing of Teacher Eligibility Test and some of the writ petitions have been filed by the Teachers who have been appointed after the issue of G.O.Ms.No.181 dated 15.11.2011 seeking to

approve their appointment and to pay salary.

3. By G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011, the Government of Tamil Nadu, has mandated that person qualified with Teacher Eligibility Test alone has to be appointed as Teachers (Graduate Assistants/B.T. Assistants) and the teachers who were appointed prior to the issue of the said G.O. have to qualify themselves with Teacher Eligibility Test within a period of five years. But, some of the writ petitioners who were appointed prior to and after the issue of G.O.Ms.No.181 dated 15.11.2011, appeared for Teacher Eligibility Test and qualified themselves with Teacher Eligibility Test. However, they have not been paid salary from the date of their appointment till the date of passing of Teacher Eligibility Test. Some of the writ petitioners and contesting respondents in the writ appeals have been appointed after the issue of G.O.Ms.No.181 dated 15.11.2011 in various aided schools. When their appointments were sought to be approved by the Management, the educational authorities refused to approve the same on the ground that they did not qualify themselves with a pass in Teacher Eligibility Test. Hence, writ petitions were filed seeking to approve their appointments and to grant consequential benefits.

4. In some of the writ petitions, a learned single Judge of this Court had granted interim direction to temporarily approve the appointment of

Teachers who were appointed subsequent to the issue of G.O.Ms.No.181 dated 15.11.2011 and to grant consequential benefits till a period of five years and that if they do not qualify in the Teacher Eligibility Test, the temporary approval granted to the Teachers would stand automatically terminated. Aggrieved by the said interim direction, the Government has come up with writ appeals.

5. Before advertng to the contentions raised on behalf of both sides, it is pertinent to take a look at the background which led to the issue of the Government Order.

6. Article 21A, guaranteeing the right to free and compulsory education to all children of the age of 6 to 14 years, which was the constitutional dream and mandating the State by Article 45 of the Constitution to provide free and compulsory education for all children until they complete the age of 14 years, was inserted by the Constitution (86th Amendment) Act, 2002. It received the assent of the President on 12.12.2002. Article 21A mandated the State to provide free and compulsory education to all the children of the age from 6 to 14 years in such manner as the State may by law determine. Article 21A reads as under:

"Right to education.-

21A. The State shall provide free and compulsory education to all

children of the age of six to fourteen years in such manner as the State may, by law, determine."

7. A rough draft of an Education Bill was introduced in the year 2005 and it was approved by the Cabinet in July 2009 and passed by both the Houses in July and August 2009 respectively. After receiving the Presidential assent and notifying on 27th August 2009, it was also republished by the Government of Tamil Nadu in the Tamil Nadu Government Gazette on 24.2.2010. Thereafter, 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 01.4.2010.

8. The constitutional validity of the RTE Act was questioned before the Apex Court in ***Unaided Private Schools of Rajasthan V. Union of India [(2012) 6 SCC 1]***. In paragraph 64 of the judgment, the 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."

9. Thus, it is made clear that RTE Act is valid and is applicable to the recognised 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.

10. 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."

11. The Government of India, by its notification dated 31.3.2010 issued under Section 23(1) of RTE Act, authorised the National Council for Teachers Education (in short "NCTE") as the Academic Authority, to lay down the minimum qualification for a person to be eligible for appointment as a teacher.

12. Pursuant to the aforesaid notification of the Government of India dated 31.03.2010 authorising NCTE as the Academic Authority to lay down the minimum qualification for a person to be eligible for appointment as a Teacher, the NCTE laid down the 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 Teacher Eligibility Test to be conducted by the appropriate

Government in accordance with the guidelines framed by the NCTE for the purpose. The notification came into effect from 23.8.2010.

13. Clause (5) of the NCTE notification dated 23.8.2010 made it clear that if the process 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.

14. Thus, a pass in the Teacher Eligibility Test, 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.

15. Thereafter, NCTE also issued a set of Guidelines, by their Memorandum, dated 11.02.2011, for the conduct of the Teacher Eligibility Test. Paragraph 9 of the said Guidelines issued on 11.02.2011 stipulated that a person who scores 60% and more in Teacher Eligibility Test 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."

16. 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. As far as we are concerned, Clause 5(a) is relevant for these cases.

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

18. G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 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 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. In the G.O.1st read above, orders have been issued as directed by the Hon'ble Supreme Court of India on 20.8.2008 in SLP (c) No.18227 – 18228/2008 that the State Government should followed the Statewide seniority in employment registration while appointing Secondary Grade Teachers by calling for the list of eligible persons from all the District Employment Exchanges and by newspaper Public Advertisements throughout the State. The Supreme Court has further directed that the aforesaid

arrangement will apply for any recruitment to be made pending disposal of these appeals.

6. In the Government letter 2nd read above, the Government changed the recruitment policy in 2006-07 for recruiting Graduate Assistants, from written examination to Statewide registration seniority in Employment Exchange.

7. The Government carefully examined on the lines of the orders of Supreme Court of India in SLP(c) No.18227- 18228 dated 20.8.2008 and National Council for Teacher Education guidelines and issue the following orders in respect of change of policy for recruitment of Secondary Grade 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 ("Teacher Eligibility Test") in accordance with the guidelines framed by National Council for Teacher Education and certificate verification, will be followed.*
- 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."

19. A bare reading of the G.O. extracted above would make it clear

that Teacher Eligibility Test shall be conducted by the Teachers Recruitment Board in accordance with the guidelines framed by the National Council for Teacher Education. It also prescribed a set of guidelines for the conduct of Teacher Eligibility Test in the Annexure. It has also specified that the 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.

20. With the above factual scenario, let us now come back to the case on hand. It is the main contention of the learned counsel appearing for the Teachers that the Teachers have been appointed to impart education to the children in the then existed vacancies to meet out exigency and therefore, the approval of their appointments should not be rejected on the only ground that they were not appointed prior to the issue of G.O.Ms.No.181 dated 15.11.2011 and that they do not possess the qualification of a pass in Teacher Eligibility Test.

21. It is further contended that the Teachers Recruitment Board had not conducted the Teacher Eligibility Test after 2013 and that the period of five years granted to those who have been appointed prior to the issue of G.O.Ms.No.181 dated 15.11.2011, for qualifying themselves with a pass in Teacher Eligibility Test, if extended to the teachers who have been appointed after the issue of G.O.Ms.No.181 dated 15.11.2011 to meet out

exigencies, the Teachers herein would also qualify themselves with a pass in Teacher Eligibility Test.

22. It is also contended that the Teachers having been appointed after the issue of G.O.Ms.No.181 dated 15.11.2011 at the time of exigency for imparting education to the children, refusal to approve their appointments due to the lack of the minimum qualification of a pass in TET, would cause great prejudice and hardship to them, for no fault on their part and therefore, they must be provided with an opportunity to appear for the Teacher Eligibility Test and to qualify themselves with a pass and in the event, they could not come out successful, their appointments may not be approved.

23. Assailing the contention of the learned counsel for the Teachers, the learned Advocate General appearing for the Government and the learned Additional Advocate General appearing for the Teachers Recruitment Board, contended that when the Teachers, who have not qualified themselves with a pass in Teacher Eligibility Test, have been appointed in violation of G.O.Ms.No.181 dated 15.11.2011, the action of the educational authorities in rejecting the approval of their appointments cannot be said to be arbitrary or unreasonable, particularly, when G.O.Ms.No.181 dated 15.11.2011 made it clear that the Teachers to be appointed after the issue of G.O.Ms.No.181 dated 15.11.2011 must be

qualified with a pass in Teacher Eligibility Test and giving liberty only to the Teachers those who were appointed prior to the issue of the said G.O. to acquire the qualification of a pass in Teacher Eligibility Test within a period of five years.

24. The learned Advocate General further contended that due to unexpected and unavoidable circumstances on the administrative side, the Teachers Recruitment Board could not conduct the Teacher Eligibility Test after 2013 and that the Teachers Recruitment Board is taking steps to conduct the Teacher Eligibility Test in the near future and that the same cannot be taken advantage of by the Teachers who were appointed subsequent to the issue of G.O.Ms.No.181 dated 15.11.2011 and seek approval of their appointment without possessing the minimum qualification as per G.O.Ms.No.181 dated 15.11.2011.

25. The learned Advocate General also contended that though the contention of the Teachers that they have been appointed subsequent to the issue of G.O.Ms.No.181 dated 15.11.2011, in the vacancies then existed, to meet the need of imparting education to the children, may be genuine, but the same cannot be taken as a right to claim approval of their appointment as Teachers subsequent to the issue of and in violation of G.O.Ms.No.181 dated 15.11.2011.

26. We have given our anxious consideration to the submissions made on behalf of both parties and have also perused the relevant Government Orders, on which reliance was placed by the parties as also the various judgments to which our attention was drawn.

27. Admittedly, the contesting respondents and the writ petitioners have been appointed as Graduate Assistants in various aided educational institutions only after the issue of G.O.Ms.No.181 dated 15.11.2011. Therefore, the issue to be decided by us is whether the appointment of teachers, who are the contesting respondents in the writ appeals and the writ petitioners, who have been appointed after the issue of G.O.Ms.No.181 dated 15.11.2011, would stand the test of legal scrutiny or not and to what relief the parties would be entitled to.

28. It is no doubt true that the Central Government came up with the RTE Act prescribing qualification of a pass in Teacher Eligibility Test, apart from the qualifications prescribed by the State. The NCTE, being the Nodal Agency, made it clear that those persons who were appointed prior to the issue of its notification have to qualify themselves with Teacher Eligibility Test within a period of five years. It has also issued a set of Guidelines as to how the Teacher Eligibility Test has to be conducted.

29. At this juncture, it is apposite to note an important fact for

deciding the issue that has been posed before us. Though it was mandated that the teachers to be recruited subsequent to the issuance of the Government Order should possess the qualification of a pass in Teacher Eligibility Test, it also granted a period of five years to those persons who were appointed prior to the issue of G.O.Ms.No.181 dated 15.11.2011, to qualify themselves with a pass in Teacher Eligibility Test. The record reveals that the Teachers Recruitment Board conducted the Teacher Eligibility Test in July 2012. The details of candidates appeared for the exam and the percentage of pass in the Teacher Eligibility Test conducted on 12.7.2012 are presented in a tabular form:

<i>Sl. No.</i>	<i>TET Paper</i>	<i>No. of candidates appeared</i>	<i>No. of candidates passed</i>	<i>Percentage</i>
<i>1</i>	<i>Paper I</i>	<i>305405</i>	<i>1735</i>	<i>0.57%</i>
<i>2</i>	<i>Paper II</i>	<i>409121</i>	<i>713</i>	<i>0.17%</i>
	<i>Total</i>	<i>714526</i>	<i>2448</i>	<i>0.34%</i>

30. In view of the fact that the percentage of pass was very low, the Board conducted a supplementary examination on 14.10.2012. The details of candidates appeared and the percentage of pass are as under:

<i>Sl. No.</i>	<i>TET Paper</i>	<i>No. of candidates appeared</i>	<i>No. of candidates passed</i>	<i>Percentage</i>
<i>1</i>	<i>Paper I</i>	<i>278725</i>	<i>10397</i>	<i>3.7%</i>
<i>2</i>	<i>Paper II</i>	<i>364370</i>	<i>8864</i>	<i>2.4%</i>
	<i>Total</i>	<i>643095</i>	<i>19261</i>	<i>2.9%</i>

31. Taking note of the fact that even the supplementary examination conducted showed only a marginal improvement, the

Government thought to relax the minimum marks prescribed for pass. Accordingly, the Government issued G.O.Ms.No.25, School Education (TRB) Department, dated 06.02.2014, giving 5% relaxation of the marks from 60% to 55% to all categories of candidates, except General candidates, with applicability of the same from the tests to be conducted during 2013. The relevant portion of the G.O. reads as follows:

"3. In continuation of the announcement made by the Hon'ble Chief Minister, the Government orders as follows:

a) relaxing 5% marks from the present pass mark of 60% and fix the pass mark at 55% for candidates belonging to Scheduled Caste, Scheduled Tribes, Backward Classes, Backward Classes (Muslim), Most Backward Classes, De-notified Communities and Persons with Disability (PWD) as given below. The Candidates are required to obtain the following minimum marks in Paper I for Secondary Grade Teachers and Paper II for Graduate Assistants:-

Category	Maximum marks	Minimum marks (%) to be obtained in TNTET	
		Paper I	Paper II
<i>General</i>	<i>150</i>	<i>60% or 90 marks</i>	<i>60% or 90 marks</i>
<i>SC, ST, BC, BC(M), MBC, DNC and Persons with disability (PWD)</i>	<i>150</i>	<i>55% or 82.5 marks rounded off to 82 marks</i>	<i>55% or 82.5 marks rounded off to 82 marks</i>

b) relaxing 5% marks from the 60% marks prescribed for

clearing of the Tamil Nadu Teacher Eligibility Test, 2013 held on 17.8.2013 and 18.8.2013 for Scheduled Caste, Scheduled Tribes, Backward Classes, Backward Classes (Muslims), Most Backward Classes, De-notified Communities and Persons with Disability (PWD) and fixed at 55% or 82 marks.

c) For all future Teacher Eligibility Tests, to fix the minimum marks for candidates belonging to General Category at 90 marks (60% of 150) and for candidates belonging to Scheduled Caste, Scheduled Tribes, Backward Classes, Backward Classes (Muslims), Most Backward Classes, De-notified Communities, and Persons with Disability (PWD) at 82 marks (55% of 150)."

32. The above G.O.Ms.No.25 dated 06.02.2014 was quashed by a Division Bench of this Court and the same was, on appeal, upheld by the Supreme Court.

33. Undoubtedly, the intention of the Government in issuing G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 is to ensure the quality of education imparted to the children and to maintain uniformity in teaching. In other words, G.O.Ms.No.181 has been issued only to standardise the quality of education imparted to children across the various types of institutions. Thus, it is evident that the policy decision of the Government is not to compromise on the quality of Teachers, but to appoint quality Teachers and therefore, the same cannot be found fault with.

34. But, the Government, before issuing G.O.Ms.No.181 dated 15.11.2011, lost sight of one important fact, namely imposition of a condition on the Teachers, who were appointed prior to the issue of G.O., in non minority and minority Schools, both aided and unaided, to qualify themselves with TET within a period of five years, in order to continue in service, would cause great hardship to them. Moreover, if the Teachers who have put in more number of years of service, could not pass TET within a period five years, their continuation in service would be in jeopardy. Further, it is seen that the percentage of pass in the TET examination conducted in 2012 and 2013 was very minimal.

35. Indisputably, the Teachers Recruitment Board did not conduct Teachers Eligibility Test after 2013, till now, though the State Government was directed to conduct such test from time to time to enable the Teachers already working to become eligible to continue in services. However, for certain appointments which have been made by the institutions in the interregnum, this Court granted an interim order directing the Government to pay the salary to such appointees, since work has been extracted from them and also allowed them to continue in service for a period of five years, subject to their qualifying themselves in TET.

35. An important point to be noted now is that large number of

vacancies were then existed in the aided education institution and the same could not be filled up due to the non availability of persons with the qualification of a pass in Teacher Eligibility Test, leading to a disruption in fulfilling the object of quality compulsory education to the children. Therefore, in order to fulfil the object of the RTE Act and to meet out the need for imparting education to the children, the persons without the qualification of a pass in Teacher Eligibility Test have been appointed.

36. This Court, though not putting the seal of approval for the act done by the various aided educational institutions in appointing persons without the required qualification of a pass in Teacher Eligibility Test, taking into consideration the situation that made the various aided education institutions to appoint persons without the qualification of a pass in Teacher Eligibility Test, directed the State Government as follows:

" 7. In the said circumstances, we hereby direct the State Government to conduct Teacher Eligibility Test on or before 31st October, 2016, to enable the candidates, who have already been working in Schools to get themselves regularised and also for the aspiring candidates to get themselves recruited in the vacancy that arises.

8. However, it is made clear that while conducting valuation, it is for the Department to take note of G.O.Ms.No.71, School Education (TRB) Department dated 30.05.2014 in respect of selection of candidates for appointment. It is also made clear that for the purpose of undergoing the test and appearance of the

candidates in the Teacher Eligibility Test, it is not only for the teachers, who are already working in the Schools, but it is also left open to the candidates in general to appear in TET and get themselves eligible in the said test."

37. At this juncture, it would be apt to refer to the qualifications prescribed for appointment as Teachers in Private Schools under Annexure V of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. The name of the post and the qualification that is relevant to the case on hand reads as follows:

<i>Name of the Post</i>	<i>Qualifications</i>
<i>B.T. Assistant</i>	<i>B.A. or B.Sc. or its equivalent and B.T. or B.Ed. or L.T. and Trained Teachers Certificate to Collegiate Grade</i>
<i>Secondary Grade Teacher</i>	<i>(1) S.S.L.C. (2) T.S.L.C. of Secondary Grade or its equivalent</i>

38. A reading of the qualifications extracted above would clearly show that the B.T. Assistants are being appointed only if they are qualified and possessed with Teachers Training Certificate. As per G.O.Ms.No.181 dated 18.11.2011, Secondary Grade Teachers are being appointed only if they are qualified and possessed with Diploma in Teachers Education. Thus, it is evident that the persons who underwent either Teachers Training course or Diploma in Teachers Education alone are eligible for appointment either as B.T. Assistants or Secondary Grade Teachers as the

case may be. Thus, the persons who hold a Teacher Training Certificate alone were appointed as B.T. Assistants and it is not as though the Teachers have been appointed without any training in Teachers Education and till the issuance of G.O.Ms.No.181 dated 15.11.2011, the Teachers were appointed only if they underwent Teachers Training Certificate. Therefore, there cannot be an iota of doubt as to their eligibility for appointment as Teachers. At the same, this Court does not want to compromise the quality of education imparted to the students nor would state that the stipulation of a pass in the Teacher Eligibility Test as a condition precedent for appointment, is violative of any right.

39. In a similar situation, in a batch of writ petitions and writ appeals either filed by the teachers or by the Management of minority schools or by the Government, where the issue to be decided was whether G.O.Ms.No.181 dated 15.11.2011 issued by the Government prescribing a pass in TET as minimum qualification for Teachers will be binding on the minority institutions, in view of Article 30 and the decision of the Supreme Court in ***Pramati Educational and Cultural Trust***, this Court, after taking note of the factual position and after referring to the decision in ***TMA Pai Foundation v. State of Karnataka [(2002) 8 SCC 481]*** and other decisions relied upon by both parties and the law laid down by the Apex Court, held as under:

"56. We are, therefore, of the considered view that the

Government may seek a clarification from the NCTE, in the light of what is stated in the preceding paragraph, whether the prescription of minimum qualification of TET can be made applicable prospectively for the Teachers who were appointed subsequent to the date of the issue of G.O., in both non minority and minority institutions and not retrospectively as the same would cause undue hardship to the Teachers who have been serving for a quite a long time.

57. In case of NCTE clarifying that G.O. can be given prospective effect, the Government, in its wisdom, may think of conducting refresher course for the Teachers who were appointed prior to the issue of G.O., during the annual vacation, instead of insisting for qualifying in TET, since the Teachers have already undergone either Teachers Training Course or Diploma in Teachers Education, as the case may be, as per the Education Act of the State. Moreover, we are of the opinion that asking the Teachers who have been appointed after having found eligible and working for quite a long time, to undergo TET examination and to pass the same at this stage, would be nothing but imposing upon them a task, which they have already achieved by passing the requisite tests for getting appointed. Further, an uncertainty also would get created in the minds of the Teachers that lest they pass the TET examination, their career would be hanging in balance as the Damocles Sword. Keeping the above in mind, the Government may, in consultation with NCTE, formulate a scheme for conducting refresher course for those Teachers who were appointed prior to the issue of G.O., as this would set at rest the uncertainty that would otherwise get created in the minds of the persons already in employment.

58. *In our opinion, non qualifying in TET by the Teachers already in service should not defeat the object of the Government to provide quality and standard education and therefore, the Government may, in the alternative, conduct a refresher course and also some interactive sessions during annual vacation, in order to ensure and enhance the quality of education.*

59. *Insofar as minority institutions are concerned, the contention of the learned senior counsel appearing for the minority Schools is that when Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 received the assent of the President of India and it is still in force, it cannot be supplanted by an Executive Order, namely by G.O.Ms.No.181 dated 15.11.2011. Further, the Apex Court has clearly held in **Pramati Educational & Cultural Trust** that RTE Act, 2009 is not applicable to the minority institutions. Therefore, we have no hesitation to hold that the right conferred under Article 30(1) of the Constitution cannot be abrogated. Consequently, G.O.Ms.No.181 dated 15.11.2011, which was issued pursuant to the directions of NCTE, cannot be made applicable to the minority institutions.*

60. *In the light of the above, we are of the view that the Government cannot insist upon the minority institution, both aided or unaided, to abide by any Regulation framed under the provisions of the RTE Act. Therefore, we hold that G.O.Ms.No.181, School Education (C2) Department dated 15.11.2011 issued by the Government of Tamil Nadu, is not applicable to the minority institutions. Similarly, G.O.Ms.No.76 dated 18.3.2015 issued by the Government of Puducherry, is also not applicable to the minority institutions.*

61. *Though the intention of the Government is that there*

*should not be any discrimination among the Teachers working in non-minority Schools and minority Schools with respect to qualification and that there should be uniformity in the teaching imparted to the children, in view of the decision of the Apex Court in **Pramati Educational & Cultural Trust**, the Government cannot take shelter under the guise of discrimination to impose restrictions on minority institutions.*

62. However, keeping in mind the larger interest in which the Government has issued the above G.Os., this Court feels that the minority institutions may also consider conducting a refresher course and also some interactive sessions to all the Teachers during annual vacation, in order to ensure and improve the quality of Teachers.

63. In the result, the writ petitions are allowed and the writ appeals are dismissed with a direction to the Government to release the salary of the Teachers and also to pay the arrears of salary within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected M.Ps. are closed.

40. As held by this Court in the case of minority Schools, there is no embargo in appointing persons possessed with Teachers Training Course or Diploma in Teachers Education for appointment as Teachers, as they were qualified for appointment either as B.T. Assistants or Secondary Grade Teachers. However, further to the Government Order, it is trite that appointments have to be made in consonance with the said order. But the Government having not conducted TET examinations regularly, a piquant

situation has arisen, where a mandate is made for inducting persons with TET qualification, but the mandate being not fulfilled by the Government, i.e., there being no TET exams conducted regularly, except for the years 2012 and 2013, in such a scenario, shifting the burden on the persons alone would not be justified, as non-conduct of TET exams regularly would reflect on the debit side of the Government as well. The fact that persons have been appointed against the vacancies as existed in order to impart education to the children, but, however, without passing the TET examination, but otherwise qualified, prior to the issuance of the said Government Order, such a contingent situation will also have to be taken into account for the purpose of arriving at a just decision.

41. This Court, on an overall consideration of the factual matrix of the matter, is of the considered view that in the absence of conduct of regular TET examination further to the issuance of the Government Order, the Teachers, in the instant case, who were holders of either a Diploma or Degree in Teacher Education and who were waiting in the rolls of the Employment Exchange for decades, particularly those who were possessed of the requisite qualifications for appointment to the post of a Teacher, prior to the issuance of the Government Order, cannot be left in lurch on the only ground that they have not passed the TET examination as mandated by the Government Order, they having put in quite a number of years of service. This Court feels that the ends of substantial justice

would be met that if those persons, who have been appointed subsequent to the issuance of the Government Order, be given one opportunity to appear for Teacher Eligibility Test and to qualify themselves, taking into consideration the services rendered by them at the time of exigency. Any other course than the one directed above would be detriment both to the career of the students as also the livelihood of the persons, who have all along been in employment, the crux of the issue being that the Teachers Recruitment Board had not conducted the Teacher Eligibility Test after 2013.

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;

(ii) Till the results are published, the Government shall pay the salary to the Teachers, who are in service of the aided institutions, for the services rendered by them and in the cases where salary was not paid the same shall be paid along with arrears, if any, forthwith;

(iii) Learned Advocate General submitted that salary has been paid to most of the Teachers and only a few were not paid, for want of particulars. In such a case, the Teachers whose salary have not been paid for want of particulars, they shall furnish the requisite particulars immediately, so to enable the Government pay the salary immediately;

(iv) Insofar as W.P.No.7593 of 2015 is concerned, though the writ petitioner has qualified with a pass in Teacher Eligibility Test during 2013, she has not been paid the difference of salary from the date of appointment, till the date of passing of the Teacher Eligibility Test. In view of the discussions aforesaid, the Government is directed to pay the difference of salary within a period of four weeks from the date of receipt of a copy of this order; and

(v) The Teachers Recruitment Board is directed to take note of the above observations and to issue notification for conducting Teacher Eligibility Test on or before the end of February 2017, indicating the date of exam to be either in the last week of March 2017 or in the first week of April 2017.

In the result, the writ appeals and the writ petitions are disposed of in the above terms. There shall be no order as to costs. Consequently,

connected Miscellaneous Petitions are closed.

Index : Yes/No
Internet : Yes/No

(H.G.R.J.) (M.V.M.J.)
24.01.2017

kpl

Note to Office:

Communicate a copy of this order to
Teachers Recruitment Board

HULUVADI G.RAMESH,J,
and
M.V.MURALIDARAN,J.

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W.A.Nos.1126, 1127, 1585, 1765
& 1797 of 2015, 47, 636 &
1034 of 2016 etc. batch

24.01.2017.

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