

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-12-2017

CORAM:

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.13041 and 21083 to 21085 of 2015
and

M.P.Nos.1, 1, 1 & 1 of 2015
and

W.M.P.Nos.25854, 25855 and 25856 of 2017

A.Aroquiaraj Abrahame .. Petitioner in WP 13041/2015
A.John Joseph .. Petitioner in WP 21083/2015
D.Vincentraj .. Petitioner in WP 21084/2015
J.Jenifer .. Petitioner in WP 21085/2015

vs.

- 1.The Union Territory of Puducherry,
Rep by its Secretary,
Department of Education,
Secretariat,
Puducherry - 605 001.
 - 2) The Director of School Education,
Government of Puducherry,
Directorate of School Education,
Puducherry - 605 005.
 - 3) The Senior Accounts Officer,
Government of Puducherry,
Directorate of School Education,
Puducherry - 605 005.
 - 4) The Deputy Director of School Education (Women),
Government of Puducherry,
Directorate of School Education,
Puducherry - 605 005.
 - 5) The Correspondent/Manager,
St. Antony's Government Aided High School,
C-115, Marai Malai Adigal Salai,
Puducherry-605 001. .. Respondents in WP 13041/2015
- 1.The Union Territory of Puducherry,
Rep by its Secretary,
Department of Education,
Secretariat,
Puducherry - 605 001.
 - 2) The Director of School Education,

Government of Puducherry,
Directorate of School Education,
Puducherry - 605 005.

- 3) The Senior Accounts Officer,
Government of Puducherry,
Directorate of School Education,
Puducherry - 605 005.
- 4) The Chief Educational Officer,
The Office of the Chief Educational Officer,
Karaikal.
- 5) The Correspondent,
St. Mary's Government Aided Boys High School,
Karaikal-609 602. .. Respondents in WPs 21083 to 21085/2015

Prayer in W.P.No.13041 of 2015: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to accord approval to the appointment of the petitioner Mr.A.Aroquiaraj Abrahame, working as School Librarian in the 5th respondent, St.Antony's Government Aided High School, C-115, Marai Malai Adigal Salai, Puducherry-605 001, w.e.f. 29.03.2012, as per G.O.Ms.No.86 dated 21.07.2006 on the file of the first respondent, with all service and monetary benefits.

Prayer in W.P.No.21083 of 2015: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to accord approval to the appointment of the petitioner Mr.A.John Joseph, working as Physical Education Teacher in 5th respondent, St.Mary's Government Aided Boys High School, Karaikal-609 602, w.e.f. 12.07.2011, with all service and monetary benefits.

Prayer in W.P.No.21084 of 2015: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to accord approval to the appointment of the petitioner Mr.D.Vincentraj, working as Physical Education Teacher in 5th respondent, St.Mary's Government Aided Boys High School, Karaikal-609 602, w.e.f. 01.07.2008, with all service and monetary benefits.

Prayer in W.P.No.21085 of 2015: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to accord approval to the appointment of the petitioner Tmt.J.Jenifer, working as Primary School Teacher in a regular and sanctioned post in 5th respondent, St.Mary's Government Aided Boys High School, Karaikal-609 602, w.e.f. 01.07.2011, with all service and

monetary benefits.

For petitioners : Dr.Fr.A.Xavier Arul Raj,
(in all WPs) Senior Counsel
for M/s.A.Arul Mary.

For Respondents : Mr.R.Syed Mustafa,
(in all WPs) Government Pleader
(Service Matters (Writs) Pondicherry).

C O M M O N O R D E R

As the issues involved in all the Writ Petitions, are one and the same, the cases are taken up for disposal by a Common Order.

2. The main relief sought for in all these writ petitions are for a direction to direct the respondents to grant approval in respect of the appointments of the writ petitioners as Physical Education Teacher, Primary School Teacher and School Librarian in a regular and sanctioned post in the fifth respondent-Institution, namely, St. Mary's Government Aided Boys High School, Karaikal-609 602 in respect of the writ petitioners in WP Nos.21083 to 21085 of 2015 and St. Antony's Government Aided High School, Puducherry in respect of the writ petitioner in WP 13041 of 2015, with effect from their respective date of joining in service along with the monetary benefits and other consequential service benefits.

3. The writ petitioner in WP No.21083 of 2015 Mr.A.John Joseph is working as a Physical Education Teacher in the fifth respondent-school with effect from 12.7.2011. The writ petitioner in WP No.21084 of 2015 Mr.D.Vincentraj is also working as Physical Education Teacher in the fifth respondent-school with effect from 1.7.2008. The writ petitioner in WP 21085 of 2015 is working as a Primary School Teacher in the fifth respondent-school with effect from 1.7.2011. The writ petitioner in WP 13041 of 2015 is working as a School Librarian in the fifth respondent-school with effect from 29.3.2012. The fifth respondent-School in WP No.13041 of 2015 was established and administered by the Religious Congregation of Institute of the Foreign Missions Sisters in India, Pondicherry. The fifth respondent in WP Nos.21083 to 21085 of 2015 was established and administered by Archdiocese of Pondicherry. It is a registered Society in the name and style of 'LE CONSEIL D' ADMINISTRATION DE I' ARCH DIOCESE DE PONDICHERRY (The Council of Administration of Archdiocese of Pondicherry). They are Religious, Charitable and Educational Organisations, registered under the Societies Registration Act (comprised of Catholic Nuns). All the Educational Institutions run by the said Society are admittedly

Minority Educational Institutions under Article 30 (1) of the Constitution of India.

4. The first respondent in G.O.Ms.No.86, dated 21.07.2006 sanctioned 266 new posts of teaching and non-teaching staffs and also upgraded 189 existing posts of the teaching and non-teaching staff to thirty aided schools in the Union Territory of Pondicherry, including to the fifth respondent-School. The second respondent, in circular dated 07.08.2006, directed the Heads of these aided private schools to send proposals for filling up of these newly sanctioned and upgraded posts with all relevant and required documents and all particulars on or before 30.08.2006. Pursuant to the circular dated 07.08.2006, the second respondent enclosed the details of all newly sanctioned and upgraded posts for the fifth respondent-School in column 6 of Annexure 1 to G.O.Ms.No.86. The norms and guidelines issued by the Government in G.O.Ms.No.42 dated 25.05.2000 is to be followed in relation to the said appointment as mentioned in circular dated 07.08.2006.

5. Most of the writ petitioners were already working in Unaided Section of the fifth respondent-School on consolidated pay. The writ petitioners were selected by the Management of the fifth respondent-School and appointed through the Resolutions passed by the Executive Committee of the Educational Agency and their appointments were made against the sanctioned posts. The initial appointments were to the post of Primary School Teacher and thereafter, appointed as Trained Graduate Teachers. Some of the Teachers were directly appointed as Trained Graduate Teachers. Necessary proposals were submitted by the Management, by proceedings dated 29.8.2006, seeking approval of appointments. Since there was no response from the Educational Authorities, the said proposals were again resubmitted on various dates. The main grievances of the writ petitioners are that there was no proper response from the Competent Authorities. As a result, the writ petitioners are working as Teachers, without any salary from their respective date of appointments. Thus, the writ petitioners are entitled for approval of their appointments as per law.

6. Apart from the proposals submitted by the fifth respondent-School Management, the writ petitioners were also submitted their personal representations to the Competent Authorities, seeking approval of their appointments in the fifth respondent-School and also to release the salary of the writ petitioners in view of the fact that they are working without any salary and their livelihood is in peril. In spite of the efforts taken by the fifth respondent-School as well as the writ

petitioners, the official respondents have not made any progress on the proposals and the writ petitioners are made to suffer without any salary.

7. The learned Senior Counsel Dr.Fr.A.Xavier Arul Raj, appearing on behalf of the writ petitioners, states that the inaction of the respondents are certainly in violation of Articles 21, 21(A), 19 (1)(g), 31 and 14 of the Constitution of India. All the writ petitioners are fully qualified and working as Physical Education Teacher, Primary School Teacher and School Librarian in a regular and sanctioned post. The writ petitioners were appointed in a regular sanctioned vacancy, which was approved by the Competent Authorities and became vacant on account of the retirement or resignation or otherwise. Thus, the inaction of the Educational Authorities are discriminatory, arbitrary and illegal. The learned Senior Counsel contended that on account of the inaction of the official respondents, the poor teachers are made to suffer without any salary and the same is in violation of Article 31 of the Constitution of India. The teachers are working without any salary and their right for livelihood ensured under Article 21 of the Constitution of India, also is violated. In view of this, the writ petitioners are constrained to move the present writ petitions, seeking direction to accord approval to their respective appointments from their initial date of appointments.

8. The learned Government Pleader Mr.R.Syed Mustafa, appearing on behalf of the respondents, strenuously opposed the contentions and the arguments advanced by the learned Senior counsel, appearing on behalf of the writ petitioners. At the outset, he rejected the contentions by stating that the proposals were not submitted in accordance with law and in accordance with the procedures contemplated under the Pondicherry Act and Rules. The learned Government Pleader is of the opinion that, the teachers appointed by the fifth respondent-School were either not possessing requisite qualifications as per the Act and Rules or were over-aged. This apart, the teachers have not passed the Teachers Eligibility Test (TET), which is a mandatory qualification to be acquired as per the National Educational Policy issued by the National Council for Teacher Education (NCTE). The passing of the Teachers Eligibility Test is mandatory across the country for securing appointment as teachers in various Government Schools and also in aided and aided minority schools. Such being the mandatory provision prescribed by the Government of India by virtue of Right to Education Act, the Government of Pondicherry, cannot grant any relaxation in respect of such qualifications prescribed under the National Policy.

9. The learned Government Pleader further stated that the

fifth respondent-School has appointed the persons at their whims and fancies, without following and adhering the minimum educational qualifications as prescribed under the Act and Rules. Thus, the Government cannot grant approval without verifying the qualifications acquired by the respective teachers appointed by the fifth respondent-School. The learned Government Pleader, at the outset, contended that the Management of the minority schools are bound by the rules relating to the minimum educational qualifications prescribed by the State for appointment of Primary School Teacher and Trained Graduate Teacher in Pondicherry.

10. The learned Government Pleader further opposed the contentions of the learned Senior Counsel appearing for the writ petitioners that, the fifth respondent-School has not followed the Act and Rules, while appointing the teachers in the school. Thus, we have to take note of all these things and take a decision in grant of approval to the teachers. The fact remains that in some of the cases, the Government of Pondicherry have not taken a decision in respect of the approval of the teachers and the proposals are still pending and are under consideration. The learned Government Pleader is of the opinion that this Court cannot directly issue or grant order of approval in favour of the writ petitioners and it is for the Competent Authorities to scrutinise the entire proposals in accordance with the law and pass an order in this regard.

11. Considering the arguments as advanced by the respective learned Senior Counsel appearing on behalf of the writ petitioners as well as the learned Government Pleader appearing on behalf of the respondents, this Court has to consider the following issues:

1. Whether the fifth respondent school which is an aided minority is bound by the provisions of the Pondicherry School Education Act and the Rules or not?

2. Whether the aided minority schools are exempted from the provisions of minimum educational qualifications as prescribed by the National Council for Teacher Education under the provisions of the Right to Education Act or not?

3. Whether the teachers appointed in contravention to the minimum educational qualifications prescribed is entitled for approval or not?

4. Whether the Government can grant age relaxation in respect of the appointment made. If so, whether it can be granted automatically without adhering to the Rules and legal principles or not? and

5. What all are the legal principles settled by the Constitutional Bench of the Hon'ble Supreme Court of India in respect of the prescription of minimum educational qualifications and Teachers Eligibility Test in respect of the

aided and aided minority schools.

12. The Pondicherry School Education Act of 1987, was enacted by the legislative Assembly of Pondicherry and received assent of the Hon'ble President of India on 20.10.1987. The Act was enacted for better organization and development of School Education in the Union territory of Pondicherry and for matters connected from with or incidental there to. The Act applies to the whole of the Union territory of Pondicherry.

(i) Section (2) provides definitions and the term "aid" is defined as follows:-

"'aid' means any aid granted to a recognised school by the Central Government, the government, a local authority or any other authority designated by the Central Government, the Government or a local authority;"

(ii) Section (2), sub clause (3) defines " aided school" and Section 2 sub clause 6(b) provides meaning for "existing school", which means:-

"a recognised private school which is existence at the commencement of this Act."

Thereafter, the term "minority aided school" is also defined as:-

"a private school of its choice established and administered, by any such minority whether based on religion or language as has the right to do so under clause (1) of article 30 of the Constitution."

(iii) The term "private school" means:-

"a pre-primary, primary, middle or high school or higher secondary school or any other institution imparting education or training, established and administered or maintained by any person or body of persons, but does not include a school or an institution imparting technical or professional education."

(iv) Chapter II, Section (3) provides "Power of Government to regulate School Education". The Government may regulate the different stages of education and courses of instruction in private schools. Section (5) provides, "Application for permission and sending of statement." Section (6) deals with "Grant of permission".

(v) Chapter III, Section (12), denotes "Recognition of private School". Section (15) deals with "Payment of Grant" and the same reads as under:-

" 15. Payment of Grant:

1. The Government may grant aid to recognized schools such sums of money and for such purposes as may be prescribed.

2. The Government may withhold permanently or for any specified period the whole or part of any aid referred to in sub-section (1) in respect of any private school:-

a. which does not comply with any of the provisions of this Act or any rules made or directions issued thereunder in so far

as such provisions, rules or directions are applicable to such private school, or

b. in respect of which the pay and allowances payable to any teacher or other person employed in such private school are not paid to such teacher or other person in accordance with the provisions of this Act or the rules made thereunder, or

c. which contravenes or fails to comply with any such conditions as may be prescribed.

Before withholding the grant under sub-section (2) the Government shall give the educational agency an opportunity of making its representation."

(vi) Chapter V provides "Terms and conditions of service of Teachers and other persons employed in Private Schools" which require attention in respect of the present writ petition on hand. Section (17) deals with "Qualifications, condition of Service, etc, of teachers and Other Persons employed in recognized Schools" which reads as under:-

"The Government may make rules regulating the number, qualifications and conditions of service (including promotion, pay, allowances, leave, pension, provident fund, insurance and age of retirement and rights (as respect disciplinary matters) of the teachers and other persons employed in any recognized school.

(vii) Section (35) deals with "Furnishing of Returns etc". Section (49) empowers the Government to make rules pursuant to the provisions of the Act. Section (49), sub clause (2) (g) states that, "the minimum qualifications for, and method of recruitment, and the terms and conditions of service of employees", also shall be provided by way of Rules and under Section (49).

13. Pursuant to the Act, the respondents issued Pondicherry School Education Act 1996, Rule 32 denotes in "Grant-in-Aid". Rule 35, deals with "Conditions for giving Aid" and the rule is extracted hereunder:-

" 35. Conditions For Giving Aid:

1. A School seeking grant-in-aid shall have a permanent income whether from endowments or other sources excluding fees and pupil's funds which when supplemented by grant-in-aid shall be adequate to discharge its obligations under the Act and to enable it to carry on its work efficiently.

2. No school shall be granted aid unless its managing committee gives an undertaking in writing that -

(i) it shall comply with the provisions of the Act and these rules;

(ii) it shall fill in the posts in the school with the scheduled castes, the scheduled tribes and other reserved category candidates in accordance with the instructions issued by the Government from time to time and also maintain the roster and other connected returns in this behalf. Nothing in this

provision shall apply to minority unaided school;

(iii) it shall deposit its five percent share towards pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits with the Government on or before twentieth of every month;

(iv) it shall disburse or cause to be disbursed the dues specified in clause (iii) within the first week of every month to the employees of the school;

(v) while filling up the posts in the school, it shall give first preference to such of the employees of other aided schools as have become surplus in pursuance of the provisions of rule 19;

(vi) it shall comply with the directions given by the Director under the provisions of the act and these rules;

(vii) it shall fill in such number of posts in the school as have been approved by the Director, in accordance with the directions issued by the Director in this regard without any discrimination or delay as per the recruitment rules prescribed for such posts;

(viii) it shall ensure that the Head of School possesses the necessary papers of an employee who is due to retire from service after attaining the age of superannuation or otherwise, before 6 months of his retirement with a view to avoid any delay in sanctioning the pension, gratuity, provident fund to such employee or his/her family, as the case may be; and

(ix) it shall attend to all the claims or the service matters of the employees of its school as and when they become due, promptly without any delay or discrimination, strictly in accordance with the recruitment rules or the instructions issued by the Government from time to time on the subject.

3. The breach of any condition specified in sub-rule (1) and (2) shall render such school liable to be removed from the grant-in-aid list."

14. Chapter V of the said Rules deals with "Requirement and terms and conditions of service of teachers and other persons employed in Private Schools". Rule 43 deals with "Recruitment". Rule 45 provides "Age Limit" for recruitment of persons to a recognized school, shall be the limits as applicable to corresponding posts in Government schools. Rule 46 provides "Seniority" and it is brought to the notice of the Court that the Recruitment Rules for the post of Primary School Teachers was published by the respondents on 11.11.2003. The said Rule was published in Supplement - II to the Gazette No.45 by the Government of Pondicherry. The said Rules provide Recruitment Rules for the post of primary school teachers and the same is extracted as under:-

RECRUITMENT RULES FOR THE POST OF PRIMARY SCHOOL TEACHER

1. Name of the post : Primary school teacher.

2. Number of posts : 2,207 (Two thousand two hundred and seven) [2003]
Subject to variation depending on work-load.
3. Classification : General Central Services - Group 'C' - Non-Gazetted - Non-Ministerial.
4. Scale of pay : Rs.4,500 - 125 - 7,000.
5. Whether selection post or non-Selection post : Not applicable.
6. Whether benefit of added years of service admissible under Rule 30 of the Central Civil Services (Pension) Rules, 1972 : No
7. Age limit for direct recruits : Between 18 and 32 years (Age relaxation for reserved and special category of persons shall be admissible in accordance with the orders or instructions issued by the Government from time to time).

Note: The crucial date for determining the age limit shall be the closing date for receipt of applications.

Incase of recruitment made through the Employment Exchange, the crucial date for determining the age limit, shall, in each case, be the last date up to which the Employment Exchanges are asked to submit the names.

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8. Educational and other : (i) A pass in Higher Secondary qualifications required for direct recruits

(ii) Diploma in Teacher Education or Certificate in Basic Teacher's Training of duration of not less than 2 years offered by an institution recognized by the National Council for Teacher Education. The minimum academic qualification for admission to the Diploma in Teacher Education or Certificate in Basic Teacher's Training should be Higher Secondary or its equivalent; and

(iii) Should have studied the particular regional language (Tamil/Telugu/Malayalam) as one of the subjects up to Secondary level or studied Diploma in Teacher Education/Certificate in Basic Teacher's Training in the relevant Medium of regional language.

Note: The Educational qualification for Primary School Teachers for schools with medium of Instruction in French shall be:-

1. Brevet Elementaire de Francais ;

2. Higher Secondary with 50% marks in aggregate ; and

3. Diploma in Teacher Education or Certificate in Basic Teacher's Training of a duration of not less than two years offered by an Institution recognized by National Council for Teacher Education. The minimum academic qualifications for admission to the Diploma in Teacher Education or Certificate in Basic Teacher's Training should be Higher Secondary or its equivalent.

9. Whether age and educational qualification for direct recruits will apply in the case of promotees : Not applicable.
- 10 Period of probation, : Two years.
. if any
- 11 Method of recruitment, : By direct recruitment.
. whether by direct recruitment or by promotion or by transfer / deputation and percentage of the posts to be filled up by various methods
- Note: Selection will be made of the persons possessing knowledge of the regional language of Tamil, Malayalam or Telugu, as the case may be according to the availability of vacancies in different regions of the Union territory of Pondicherry at the time of selection.
- 12 In case of recruitment : Not applicable
. by promotion / deputation / transfer, Grade from which promotion / deputation / transfer is to be made
- 13 If a Departmental Promotion Committee / Recruitment Committee Exists, what is its composition?
- : Group 'C' Departmental Selection Committee (for considering the direct recruitment and Confirmation of direct recruits) -
- a Secretary to Govt. - Chairman
) (Education)
- b Deputy - Member
) Secretary/Under Secretary (Education)
- c Director of School - Member
) Education
- d Joint - Member
) Director/Deputy Director dealing with Primary Education.
- 14 Circumstances in which : Does not arise
. Union Public Service Commission is to be Consulted in making recruitment

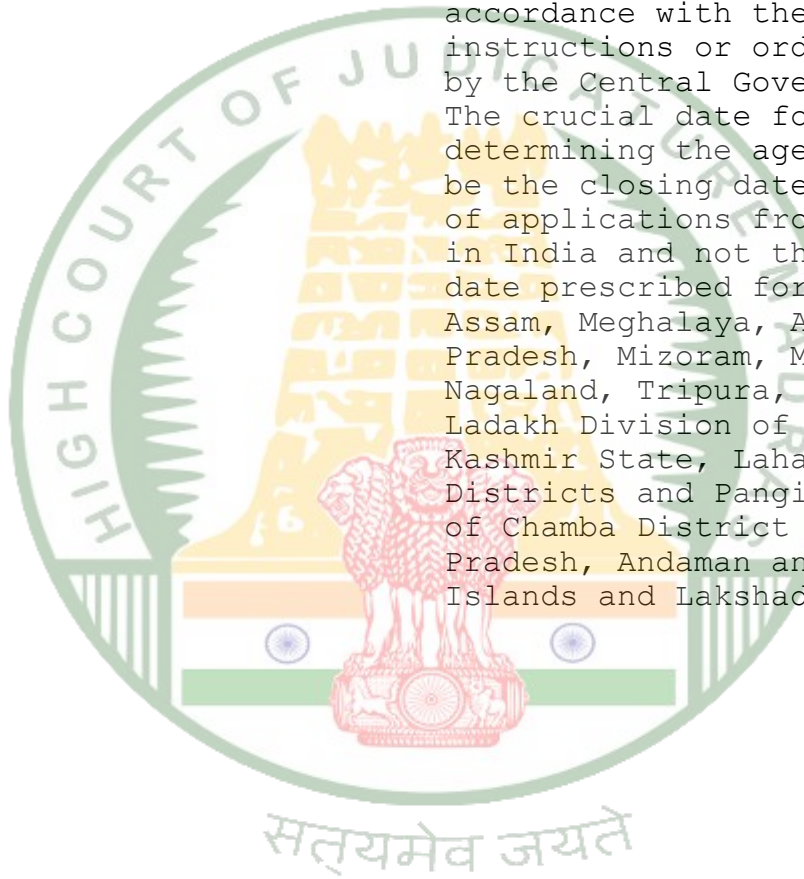
15. In respect of Trained Graduate Teachers, the Recruitment Rules were published on 18.01.2011. The said Rule was published in Supplement to the Gazette No.3 of 18.01.2011 by the Government of Pondicherry. Rule 6 provides "Power to relax". Accordingly, it reads as under:

"Where the Lieutenant-Governor is of the opinion that it is necessary or expedient so to do, he may, by order and for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons".

16. Schedule deals with Recruitment Rules of Trained Graduate Teachers (TGT) and the same reads as under:-

1. Name of the post	Trained Graduate Teacher
2. Number of posts	2,225 (Two thousand two hundred and twenty-five) [2010] Subject to variation dependent on work-load.
	Name of discipline ... No. of posts
	Mathematics .. 442
	Science .. 503
	Physical Science-183 and (Li
	Science-320) Social Science ..
	English .. 394
	French .. 360
	Tamil .. 13
	Telugu .. 392
	Malayalam .. 17
	Hindi .. 51
	Sanskrit .. 3
	Arabic .. 19
3. Classification	General Central Services-Group 'B' Non-Gazetted- Non-Ministerial.

4. Scale of pay	Rs.9,300-34,800 (Pay Band-2) with Grade Pay of Rs.4,600
5. Whether selection post or non-selection post	Selection
6. Whether benefit of added years of service admissible	Not applicable
7. Age limit for direct recruits	Not exceeding 30 years. Relaxable for Government servants up to five years in accordance with the instructions or orders issued by the Central Government. The crucial date for determining the age limit shall be the closing date for receipt of applications from candidates in India and not the closing date prescribed for those in Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim, Ladakh Division of Jammu and Kashmir State, Lahaul and Spiti Districts and Pangi Subdivision of Chamba District of Himachal Pradesh, Andaman and Nicobar Islands and Lakshadweep.



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8.Educational and other qualifications required for direct recruits

Essential:

I. Bachelor's degree in the respective subject/language from any recognised University as per following provisions:-

(i) Mathematics: Bachelor's degree with Mathematics as main subject.

(ii) Science: Bachelor's degree with main subject Physics or Chemistry or Botany or Zoology or Computer Science.

(iii) Social Science: Bachelor's degree with main subject History or Geography or Political Science or Economics.

(iv) English: Bachelor's degree with main subject English language.

(v) French: Bachelor's degree with main subject as French language. (vi) Tamil,

Malayalam, Telugu, Hindi, Sanskrit and Arabic: Bachelor's degree with main subject in the respective language. II. B.Ed.

or B.T. of any recognised University. III. Should have studied the particular regional language (Tamil/ Telugu/ Malayalam) as one of the

subjects in the Secondary level. In respect of schools with medium of instruction in

French, should have studied Brevet Elémentaire de Français.

However, this qualification is not required for the Trained Graduate Teacher in the

discipline of Tamil, Telugu, Malayalam and French as these languages are regional language of Union territory of

Puducherry.

Note: Qualifications are relaxable at the discretion of the Union Public Service Commission, for reasons to be recorded in writing, in case of

9. Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees Age : No
Educational qualification : Yes
10. Period of probation, if any Two years
11. Method of recruitment whether by direct recruitment or by promotion or by deputation/absorption and percentage of the vacancies to be filled by various methods. 40% by promotion failing which by direct recruitment.
60% by direct recruitment.
12. In case of recruitment by promotion /deputation/ absorption, grades from which promotion/deputation/ absorption is to be made Promotion :
Primary School Teacher in the scale of pay of Rs.9,300-34,800 with Grade Pay of Rs. 4,200 in Pay Band-2 with five year regular service in the grade with requisite subject/language and educational qualification as detailed under column (8) and also the regional language (medium of instruction) requirement of the post to which promotion is made.
Note : Where juniors who have completed their qualifying / eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years whichever is less and have successfully completed their probation period for promotion to the next higher grade alongwith their juniors who have already completed such qualifying/eligibility service

13. If a Departmental Promotion Committee exists, what is its composition?

Group 'B' Departmental Promotion Committee (for considering promotion/confirmation):-
(1) Chief Secretary to Government ..

Chairman
(2) Secretary to Government (Education)

.. Member
(3) Director of School Education ..

Member
(4) Joint Director / Deputy Director ..

Member dealing with the subject.

14. Circumstances in which Consultation with Union Public Service Commission is not necessary in making recruitment

17. Then, it was brought to the notice of this Court in respect of the notifications issued by the National Council For Teacher Education (NCTE), New Delhi dated 29.07.2011, w.e.f., 23.08.2010. The said notification was issued by the NCTE in exercise of the powers conferred by sub section (1) of Section 23 of Right of Children to Free and Compulsory Education Act, 2009 and the minimum qualification for Classes I to V and Classes VI to VII are extracted as under:

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).

OR

Graduation and two year Diploma in Elementary Education (by whatever name known)

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) Graduation and 2-year Diploma in Elementary Education (by whatever name known)

OR

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

OR

Graduation 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. Ed./B.Sc. Ed.

OR

Graduation 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.

18. It is pertinent to note that the Pondicherry School Education Act, 1987 and Rules therein, are in force and applicable to all the schools in the Union of Pondicherry, including aided and aided minority schools. The application of the Act and Rules are not disputed by the respective parties and recognition and approval of appointments are granted by the Government of Pondicherry, in accordance with the said Act and Rules. Further, it is brought to the notice of the Court that, the grant-in-aid is also sanctioned and disbursed under the provisions of the said Act and Rules, when the grant-in-aid are sanctioned and disbursed under the Act and Rules. The learned Government Pleader has contended that other provisions of the Act are also applicable in respect of recognition and approval of appointment made by the aided and aided minority schools in the Union of Pondicherry.

19. The learned Senior Counsel, appearing on behalf of the writ petitioners, has stated that some of the provisions were challenged by way of W.P.Nos.19445 of 1998 and 35996 of 2007 by the Society of the Sisters of Charity, Avila Primary School, represented by its Manager Rev SR, Mercedes, Mahe, Union Territory of Pondicherry and the Council of Administration of Archdiocese of Pondicherry (le Conseil d' Administration De L'Arch Diocese de Pondicherry) and in both writ petitions, an interim order was granted in respect of certain provisions and the same are pending for final disposal.

20. May that it be, now, this Court has to consider the legal principles, more specifically, in respect of the application of minimum educational qualifications prescribed for appointment of teachers in the aided and aided-minority schools with reference to the Pondicherry School Education Act. It is not in dispute between the parties to this lis, that the Pondicherry School Education Act and the Rules thereon, has to be followed, while granting recognition and for approval of appointments made by the respective School Managements. The Pondicherry School Education Act and the Rules, are periodically amended in accordance with the National Educational Policies issued by the Government of India and recently by virtue of the Right to Education Act. Undoubtedly, the States are bound to follow the National Educational Policy issued by the Government of India, more specifically, in relation to the prescription of minimum educational qualifications for appointment of teachers in the schools.

21. The further consideration before this Court is that whether the teachers appointed to the post of Primary School Teachers or to the post of Trained Graduate Teachers, are possessing the prescribed minimum educational qualifications as per the Act or the Rules and also as per the notifications issued by the National Council for Teacher Education (NCTE). However, at this point of time, it is for the Government of Pondicherry to consider all these Act and Rules and the notifications, while scrutinising the proposals submitted by the fifth respondent-School and at the time of taking a decision in respect of grant of approval to the teachers appointed by the School Management.

22. Therefore, in respect of the qualifications acquired by the respective writ petitioners, it is the subjective satisfaction and in compliance of the Act and Rules and therefore, the decision is to be taken by the Competent Authority, at the time of considering the proposal.

23. The learned Senior Counsel, appearing on behalf of the

writ petitioners, made a submission that in certain cases, relaxation is required in respect of age as well as the qualifications. The teachers are possessing the required qualifications and they require age relaxation. However, this Court is not inclined to consider the arguments, as advanced by the learned Senior Counsel, in view of the fact that the grant of relaxation is the prerogative of the Government concerned and the same is to be considered only at the time of taking a decision on the proposals.

24. However, in respect of the grant of relaxation under the service jurisprudence, this Court has to clarify that, Rule of relaxation can never be claimed as a matter of right. No doubt, the Rules empower the Government to grant relaxation in certain cases. If the Lieutenant Governor is of the opinion that it is necessary or expedient to do so, She may, by order and for reasons to be recorded in writing, but many of the provisions of these Rules in respect of any class or category of persons. Thus, the Rule of relaxation is an exception and can never be construed as a routine process. Power of relaxation can be exercised, even by the Government, only on exceptional circumstances and to mitigate the gross injustice, if any, caused to a class or group of people. However, in respect of relaxation of Educational qualifications, the same cannot be granted in a routine manner and it is left open to the discretion of the competent authority to make an assessment in this regard and exercise the power of discretion in a judicious manner and not taking the decision on the basis of any extraneous consideration or on misplaced sympathy.

25. The object of the power of relaxing the Rules is obviously to neutralise the injustice as a result of operation of any Rule. It has been described to be a reserve power to deal with the unforeseen situations or circumstances and it is to be exercised in the public interest with a view to maintain integrity and efficiency in service. It is conferred upon the Government to meet the emergent situations, where injustice might have been caused to any individual candidate or class or group of candidates or where the working of the rule might have become impossible. Where the power of relaxation is conferred upon the Government (or the Governor), the Court cannot usurp the power directly or indirectly to effect a relaxation.

26. In interpreting provisions for relaxation, it has been pointed out that the power of relaxation, even if generally included in the Service Rules, could either be for the purpose of mitigating hardship or to meet a special and deserving situation. Any arbitrary exercise of such power must be guarded against and that the rule of relaxation must get pragmatic construction, so as to achieve effective implementation of good

policy. The Hon'ble Supreme Court of India, in the case of Suraj Prakash Gupta and Others Vs. State of J&K and Others [(2000) 7 SCC 561], reiterated the principles, in paragraph-32, as under:-

"32. On facts, the reasons given in the Cabinet note for granting relaxation are hopelessly insufficient. In fact, the letter of the Commission dated 25-11-1997, shows that the Commission was prepared to give its opinion in regard to regularisation of each promotee but the Government backed out when the Commission called for the records relevant for considering suitability for regular promotion. In our view, there can be no hardship for a person seeking appointment or promotion to go by the procedure prescribed therefor. The relevant Recruitment Rule for promotion cannot itself be treated as one producing hardship. Narender Chadha case [(1986) 2 SCC 157 : 1986 SCC (L&S) 226] must be treated as an exception and not as a rule. In fact, if such relaxation is permitted in favour of the promotees then the same yardstick may have to be applied for direct recruits. In fact the J&K Government has already started to do so and this has not been accepted by this Court in Narinder Mohan case [(1994) 2 SCC 630 : 1994 SCC (L&S) 723 : (1994) 27 ATC 56] and Dr Surinder Singh Jamwal case [(1996) 9 SCC 619 : 1996 SCC (L&S) 1296] referred to above. If it is to be held that direct recruitment can also be permitted without consulting the Service Commission (in case it is required to be consulted there will, in our opinion, be total chaos in the recruitment process and it will lead to back door recruitment at the whims and fancies of the Government). Such a blanket power of relaxation of Recruitment Rules cannot be implied in favour of the Government."

27. The Hon'ble Supreme Court of India, in the case of Shri Amrik Singh and Others vs. Union of India and Others [(1980) 3 SCC 393], discussed the principles regarding the rule of relaxation, His Lordship Hon'ble Mr. Justice V.R.Krishna Iyer, speaking for the Bench, emphatically ruled the legal principles as under:-

"Government must be satisfied, not subjectively but objectively, that any rule or regulation affecting the conditions of service of a member of the All India Services causes undue hardship, then the iniquitous consequence thereof may be relieved against by relaxation of the concerned Rule or Regulation. There must be undue hardship and, further the relaxation must promote the dealing with the case in a just and equitable manner. These are perfectly sensible guidelines. What is more, there is implicit in the Rule, the compliance with natural justice so that nobody may be adversely affected even by administrative action without a hearing. We are unable to see anything unreasonable, capricious or deprivatory of the rights of anyone in this residuary power vested in the Central Government. Indeed, the present case is an excellent

illustration of the proper exercise of the power. We are, therefore, satisfied that the Central Government was right in invoking its power to relax and regularize the spell of officiation, which was impugned as irregular or illegal. The consequence inevitably follows that the officer Ahluwalia was rightly assigned 1961 as the year of allotment."

Thus, this Court is also of the opinion that the power to grant an exemption, cannot be exercised in a manner to destroy the general provision from which the exemption is granted. For example, where the number of exemptees is far in excess of vacancies and render the chances of qualifiers illusory.

28. This Court is of the firm opinion that if a rule of relaxation is invoked in a routine manner, it will amount to neutralizing and degrading the recruitment rules in force. A striking balance in between has to be adopted while exercising the powers of relaxation by the Competent Authorities. The process of recruitment and appointment shall be made only by following the recruitment rules in force. In other words, all appointments are to be made strictly by adhering the recruitment rules in force. Thus, the rule of relaxation is an exception and such an exception is to be exercised cautiously and sparingly in order to mitigate the injustice caused to a particular class or group of people. Thus, the relaxation can never be claimed as a matter of right by the candidates. Thus, the respondents 1 to 4 have to take note of the limitations prescribed, while considering the relaxation, as cited in the judgment above.

29. Now let us look into the legal principles settled by the Hon'ble Supreme Court of India. The Hon'ble Two Judges Bench of the Hon'ble Supreme Court of India in the case of P.U.Joshi and others vs Accountant General, Ahmedabad and others reported in (2003) 2 SCC 632, held that,

" there is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

Thus, it is made clear by the Hon'ble Supreme Court that, the State has got only powers to amend the rules then and there, and the employees working under the State cannot make a claim that, they cannot amend the rules and the protection granted is only in respect of the post in which they are working and not in respect of the post which they are not holding.

30. The Constitutional Bench of the Hon'ble Supreme Court of India in the case of Islamic Academy of Education and another vs

State of Karnataka and others reported in (2003) 6 SCC 697, elaborately dealt with the rights of the minority institutions. Relevant paragraphs are extracted here under:

"25. Privately managed educational institutions imparting professional education in the fields of medicine, dentistry and engineering have spurted in the last few decades. The right of the minorities to establish an institution of their own choice in terms of Clause (1) of Article 30 of the Constitution of India is recognized; so is the right of a citizen who intends to establish an institution under Article 19(1)(g) thereof. However, the fundamental right of a citizen to establish an educational institution and in particular a professional institution is not absolute. These rights are subject to regulations and laws imposing reasonable restrictions. Such reasonable restrictions in public interest can be imposed under Clause (6) of Article 19 and Regulations under Article 30 of the Constitution of India. The right to establish an educational institution, although guaranteed under the Constitution, recognition or affiliation is not. Recognition or affiliation of professional institutions must be in terms of the statute.

38. The right to establish an institution is provided for in Article 19(1)(g) of the Constitution of India. Such a right, however, is subject to reasonable restrictions, which may be brought about in terms of Clause (6) thereof.

39. Minorities, whether based on religion or language, however, have a fundamental right to establish and administer educational institutions of their own choice. The right under Clause (1) of Article 30 is not absolute, and subject to reasonable Regulations which inter alia may be framed having regard to the public interest and national interest of the country. Regulations can also be framed to prevent mal-administration as also for laying down the standard of education, teaching, maintenance of discipline, public order, health, morality etc.

46. From the above decisions of this Court, it is evident that though right engrafted under Article 30(1) of the Constitution does not lay down limitations or restrictions upon the right of a minority to administer educational institutions, yet the right cannot be used absolutely unreasonably.

118. Human history would show that the struggle of man for democrat polity was inspired by a desire to achieve equality among them. Indeed, son of the world constitutions in their preamble abhor inequality and proclaim to achieve equality in all respects. Whatever may be the power and jurisdiction of the State and State authorities to make a special provision in favour of the backward and the downtrodden, when the Court tests the reasonableness of such distinctive State action, it should be done by posing a question whether such State action to ameliorate social, economic and political poverty whatever be the reason, delays the journey towards the proclaimed goal of

equality. If a measure tends to perpetuate inequality and makes the goal of equality a mirage, such measure should not receive the approval of the Court. The Court, in such circumstances, has to mould the relief by indicating what would be the reasonable measure or action which furthers the object of achieving equality. The concept of equality is not a doctrinaire approach. It is a binding thread which runs through the entire constitutional text. An affirmative action may, therefore, be constitutionally valid by reason of Articles 15(4) and 16(4) and various directive principles of State policy, but the Court cannot ignore the constitutional morality which embraces in itself the doctrine of equality. It would be constitutionally immoral to perpetuate inequality among majority people of the country in the guise of protecting the constitutional rights of minorities and constitutional rights of the backward and downtrodden. All the rights of these groups are part of the right to social development which cannot render national interest and public interest subservient to right of an individual or right of a community.

120. So far as institutions imparting professional education are concerned, having regard to the public interest, they are bound to maintain excellence in the standard of education. To that extent, there cannot be any compromise and the State would be entitled to impose restrictions and make regulations both in terms of Article 19(1)(g) and Article 30 of the Constitution of India. The width of the rights and limitations thereof unaided institutions whether run by a majority or a minority must conform to the maintenance of excellence. With a view to achieve the said goal indisputably, the Regulations can be made by the State.

121. The right to administer does not amount to the right to mal-administer and the right is not free from regulation. The regulator measures are necessary for ensuring orderly, efficient and sound administration. The regulatory measures can be laid down by the State in the administration of minority institutions. Extent of regulations

122. Article 30(1) of the Constitution does not confer an absolute right. The exercise of such right is subject to permissible State regulations with an eye on preventing maladministration. Broadly stated, there are "permissible regulations" and "impermissible regulations".

31. The Hon'ble Seven Judges Bench of the Supreme Court of India in the case of P.A.Inamdar and Others Vs State of Maharashtra and others, reported in (2005) 6 SCC 537, settled the legal principles. In paragraph 16 of the above cited judgment, the Hon'ble Judges have dealt with the gist of answers given by the Constitutional Bench of this Court and in the opinion of Justice S.B.Sinha, minority educational institutions do not have a higher right in terms of Article 30(1); the rights

of minorities and non-minorities are equal. What is conferred by Article 30(1) of the Constitution is "certain additional protection" with the object of bringing the minorities on the same platform as that of non-minorities, so that the minorities are protected by establishing and administering educational institutions for the benefit of their own community, whether based on religion or language.

32. It is clear that, as between minority and non-minority educational institutions, the distinction made by Article 30(1) in the fundamental rights conferred by Article 19(1)(g) has been termed by the majority as a "special right" while in the opinion of S.B.Sinha, J., it is not a right but an "additional protection". However, the reliance to the opinion of His Lordship S.B.Sinha, that we have to further get into the legal principles settled by the Hon'ble Supreme Court of India in this regard. Paragraph 94 of the Judgment reads as under:

"94. Aid and affiliation or recognition, both by State, bring in some amount of regulation as a condition of receiving grant or recognition. The scope of such regulations, as spelt out by 6-Judge Bench decision in Rev. Sidhrajibhai case AIR 1963 SC 540 and 9-Judge Bench case in St. Xavier's must satisfy the following tests: (a) the regulation is reasonable and rational; (b) it is regulative of the essential character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it; (c) it is directed towards maintaining excellence of the education and efficiency of administration so as to prevent it from falling in standards. These tests have met the approval of Pai Foundation. However, Rev. Sidhrajibhai's case and St. Xavier's go on to say that no regulation can be cast in 'the interest of the nation' if it does not serve the interest of the minority as well. This proposition (except when it is read in the light of the opinion of Quadri, J.) stands overruled in Pai Foundation where Kirpal, CJ, speaking for majority has ruled (vide para 107)

'any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30 (1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf.'"

33. Thus, even in the majority opinion expressed through Lordship Kirpal Chief Justice has made clear that national interest to be taken note and while extending certain benefits in respect of all educational institutions including majority or minority. Further, it is made clear that the competent government cannot be prevented from framing regulations in this

regard. In paragraph 103 of the very same judgment, it is observed that,

"Once an educational institution is granted aid or aspires for recognition, the State may grant aid or recognition accompanied by certain restrictions or conditions which must be followed as essential to the grant of such aid or recognition. This Court clarified in Kerala Educational Bill that 'the right to establish and administer educational institutions' conferred by Article 30(1) does not include the right to mal-administer, and that is very obvious. Merely because an educational institution belongs to minority it cannot ask for aid or recognition though running in unhealthy surroundings, without any competent teachers and which does not maintain even a fair standard of teaching or which teaches matters subversive to the welfare of the scholars. Therefore, the State may prescribe reasonable regulations to ensure the excellence of the educational institutions to be granted aid or to be recognized."

In paragraph 122, the Hon'ble Supreme Court observed that,

"122.....Subject to reconciliation of the two objectives, any regulation accompanying affiliation or recognition must satisfy the triple tests: (i) the test of reasonableness and rationality, (ii) the test that the regulation would be conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it, and (iii) that there is no in-road on the protection conferred by Article 30(1) of the Constitution, that is, by framing the regulation the essential character of the institution being a minority educational institution, is not taken away."

It is exactly the opinion expressed in *Pai Foundations* case.

34. It is important to look into the findings of the Hon'ble Supreme Court in the case of *Modern Dental College and Research Centre and Others Vs State of Madhya Pradesh and others* reported in (2016) 7 SCC 353. It is held that,

"In the field of the education, therefore, this constitutional goal remains pivotal which makes it distinct and special in contradistinction with other economic activities as the purpose of education is to bring about social transformation and thereby a better society as it aims at creating better human resource which would contribute to the socio-economic and political upliftment of the nation. The concept of welfare of the society would apply more vigorously in the field of education."

35. The Supreme Court held that the provisions relating to admission as contained in the impugned Act and the rules are not offensive of Article 19(1)(g) of the Constitution as they are reasonable restrictions and do not suffer from any

constitutional vice. Reference has been made in respect of observations made in T.M.A.Pai Foundation case and it is held that,

"no unfettered right was granted to private unaided educational institutions to carry on trade and business without being restricted by statutory regulations enacted by the competent legislature. A fundamental right is not without measure of control and it will always be subject to reasonable restriction which the State is duty bound to impose in the larger public interest."

36. While providing supplementary findings, Banumathi J., has made out the following legal principles in paragraph 122 of the judgment and the same reads as under:-

"122. While 'education' is a concurrent subject under entry 25 of concurrent list as substituted by Constitution (Forty-second Amendment) Act 1976, entries 65 and 66 of Union List give Union the power to ensure that the standards of research etc. is not lowered at the hands of particular State or States to the detriment of national progress and that the power of the State Legislature must be so exercised as not to directly encroach upon the power of Union under the present entry. Though the field of legislation available to the Parliament and the States has been definite as stated above, more often, a certain amount of overlapping might become unavoidable; the legislation which thus overlaps would not however be rendered invalid, if, in 'pith and substance' the legislation is on the subject reserved in favour of that Legislature. In order to enable smooth functioning of federal structure of our Constitution, 'incidental encroachment' into or 'overlapping' of the field covered by one of the entries in the other Lists is permissible so long as it does not transgress the limit of legislation earmarked for the legislature making the law, judged by the standards fixed by the doctrine of 'pith and substance'."

37. The learned Senior Counsel, appearing on behalf of the writ petitioners, brought to the notice of the Court, the judgment of the Hon'ble Division Bench of this Court in The Secretary to Government vs. S.Jeyalakshmi reported in 2016 (7) MLJ 155, wherein the qualifications of Teachers Eligibility Test prescribed by the Government of Pondicherry in G.O.Ms.No.76 dated 18.03.2015 was set aside.

38. The contentions of the learned senior counsel appearing on behalf of the writ petitioners is that the G.O.Ms.No.76 issued by the Government of Pondicherry was set aside and in the said G.O., the Government prescribed the qualifications for Teachers Eligibility Test and further, now the same is made applicable to the teachers from Pondicherry, including the writ petitioners.

39. In this regard, this Court has to now examine the provisions of Right of Children to Free and Compulsory Education Act of 2009. The Act provides for Free and Compulsory Education to the children aged 6 to 14 years. The Act shall extend to the whole of India except the State of Jammu and Kashmir. The Act being a Central Act, governs the area of Education in respect of the matters stipulated in the Act. Chapter II deals with the Right to Free and Compulsory Education. Section 23 of the Act deals with "Qualifications for appointment and terms and conditions of service of teachers" and it 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 insufficient 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:

Provided further that every teacher appointed or in position as on the 31st March, 2015, who does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of four years from the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017 (24 of 2017).

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

40. This apart, the National Council for Teacher Education (NCTE) Act, 1993 also extends to the whole of India. The Council was constituted to provide for establishment of National Council for Teacher Education with a view to achieve planned and co-ordinated development of the teacher education system throughout the country. The regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith. Section 32 of the Act provides "Power to make Regulations", which states that, "the Council may, by

notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, generally to carry out the provisions of this Act. Section 32(d) deals with:-

"(d) the norms, guidelines and standards in respect of -

(i) the minimum qualifications for a person to be employed as a teacher under clause (d) of Section 12."

41. In pursuance of the above said provision, the National Council for Teacher Education (NCTE) issued a notification on 23.08.2010. However, it is brought to the notice of this Court that, NCTE has not invoked the powers under the Council for Education Act and in turn they have invoked the powers under Section 23 of the Right to Children to Free and Compulsory Education Act, 2009. However, this Court has to read the provisions cogently and harmoniously in relation to the purpose of the objectives sought to be achieved.

42. The purpose and the object of the Act and the Regulations are to maintain uniform standards in relation to the prescription of minimum educational qualifications for appointment to the post of teachers across the country. It is a constitutional perspective to maintain uniform educational qualifications, so as to provide effective educational system to the citizens of this Great Nation. The Constitution Bench of the Hon'ble Supreme Court of India reiterated the necessity for a uniform educational policy in respect of the prescription of minimum educational qualification for appointment to the post of teachers in order to implement the nation wide educational policy effectively. Thus, there cannot be any deviation or discrimination as far as the minority and non-minority institutions across the country.

43. In respect of the Hon'ble Division Bench Judgment of this Court submitted by the learned counsel for the writ petitioners in W.A.Nos.213 and 572 of 2016, the Hon'ble Division Bench decision in paragraph 56 is stated as under:-

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

Paragraph 57 of the above cited judgment is extracted as under:

"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."

44. The learned Government Pleader appearing on behalf of the respondents 1 to 4 has drawn the attention of this Court against the judgment of the Hon'ble Division Bench, the Government of Pondicherry preferred an Appeal before the Supreme Court of India and the same is yet to be taken up for hearing. However, it is brought to the notice of the Court that subsequent to the judgment of the Hon'ble Division Bench cited supra, the clarification was issued by the National Council for Teacher Education in proceedings dated 08.09.2017 and the same reads as under:-

"It was made clear in these notifications that the qualification prescribed for teachers in classes I to VIII would apply to all the schools referred to in clause (n) of Section 2 of the RTE Act 2009. This precisely meant that they would apply to all the recognized schools imparting elementary education in the country including those established, owned and controlled by the appropriate Government, or a local authority and receiving Grant-sin-Aid to meet whole or part of its expenses and also the unaided schools not receiving any aid or grant from the appropriate Government or the local authority. The two notifications provided that every teacher must have passed the Teacher Eligibility Test (TET), conducted by appropriate Government, besides other qualifications prescribed therein.

The appointments made by these schools, after issue of the above said notification, are therefore required to be reviewed and in cases where the teachers are not possessing the qualifications

prescribed by NCTE, their services need to be terminated forthwith and vacancies caused are filled by those in possession of the qualifications prescribed, including having passed TET."

45. It is reiterated that the qualification of Teacher Eligibility Test (TET) is made compulsory, as the Government of Pondicherry was insisted upon by the National Council for Teacher Education (NCTE) that, they cannot dispense with the qualification of TET, which was originally enacted by National Council for Teacher Education (NCTE) by virtue of the notifications issued by NCTE on 23.08.2010. In other words, the NCTE insisted that the qualifications of TET cannot be taken away by the Government of Pondicherry.

46. A reading of the objectives of Right to Children to Free and Compulsory Education 2009, which is a Central Act and on perusal of the Pondicherry School Education Act of 1987 and the Rules there on, it is made clear that the Hon'ble Supreme Court of India, time and again reiterated that the minimum educational qualifications criteria in respect of appointment of teachers are to be followed uniformly in all the educational institutions across the country, since the subject of education is in the concurrent list of the Constitution of India. When the subject is occupied by the Central Act, the same should prevail throughout and instructions or notifications issued thereon by the National Council for Teacher Education (NCTE) to be adopted by the respective States scrupulously in its letter and spirit. Thus, it is made clear that it is a constitutional obligation of the respective States to follow the minimum educational qualifications as prescribed under the Central Act Rules and notifications issued there on. Thus, it is made clear that there cannot be any exemption in respect of minimum educational qualifications and the right of minority institutions to establish and administer will not cover or exempt them from implementing minimum educational qualifications prescribed for the purpose of appointment of teachers and non teaching staff in the educational institutions.

47. The learned Senior Counsel, appearing on behalf of the writ petitioners, cited the Judgment of the Full Bench of the Madras High Court in the case of Saliar Mahajana Higher Secondary School represented by its Secretary and Correspondent, Arupukkottai Vs. The Joint Director of Schools (Higher Secondary) reported in 1995-1-Law Weekly 586. The relevant portion in paragraph No.6 is extracted here under:

"While the service schools under Article 309 of the Constitution, there is no such constitution of service with reference to private schools which take aid from the Government. When the preamble refers to the applicability of the rules mutatis mutandis to the Aided Schools, it can only mean that the

Rules will be applicable with suitable modifications necessary with reference to Aided Schools."

48. In the case of Chandigarh Administration and Others Vs. Rajni Vali (Mrs) and Others reported in (2000) 2 SCC 42 it is held that grant-in-aid is the duty of the State. The State Government provides grant-in-aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. Appointment of qualified and efficient teachers is a sine qua non for maintaining high standards of teaching in any educational institution.

49. In the case of The Forum of Minority Institutions and Associations Vs State of Tamil Nadu represented by the Joint Director of Collegiate Education, Chennai - 6 reported in 2011 (1) CTC 162. The Division Bench of the High Court of Madras observed in Paragraph 103 at page No.203 is extracted as under:

"103. Another conclusion which follows from what has been discussed above is that a law which interferes with a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution is void as being violative of Article 30(1). It is, of course, permissible for the State and its Educational Authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment without infringing Article 30(1). In the case of Rev. Father W.Proost this Court while dealing with Section 48-A of the Bihar Universities Act observed that the said provision completely took away the autonomy of the Governing Body of the College and virtually vested the control of the College in the University Service Commission. The petitioners in that case were, therefore, held entitled to the protection of Article 30(1) of the Constitution. The provisions of that Section have been referred to earlier. According to the section, subject to the approval of University appointment, dismissals, removals, termination of service or reduction in rank of teachers of an affiliated College not belonging to the State Government would have to be made by the Governing Body of the College on the recommendation of the University Service Commission. The section further provided that the said commission would be consulted by the Governing Body of a College

in all disciplinary matters affecting teachers of the College and no action would be taken against or any punishment imposed upon a teacher of a College otherwise than in conformity with the findings of the commission."

50. In the case of P.V.Ravichandran Vs. State of Tamil Nadu, represented by Secretary to Government, Department of Higher Education, Fort St. George, Chennai and others reported in 2013-5-Law Weekly 514. The Division Bench of Madras High Court held in Paragraph 17 as under:

"17. A Division Bench of Madurai Bench of this Court in W.A.(MD) No.462 of 2006, judgment dated 1.12.2006, considered the scope of rule 11(1) of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 relying upon the earlier order passed on 13.8.2006, and held that for filling up an existing post in a Private Aided College, no prior approval is necessary as any such appointment shall be subsequently approved by the Department, and at that point of time the Department would have an opportunity to consider the availability of such post and rejection of approval on the ground that no prior approval was obtained before appointment, was set aside. Same is the view taken in the following orders of this Court:

- (i) W.P.No.30618 of 2005, order dated 21.09.2005;
- (ii) W.P.No.28396 of 2004, order dated 29.03.2006;
- (iii) W.P.Nos.92 & 93 of 2008, judgment dated 6.1.2010;
- (iv) W.P.No.174 of 2009, order dated 27.04.2010;
- (v) W.P.Nos.140, 811/2006 & 805/2007, judgment dt.21.10.2010;
- (vi) W.P.No.2858 of 2010, judgment dated 21.3.2011;
- (vii) W.A.(MD)No.1088 of 2011, judgment dated 19.10.2011;
- (viii) W.A.No.2345 of 2011, judgment dated 5.3.2012;
- (ix) (2012) 5 MLJ 670 (Dr.S.Sukumaran Vs. State of Tamilnadu) rendered by one of us (NPVJ); and
- (x) W.A.No.474 of 2013, judgment dated 3.4.2013.

Thus, the issue regarding seeking prior permission for filling up the vacant post in aided college within the academic year was already settled in series of decisions and all the above said orders are implemented by the respondents 1 and 2. In such circumstances, it is not open to the respondents to again and again contend that only after getting prior permission from the Director of Collegiate Education, vacant sanctioned posts can be filled up by the management."

51. In the case of Sindhi Education Society and Another Vs. Chief Secretary, Government of NCT of Delhi and Others reported in (2010) 8 SCC 49, it is held in paragraph 123 at page No.78 is extracted here under:

"123. After referring to the earlier cases in relation to the

appointment of teachers, it was noted by Khanna, J., that the conclusion which followed was that a law which interfered with a minority's choice of qualified teachers, or its disciplinary control over teachers and other members of the staff of the institution, was void, as it was violative of Article 30(1). While it was permissible for the State and its educational authorities to prescribe the qualifications of teachers, it was held that once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution was regarded as one of the essential ingredients under Article 30(1). The Court's attention was drawn to the fact that in Kerala Education Bill, 1957 case⁷ this Court had opined that Clauses 11 and 12 made it obligatory for all aided schools to select teachers from a panel selected from each district by the Public Service Commission and that no teacher of an aided school could be dismissed, removed or reduced in rank without the previous sanction of the authorised officer. At SCC p. 792, Khanna, J., observed that in cases subsequent to the opinion in Kerala Education Bill, 1957 case⁷ this Court had held similar provisions as Clause 11 and Clause 12 to be violative of Article 30(1) (sic in the case) of minority institutions. He then observed as follows: (Ahmedabad St. Xavier's College Society¹², SCC p.792, para 109) '109. .. The opinion expressed by this Court in Kerala Education Bill, 1957, in re⁷ was of an advisory character and though great weight should be attached to it because of its persuasive value, the said opinion cannot override the opinion subsequently expressed by this Court in contested cases. It is the law declared by this Court in the subsequent contested cases which would have a binding effect. The words "as at present advised" as well as the preceding sentence indicate that the view expressed by this Court in Kerala Education Bill, 1957, in re⁷ in this respect was hesitant and tentative and not a final view in the matter.'

52. Further in Paragraph Q5C at page No.84 it is observed as follows:

"Q. 5(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and Principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as

the conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself."

53. In the case of *Brahmo Samaj Education Society Vs. State of West Bengal* and others reported in (2004) 6 SCC 224, paragraph 6 to 8 are extracted here under:

"6. The question now before us is to decide whether the appointment of teachers in an aided institution by the College Service Commission by restricting the petitioners' right to appointment is a reasonable restriction in the interest of general public or not. the petitioners have a right to establish and administer educational institution. Merely because the petitioners are receiving aid, their autonomy of administration cannot be totally restricted and institutions cannot be treated as a government-owned one. Of course the State can impose such conditions as are necessary for the proper maintenance of standards of education and to check maladministration. It is stated in *T.M.A. Pai*¹ that:

g. "71. While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe by rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the State. The merit may be determined either through a common entrance test conducted by the university or the Government followed by counselling, or on the basis of an entrance test conducted by individual institutions - the method to be followed is for the university or the Government to decide. the authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the Government or the university to provide that consideration should be shown to the weaker sections of the society. (SCC at p.550, para 71)

72. Once aid is granted to a private professional educational institution, the Government or the State agency, as a condition of the grant of aid, can put fetters on the freedom in the matter of administration and management of the institution. The State, which gives aid to an educational institution, can impose such conditions as are necessary for the proper maintenance of the high standards of education as the financial burden is shared by the State. The State would also be under an obligation to protect the interest of the teaching and non-teaching staff.

In many States, there are various statutory provisions to regulate the functioning of such educational institutions where the States give, as a grant or aid, a substantial proportion of the revenue expenditure including salary, pay and allowances of teaching and non-teaching staff. It would be its responsibility to ensure that the teachers working in those institutions are governed by proper service conditions. The State, in the case of such aided institutions, has ample power to regulate the method of selection and appointment of teachers after prescribing requisite qualifications for the same. Ever since in Kerala Education Bill, 1957, Re² this Court has upheld, in the case of aided institutions, those regulations that served the interests of students and teachers. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institutions. In other words, rules and regulations that promote good administration and prevent maladministration can be formulated so as to promote the efficiency of teachers, discipline and fairness in administration and to preserve harmony among affiliated institutions. At the same time it has to be ensured that even an aided institution does not become a government-owned and controlled institution. Normally, the aid that is granted is relatable to the pay and allowances of the teaching staff. In addition, the management of the private aided institutions has to incur revenue and capital expenses. Such aided institutions cannot obtain that extent of autonomy in relation to management and administration as would be available to a private unaided institution, but at the same time, it cannot also be treated as an educational institution departmentally run by Government or as a wholly owned and controlled government institution and interfere with constitution of the governing bodies or thrusting the staff without reference to management. (SCC PP.550-51, para 72)

73. There are a large number of educational institutions, like schools and non-professional colleges, which cannot operate without the support of aid from the State. Although these institutions may have been established by philanthropists or other public-spirited persons, it becomes necessary, in order to provide inexpensive education to the students, to seek aid from the State. In such cases, as those of the professional aided institutions referred to herein above, the Government would be entitled to make regulations relating to the terms and conditions of employment of the teaching and non-teaching staff whenever the aid for the posts is given by the State as well as admission procedures. Such rules and regulations can also provide for the reasons and the manner in which a teacher or any other member of the staff can be removed. In other words, the autonomy of a private aided institution would be less than that of an unaided institution. (SCC p.551, para 73)"

7. But that control cannot extend to the day-to-day

administration of the institution. It is categorically stated in T.M.A. Pai¹ (SCC at p.551, para 72) that the State can regulate the method of selection and appointment of teachers after prescribing requisite qualification for the same. Independence for the selection of teachers among the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of an aided institution. The State can very well provide the basic qualification for teachers. Under the University Grants Commission Act, 1956, the University Grants Commission (UGC) had laid down qualifications to a teaching eligibility of candidates. UGC has also authorised accredited States to conduct State-Level Eligibility Test (SLET). Only a person, who has qualified NET or SLET will be eligible for appointment as a teacher in an aided institution. This is the required basic qualification for a teacher. The petitioners's right to administer includes the right to appoint teachers of their choice among the NET/SLET-qualified candidates. 8. Argument on behalf of the State that the appointment through the College Service Commission is to maintain the equal standard of education all throughout the State of West Bengal, does not impress us. The equal standard of teachers are already maintained by NET/SLET. Similarly, receiving aid from State coffers can also not be treated as a justification for imposition of any restrictions that cannot be imposed otherwise."

54. Further, the learned Senior Counsel referred the case of the Pramathi Educational and Cultural Trust and Others Vs Union of India and Others reported in (2014) 4 MLJ 486 (SC). The Constitutional Bench held in paragraph 24 of the Judgment is extracted here under:

"In our view, therefore, a law made under clause (5) of Article 15 of the Constitution by the State on the ground that it treats private aided educational institutions and private unaided educational institutions alike is not immune from a challenge under Article 14 of the Constitution. Clause (5) of Article 15 of the Constitution only states that nothing in Article 15 or Article 19(1)(g) will prevent the State to make a special provision, by law, for admission of socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes to educational institutions including private educational institutions including private educational institutions, whether aided or unaided by the State. Clause (5) of Article 15 of the Constitution does not say that such a law will not comply with the other requirements of equality as provided in Article 14 of the Constitution. Hence, we do not find any merit in the submission of the Mr. Nariman that clause (5) of Article 15 of the Constitution that insofar as it treats unaided private educational institutions and aided private educational institutions alike it is violative of

Article 14 of the Constitution."

55. In paragraph 27, the Hon'ble Judges observed that therefore, by excluding the minority institutions referred to in clause (1) of Article 30 of the Constitution, the secular character of India is maintained and not destroyed. Paragraph 29 from the above Judgment is extracted here under:

"29. We accordingly hold that none of the rights under Articles 14, 19(1)(g) and 21 of the Constitution have been abrogated by clause (5) of Article 15 of the Constitution and the view taken by BHANDARI, J. in Ashoka Kumar Thakur v. Union of India (supra) that the imposition of reservation on unaided institutions by the Ninety-third Amendment has abrogated Article 19(1)(g), a basic feature of the Constitution is not correct. Instead, we hold that the (Ninety-third Amendment) Act, 2005 of the Constitution inserting clause (5) of Article 15 of the Constitution is valid."

56. Paragraph 42 of the above Judgment it is observed as here under:

"42. In our considered opinion, therefore, by the Constitution (Eighty-Sixth Amendment) Act, a new power was made available to the State under Article 21A of the Constitution to make a law determining the manner in which it will provide free and compulsory education to the children of the age of six to fourteen years as this goal contemplated in the Directive Principles in Article 45 before this constitutional amendment could not be achieved for fifty years. This additional power vested by the constitution (Eighty-Sixth Amendment) Act 2002 in the State is independent and different from the power of the State under clause (6) of Article 19 of the Constitution and has affected the voluntariness of the right under Article 19(1)(g) of the Constitution. By exercising this additional power, the State can by law impose admissions on private unaided schools and so long as the law made by the State in exercise of this power under Article 21 A of the constitution is for the purpose of providing free and compulsory education to the children of the age of 6 to 14 years and so long as such law forces admission of children of poorer, weaker and backward sections of the society to a small percentage of the seats in private educational institutions to achieve the constitutional goals of equality of opportunity and social justice set out in the Preamble of the Constitution, such a law would not be destructive of the right of the private unaided educational institutions under Article 19(1)(g) of the constitution."

57. Paragraph 44 of the above said Judgment, it is observed as here under:

"44. Thus, ultimately it is the State which is funding the expenses of free and compulsory education of the children

belonging to weaker sections and several groups in the neighbourhood, which are admitted to a private unaided school. These provisions of the 2009 Act, in our view, are for the purpose of providing free and compulsory education to children between the age group of 6 to 14 years and are consistent with the right under Article 19(1) (g) of the Constitution, as interpreted by this Court in T.M.A. Pai Foundation and Others v. State of Karnataka and Others (supra) and are meant to achieve the constitutional goals of equality of opportunity in elementary education to children of weaker section and disadvantaged groups in our society. We, therefore, do not find any merit in the submissions made on behalf of the non-minority private schools that Article 21A of the Constitution and the 2009 Act violate their right under Article 19(1) (g) of the Constitution."

58. In Paragraph 45 it is observed that thus, the power under Article 21A of the Constitution vesting in the State cannot extend to making any law which will abrogate the right of the minorities to establish and administer schools of their choice. Relevant portion in Paragraph No.46 of the above said Judgment is extracted here under:

"In our view, if the 2009 Act is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Therefore, the 2009 Act insofar it made applicable to minority schools referred in clause (1) of Article 30 of the Constitution is ultra vires the Constitution. We are thus of the view that the majority judgment of this Court in Society for Unaided Private Schools of Rajasthan v. Union of India and Another (supra) insofar as it holds that the 2009 Act is applicable to aided minority schools not correct."

59. In Paragraph 47 of the above Judgment, it is further held that the 2009 Act insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution.

60. This Court is of the opinion that the entire case relating to the Pramothi Educational and Cultural Trust is in relation to the constitutional validity of the Right to Education Act. No doubt certain indirect observations relating to the provisions of the Act, can be fit in with the minimum Educational qualifications prescribed for appointment to the post of teachers in the schools. The learned Senior Counsel cannot take advantage of any such observations made in paragraphs 45 to 47 of the above Judgment and the same cannot have any relevance in respect of the minimum Educational qualifications prescribed by the Pondicherry Government, under the provisions of the Pondicherry School Education Act and the

amendments thereon by following the regulations issued by the National Council for Teacher Education. Thus, the comparison made in this regard needs no further consideration and the case of the Paramathi Educational and Cultural Trust and the observations made thereon will not have any implications in respect of the minimum educational qualifications prescribed for appointment to the post of Primary School Teachers and Trained Graduate Teachers by the Government of Pondicherry.

61. The reference made by the learned Senior Counsel for the writ petitioners in respect of the judgments, cited above, are absolutely in relation to the establishment and administration of the minority schools and thus, the legal principles are undoubtedly settled by the Apex Court of India and the rights ensured under Article 30 of the Constitution of India, are elaborately described and discussed. Thus, those judgments are unconnected with the prescription of minimum educational qualification for appointment to the post of teachers, both in minority and non-minority institutions, across the country.

62. Thus, this Court is of the firm opinion that the catena of judgments cited by the learned Senior Counsel in respect of establishing and administering an educational institution by minority is undisputed. However, the prescription of minimum educational qualification for appointment of teachers is governed by the Act and the Rules enacted by the Government of Pondicherry. Further, it is the Government, which provides grant-in-aid to the aided institutions and therefore, the Government is at liberty to insist the minimum educational qualification in accordance with the provisions of the Pondicherry School Education Act and the Rules. The said Act and the Rules, are in conformity with the Central Act and the Right of Children to Free and Compulsory Education Act, 2009 and in accord with the notifications issued by the National Council for Teacher Education (NCTE). The NCTE was constituted and functioning under the provisions of the National Council for Teacher Education Act. Thus, all the notifications issued by the NCTE is by virtue of the power conferred under the said Act.

63. This Court finds it relevant to cite the principles laid down in the case of Modern Dental College and Research Centre and others Vs. State of Madhya Pradesh and others reported in (2016) 7 SCC 353. In paragraph No.122 of the above said Judgment the Constitutional Bench has categorically held that:

"122. While "education" is a concurrent subject under Entry 25 of the Concurrent List as substituted by the Constitution (Forty-second Amendment) Act 1976, Entries 65 and 66 of the Union List give the Union the power to ensure that the standards of research, etc. is not lowered at the hands of particular State or States to the detriment of national progress and that

the power of the State Legislature must be so exercised as not to directly encroach upon the power of the Union under the present entry. Though the field of legislation available to Parliament and the States as been definite as stated above, more often, a certain amount of overlapping might become unavoidable; the legislation which thus overlaps would not, however, be rendered invalid, if, in "pith and substance" the legislation is on the subject reserved in favour of that legislation. In order to enable smooth functioning of federal structure of our Constitution, "incidental encroachment" into or "Overlapping" of the field covered by one of the entries in the other Lists is permissible so long as it does not transgress the limit of legislation earmarked for the legislature making the law, judged by the standards fixed by the doctrine of "pith and substance".

64. It is unambiguously emphasised and re-emphasised that the State/Union have got ample powers to impose restrictions in the national interest and the right granted to the institutions in this regard, cannot be made absolute, more specifically, in relation to the prescription of minimum educational qualifications for appointment of teachers in the schools. All the institutions, across this Great Nation, have to maintain uniformity in this regard and there cannot be absolutely any exemption, both for aided or unaided minority schools. The Regulations formulated in this regard in the interest and for the development of our Great Nation, have to be implemented scrupulously and uniformly irrespective of the fact, whether the institutions are administered by minorities or non-minorities or otherwise. The prime object of the Act and the Regulations, in this regard, are to ensure that uniform standard of education and uniform procedures for appointments are prescribed, so as to take our nation progressively further in the field of education.

65. In the case on hand, the contentions of the learned Senior Counsel, appearing on behalf of the writ petitioners, are that some of the teachers from the fifth respondent-school though over-aged, their cases ought to be considered for relaxation and in certain cases some teachers have not passed the Teachers' Eligibility Test and as per the petitioners, the Teachers' Eligibility Test is neither required nor the same can be construed as a requisite qualification for appointment. In this regard, this Court is of the opinion that the prescription of minimum educational qualification for public employment are certainly required under the Constitution. When the grant-in-aid is sanctioned and disbursed to the institutions, the State is empowered to impose certain restrictions and conditions and such restrictions and conditions imposed for the purpose of sanctioning grant-in-aid is constitutionally approved by the Hon'ble Supreme Court of India. Thus, the terms and conditions imposed for sanctioning grant-in-aid cannot be disputed nor the

Educational Institutions either aided or unaided minorities can claim exemption from such conditions and in fact, the Rule of relaxation is the prerogative power of the Government and the power of relaxation is to be exercised only in accordance with the law and the grant-in-aid can never be construed as a routine affair.

66. Undoubtedly, when the grant-in-aid is sanctioned to the institutions by the Government, then the said posts of teachers and non-teaching posts, are to be treated as public posts. The salary through grant-in-aid is sanctioned and disbursed to the respective teachers and non-teaching staff from and out of the State Exchequer, which is tax payers money. When the tax payers money is being paid to the employees of the institutions or to the department or otherwise, then all such posts are to be construed as public posts. Teaching is a noble profession and progressive and consistent development in educational policies are certainly back bone for the development of our Great Nation. Only by providing quality teaching to the children and the youth of our Great Nation, the country can stand on par with other developed nations in this Globe. The minimum educational qualifications for the teachers are absolutely important and imminent for the constant and consistent development of our educational system. Thus, the post of teachers, in which grant-in-aid is granted by the Government from and out of the tax payers money, to be treated as public posts for all purposes and the Government has got every right and power to impose conditions and restrictions for the purpose of granting approval of appointments to the teachers. This Court has arrived at a conclusion that the posts of teachers covered under the grant-in-aid of the Government, are public posts and the Regulations and the restrictions issued by the Government in this regard, are to be adhered to and implemented scrupulously. When the public funds are utilised for the purpose of paying salary to the teachers, then the teachers have got greater duty towards the citizen of this Great Nation, so also the power of the Government to impose restrictions and regulations, cannot be questioned by the Managements of the Minority or the Non-Minority Institutions.

67. Even in the matters of appointment, regularization and permanent absorption, the legal principles settled by the Constitutional Bench of the Hon'ble Supreme Court of India in the case of State of Karnataka Vs. Umadevi reported in (2006) 4 SCC page No.1, the Hon'ble Supreme Court of India has held that the regularization or permanent absorption cannot be granted, if the initial appointment was not made in accordance with the recruitment rules in force.

68. Granting approval of teachers at aided or unaided

minority school is almost equivalent to that of regularization or permanent absorption because once the approval is granted then the teachers would be eligible to get all the service benefits on par with that of a Government employee in the equivalent cadre including pension etc., Even the pension rules are made applicable to the approved teachers who are all working in aided schools. Thus, for all purposes, those teachers whose appointments were approved to be treated as a public post and public employment.

69. In this regard, this Court has to consider the approval as equivalent to that of the regularization and permanent absorption as far as salary, as applicable to the Government posts are concerned. In the matters of permanent absorption and regularization of service, the Constitutional Bench of the Hon'ble Supreme Court of India held that irregular or illegal appointments can never be regularized. Rules relating to recruitment is to be followed scrupulously by the Competent Authorities of the State. In paragraph No.5 of the Judgment, the Constitutional Bench has observed that the Supreme Court also on occasions issued directions which would not be said to be consistent with the constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable consideration or individualization of justice.

70. The question arises, equity to whom? Equity for hand full of people who have approached the Court with the claim or the equity for the teaming millions of this country, seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered and the other side of the coin is also to be considered and the justice way open to any Court of law or is to observe by the law has laid down by the Constitution and not to make directions which in time, even if do not run counter to the constitutional scheme certainly tend to water down the constitutional requirements. In paragraph No.34 by referring the case of A.UmaRani Vs. Registrar of Co-operative Societies reported in (2004) 7 SCC 112. The Hon'ble Supreme Court of India observed that regularisation furthermore cannot give permanence to an employee whose services are ad-hoc in nature.

71. The Hon'ble two Judges of the Supreme Court of India in the case of Secretary to Government Vs. R.Govindasamy and others [(2014) 4 SCC 769] reiterated that in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against a sanctioned vacant post.

72. Equality class contained under Articles 14 and 16 should be scrupulously followed and the Courts should not issue direction for regularization of the employee, which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process can be regularized, back door entry appointment contrary to the constitutional scheme and appointment to the ineligible candidates cannot be regularized.

73. The Hon'ble Apex Court of India, time and again, reiterated that no absorption or regularisation can be granted to the employees in violation of the Recruitment Rules in force. It is made clear that adherence of the terms and conditions of appointment, including the minimum educational qualifications prescribed under the Rules and the Regulations, are to be followed scrupulously by the Competent Authorities, while undertaking the process of appointment. It is not, as if, the authorities can appoint employees at their own choice or at their sweet wish and subsequently, claim relaxation or regularisation or absorption from the Competent Authorities, more-so by seeking relaxation of the Rules. Such illegal or irregular appointments made by the Managements/Authorities, can never be allowed to continue in perpetuity. It is clarified, in paragraph-5 of the Constitution Bench judgment, that the Hon'ble Supreme Court of India also had committed the mistake of granting regularisation in number of cases in violation of the constitutional scheme. Such being the deep observation made by the Hon'ble Supreme Court of India, the only message sent by the Constitution Bench is that "prevent all such illegal and irregular appointments in future". Thus, the earlier precedents laid down can never be followed for the purpose of granting the relief of approval or permanent absorption. Now if the initial appointment is not in accordance with the Recruitment Rules in force, then the Competent Authorities are certainly precluded from according approval of any such appointments. The legal principles settled by the Constitution Bench is that equal opportunity in public employment is the constitutional mandate and all irregular, illegal and back door appointments are to be stopped forthwith.

74. In respect of the present writ petitions, the right of appointment conferred to the management of the minority institutions, are neither disputed nor questioned by the Government of Pondicherry. However, the Government of Pondicherry has got every right to prescribe the minimum educational qualifications for the purpose of granting approval of appointed teachers in order to maintain uniform educational policy in respect of appointment of teachers. The very object of

prescribing the minimum educational qualification for the appointment of teachers is to maintain the standard in the educational institutions as per the National Education Policy. Thus, this Court would make it clear that the catena of judgments, including the Constitution Bench and larger Bench judgments in this regard, are in relation to the constitution and administration of the institutions by the minorities and the right cannot be an absolute one in respect of the prescription of the minimum educational qualifications for appointment of teachers. Thus, the prescription of minimum educational qualification is the prerogative of the Government, which provides grant-in-aid to the minority and non-minority institutions.

75. After the Central enactment, namely, the Right of Children to Free and Compulsory Education Act, the Educational Policy becomes a national phenomenon and now the National Council for Teacher Education has occupied the field of prescribing the minimum educational qualification for appointment of teachers across the country. When the notifications are issued under the provisions of the Act, the same is to be implemented across the nation scrupulously and there cannot be any exemption or relaxation in respect of the appointment of teachers, so also in Pondicherry.

76. The Constitution Bench of the Apex Court in the case of Modern Dental College and Research Centre and Others Vs State of Madhya Pradesh and others reported in (2016) 7 SCC 353, has emphasised that such Regulations implemented, cannot be said to be irregular or ultra vires to the Constitution. In the case on hand, the grievances of the writ petitioners are that the respondents have not even considered the proposals submitted by the School Management for according approval of appointments. Thus, there is a long delay even in considering the proposals, which resulted in denial of not only approval and deprivation of the livelihood of the writ petitioners in view of the fact that they have not received the salary through grant-in-aid.

77. This Court is of the firm opinion that whenever the management of the school has submitted a proposal, seeking approval of appointment of teachers, it is for the Competent Authorities to consider the same in accordance with law, take a decision and pass orders without any undue delay. The long delay in disposing the proposals would certainly cause prejudice to the teachers, who are all working without knowing the status of their approval of appointments for long years. The decision making authorities should act within a reasonable period and if any decision is taken or no decision is taken, the same should be communicated either way to the parties concerned. Maintaining silence for long years would cause prejudice to the aggrieved

persons and they have every reason to approach the High Court under Article 226 of the Constitution of India.

78. The above contention was seriously disputed by the learned Government Pleader, appearing on behalf of the Government of Pondicherry, on the ground that whenever a proposal is submitted by the fifth respondent-Management, the same were responded by the Government and more specifically, by stating that the proposals were not in accordance with the procedures contemplated under the Act and the Rules. In other words, the learned Government Pleader states that the fifth respondent-School has not submitted the proposals in accordance with the procedures contemplated and the Government frequently responded by stating that they have to follow the procedures strictly, while submitting the proposals, seeking approval of appointments. Thus, the Government of Pondicherry, cannot be blamed and the delay occurred on account of the improper proposals submitted by the school-management.

79. The learned Government Pleader further pleaded by stating that on each and every occasion, the Government had responded to the proposals submitted by the management of the school and further directed to submit the proposals in the prescribed format in accordance with the procedures. Thus, the contentions raised on behalf of the writ petitioners are incorrect.

80. At this juncture, the learned Government Pleader stated that certain proposals said to have been submitted and enclosed in the typed set of papers filed along with the writ petitions have not reached the Government and the writ petitioners or the fifth respondent-school, have not produced any acknowledgement for submitting the said proposals. However, the Court is not inclined to go into these matters, at this point of time, as the same are unnecessary. However, it is made clear that once a proposal is submitted in accordance with the procedures contemplated under the Act and the Rules, then it is for the Competent Authorities to consider the same and pass orders on merits and in accordance with law. In the present writ petitions, no such decision is taken.

81. Thus, this Court is inclined to issue directions in this regard. Accordingly, the fifth respondent-management is directed to submit fresh proposals in accordance with the procedures contemplated under the Act and the Rules, to the respondents 1 to 4, within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the respondents 1 to 4 are directed to consider the proposals on merits and in accordance with law and pass orders, taking note of the observations made in this judgment and by following the legal

principles, within a period of eight weeks thereafter.

82. Accordingly, all the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

-Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ah/Svn

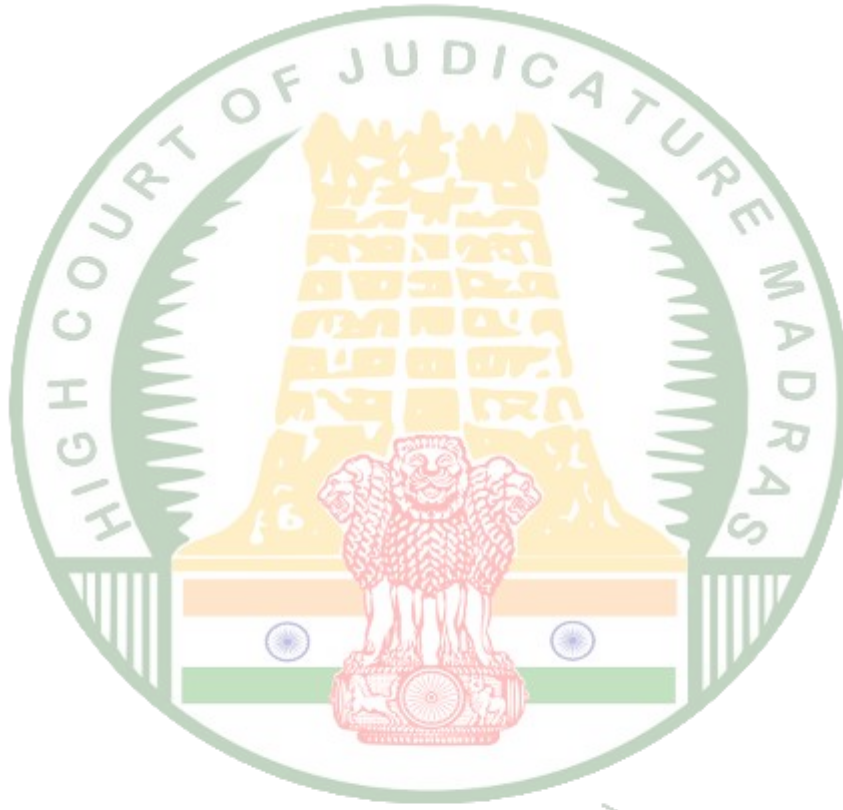
To

1. The Secretary,
Union Territory of Puducherry
Department of Education,
Secretariat,
Puducherry 605 001.
- 2) The Director of School Education,
Government of Puducherry,
Directorate of School Education,
Puducherry 605 005.
- 3) The Senior Accounts Officer,
Government of Puducherry,
Directorate of School Education,
Puducherry 605 005.
- 4) The Deputy Director of School Education (Women),
Government of Puducherry,
Directorate of School Education,
Puducherry - 605 005.
- 5) The Chief Educational Officer,
The Office of the Chief Educational Officer,
Karaikal.
- 6) The Correspondent,
St. Mary's Government Aided Boys High School,
Karaikal-609 602.
- 7) The Correspondent/Manager,
St. Antony's Government Aided High School,
C-115, Marai Malai Adigal Salai,
Puducherry-605 001.

WPs 13041, 21083 to 21085 of 2015

TM(CO)

RRK(11/01/2018)



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