

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.5964/2012**

% **6th January, 2017**

KHRIST RAJA SECONDARY SCHOOL AND ANR. Petitioners

Through: Mr. Kailash Vasdev, Senior
Advocate with Ms. Ekta Mehta,
Advocate.

Mr. Romy Chacko, Advocate for
applicants.

versus

THE GOVERNMENT OF NCT OF DELHI AND ORS. Respondents

Through: Mr. Satyakam, ASC with Mr. R.P.S.
Yadav, DEO and Mr. Ashok Nayar,
LA Zone-26.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition under Article 226 of the Constitution of India is filed by the petitioner no.1/Khrist Raja Secondary School impugning the order dated 28.3.2012 of the Director of Education whereby the Director of Education cancelled and rejected the appointment of seven teachers and one UDC appointed by the petitioner no.1/school. There are thus a total of eight employees of the petitioner no.1/school, validity of whose employments is in issue. After the writ petition was filed by the petitioner no.1/school, the

eight employees in question filed an application for their being impleaded as parties and this application was allowed on 14.7.2015 limited to the purpose of allowing these eight persons to intervene and assist the Court for determination of the issues involved in the writ petition.

2. The facts of the case are that petitioner no.1/school as per its Managing Committee meeting dated 24.2.2012 appointed a total of eight teachers. The minutes of the Managing Committee meeting dated 24.2.2012 adopted the decision of the Staff Selection Committee meeting held on 21.2.2012, 22.2.2012 and 23.2.2012. The minutes dated 24.2.2012 are reproduced in its entirety as under:-

“Minutes of the Managing Committee of KHRIST RAJA SECONDARY SCHOOL, BANGLA SAHIB MARG, NEW DELHI-110 001 passed by circulation amongst its members on 24/02/2012.

1. RECOMMENDATION OF THE SSC WITH REGARD TO THE NEW APPOINTMENTS OF THE TEACHERS/EMPLOYEES IN THE SCHOOL.

The meeting of the Staff Selection Committee of the school, held on 21.02.2012, 22.02.2012 and 23.02.2012 respectively, selected and recommended the following candidates to fill in the various vacancies detailed below:

S. No.	Name of the Post	Date of Interview	Name of the Candidates
1.	ASSTT. TEACHER	21.02.2012	i. Ms. Rose Mary ii. Ms. Urvashi Parcha
2.	UPPER DIVISION CLERK	21.02.2012	i. Ms. Mansi
3.	TGT (MATHS)	22.02.2012	i. Ms Renu Jindal
4.	TGT(HOME SCIENCE)	22.02.2012	i. Ms. Gunjan

- | | | | |
|----|-----------------------------|------------|-------------------------|
| 5. | TGT (SANSKRIT) | 23.02.2012 | i. Ms. Shailza Tripathi |
| 6. | TGT (ENGLISH) | 23.02.2012 | i. Ms. Tripti Rai |
| 7. | ASSTT. TEACHER
(NURSERY) | 23.02.2012 | i. Ms. Goma Kumari |

Resolved that the Managing Committee accepted the recommendations of the Staff Selection Committee of the school and the following candidates be appointed against vacant posts.

- | | | |
|-------------------------|----|--------------------------|
| 1. Ms. Rose Mary | as | Asstt. Teacher |
| 2. Ms. Urvashi Parcha | as | Asstt. Teacher |
| 3. Ms. Mansi | as | Upper Division Clerk |
| 4. Ms. Renu Jindal | as | TGT, Maths |
| 5. Ms. Gunjan | as | TGT, Home Science |
| 6. Ms. Shailza Tripathi | as | TGT, Sanskrit |
| 7. Ms. Tripti Rai | as | TGT, English |
| 8. Ms. Goma Kumari | as | Asstt. Teacher (Nursery) |

“It was further resolved that if any of the candidates selected and recommended for appointment does not turn up or found medically or otherwise unfit next in panel in merit be called against the vacancy as recommended by the SSC. The Manager is directed to forward the cases to obtain Grant-In-Aid on their salary from the Directorate of Education, Delhi”.

S. No.	NAME	DESIGNATION	SIGNATURE	REMARKS
1.	Sr. Lydia D’Souza	Chairperson	Sd/-	
2.	Sr. Janet	Manager	Sd/-	
3.	Ms. Meena Katyal	H.O.S.	Sd/-	
4.	Fr. Maria Susai	Member	Sd/-	
5.	Adv. Justin Fernandes	Member	Sd/-	
6.	Sr. Magdalene Gonsalves	Member	Sd/-	
7.	Sr. Rose Joseph	Member	Sd/-	

8.	Sr. Shanty George	Member	Sd/-	
9.	Sr. Josna Fernandes	Member	Sd/-	
10.	Mrs. Isabella Gomes	Member	Sd/-	
11.	Mr. Naresh Jaiswal	Member	Sd/-	

”

3. As on the date of the appointments of the eight teachers in the petitioner no.1/school in February, 2012, the sanctioned posts position as fixed by the Director of Education was as under:-

“ POST FIXATION OF GOVT. AIDED SCHOOLS 2009-10

School Name and Code: Bangla Sahib Marg, Khrist Raja Sec. School (2026058)

Print Date:-21/06/2010

Name of Post	Previous Post Fixation	Post Fixation 2009-10	Remarks
Supervisory Staff Bangla Sahib Marg Khrist Raja Sec. School (2026058)			
VICE PRINCIPAL	1	1	0
Primary Staff Bangla Sahib Marg Khrist Raja Sec. School (2026058)			
NURSERY TEACHER	0	1	1
ASSISTANT TEACHER	5	9	4
TGTs Bangla Sahib Marg Khrist Raja Sec. School (2026058)			
TGT ENGLISH	1	2	1
TGT HINDI	1	1	0
TGT MATHS	1	2	1
TGT NATURAL	1	2	1

SCIENCE			
TGT SANSKRIT	1	1	0
TGT SOCIAL SCIENCE	1	2	1
Miscellaneous Staff Bangla Sahib Marg Khrist Raja Sec. School(2026058)			
DRAWING TEACHER	1	1	0
TGT HOME SCIENCE	1	1	0
YOGA TEACHER	1	1	0
PET	1	1	0
Ancillary Staff Bangla Sahib Marg Khrist Raja Sec. School(2026058)			
LIBRARIAN	1	1	0
LAB ASSISTANT	2	2	0
Ministerial Staff Bangla Sahib Marg Khrist Raja Sec. School(2026058)			
HEAD CLERK	1	1	0
UDC	1	1	0
PEON	1	1	0
MALI	1	1	0
WATERMAN (FULL TIME)	1	1	0
SWEEPER (FULL TIME)	1	0	-1
CHOWKIDAR (FULL TIME)	2	1	-1

Checked by.....

Sd/-

4. The aforesaid Post Fixation Chart is Annexure-A to the letter of the Director of Education dated 25.6.2010, and which had fixed the posts in the petitioner no.1/school-an aided school. A reading of the aforesaid chart which is Annexure-A to the letter of the Director of Education dated 25.6.2010 shows that in effect the petitioner no.1/school was entitled to appoint a total of nine teachers with five teachers being appointed in the primary section of the school (one nursery teacher and four Assistant Teachers) and four other teachers as TGTs being one TGT (English), one TGT (Math), one TGT (Natural Science) and one TGT (Social Science).

5. So far as the issue that petitioner no.1/school is a minority school, the same is not disputed on behalf of the respondents. Once the petitioner no.1 is a minority school, as per the ratio of the Division Bench judgment of this Court in the case of *Queen Mary's School Thru its Principal Vs. U.O.I. 185 (2011) DLT 168*, the petitioner no.1/school is entitled to appoint teachers in the school without even the presence of any nominee of the Director of Education in the Selection Committee. I have had the occasion to apply the ratio of the judgment in the case of *Queen Mary's School (supra)* in the case of *St. Anthonys Girls Sr. Sec. School*

through its Manager and Anr.Vs. Govt. of NCT of Delhi and Ors. 205 (2013) DLT 744 and have accordingly held that the Director of Education does not have *locus standi* to question the validity of appointments made by a minority aided school even if there is no presence of the nominee of the Director of Education in the Staff Selection Committee. This ratio arises on account of the interpretation of Rules 96 and 98 of the Delhi School Education Rules, 1973. The respondents do not question the factum with respect to the Staff Selection Committee meeting taking place on 21.2.2012, 22.2.2012 and 23.2.2012 and the factum with respect to the meeting of the Managing Committee dated 24.2.2012 accepting the recommendations of the Staff Selection Committee for the appointment of eight teachers, however, there are other defences of the respondents which will be adverted to hereinafter. Therefore, once there did take place a Staff Selection Committee meeting and proceedings for selection of the eight teachers and adoption thereof has been done by the petitioner no.1/school on 24.2.2012, hence in view of the ratio of the judgment of the Division Bench of this Court in the case of *Queen Mary's School (supra)*, no challenge can be laid by the respondents to the appointment of eight teachers on the ground of non-presence of the nominee of the Director of Education in the Staff Selection Committee meeting on 21.2.2012, 22.2.2012 and 23.2.2012, of course, respondents otherwise being entitled to contest the issue of validity

of appointment of the eight teachers with respect to whether such teachers who were appointed did or did not meet the qualifications for so being appointed to the petitioner no.1/school.

6 (i). At this stage, this Court takes on record the statement made on behalf of Mr. Romy Chacko, Advocate who appears for the seven teachers and one UDC that since as per the Post Fixation Chart Annexure-A to the letter dated 25.6.2010, there could not be appointments of Mrs. Shailza Tripathi as TGT (Sanskrit) and Mrs. Gunjan Gulati as TGT (Home Science) because there were no vacancies in the sanctioned posts with respect to TGT (Sanskrit) and TGT (Home Science) as on 12.7.2012, therefore, Mrs. Shailza Tripathi and Mrs. Gunjan Gulati are agreeable to accept their appointments not as TGTs but as Assistant Teachers in the petitioner no.1/school and with respect to which posts there indeed were four vacancies in terms of Post Fixation Chart Annexure-A to the letter dated 25.6.2010 of the Director of Education. This statement made by Mr. Romy Chacko, Advocate will take care of the issue of there not being available sufficient posts of TGTs and posts only being available for Assistant Teachers, and hence the invalidity of the appointments of Mrs. Shailza Tripathi and Mrs. Gunjan Gulati, and consequently this writ petition will now proceed on the basis that the appointments of Mrs. Shailza Tripathi and

Mrs. Gunjan Gulati, with the petitioner no.1/school in terms of the letter dated 12.7.2012 will only be as Assistant Teachers w.e.f 27.2.2012 and not as TGTs. Therefore this writ petition is to be decided with respect to invalidity of the appointments of the seven teachers.

(ii) So far as the eighth employee Ms. Mansi who was appointed as UDC in terms of the letter dated 12.7.2012 of the petitioner no.1/school, counsel for the school and Mr. Romy Chacko, Advocate do not press the writ petition for seeking continuity and validity of appointment of Ms. Mansi and it is accepted by them that Ms. Mansi could not have been appointed as UDC as there was no vacant post of UDC in the petitioner no.1/school as on February/March, 2012. Hence appointment of Ms. Mansi will not be treated as valid but liberty is granted to the petitioner no.1/school and/or Ms. Mansi in accordance with law to seek appointment or future regularization or otherwise take steps if the Director of Education agrees to the continued appointment of Ms. Mansi or for appointment of Ms. Mansi from any prospective date.

(iii) Therefore, the writ petition is being decided only with respect to the validity of appointment of seven teachers namely Mrs. Renu Jindal, Ms. Tripti Rai, Mrs. Shailza Tripathi, Mrs. Gunjan Gulati, Ms. Rose Mary, Mrs. Urvashi Parcha and Ms. Goma Kumari.

7. The aforesaid narration leads to the following conclusions:-

(i) Petitioner no.1 is a minority school and in terms of the Post Fixation Chart given as Annexure-A to the letter of the Director of Education dated 25.6.2010, petitioner no.1/school was entitled to appoint a total of seven teachers, with five teachers being Assistant Teachers and two teachers being TGTs. Petitioner no.1/school as stated above, as also the concerned seven teachers, have agreed that the appointments of seven teachers whose names have been given above will be as five Assistant Teachers in terms of Post Fixation Chart given as Annexure-A to the letter of the Director of Education dated 25.6.2010 and the other two teachers will be taken as being appointed as TGTs.

(ii) There is no challenge, and there could not be any challenge, in view of the ratio of Division Bench judgment of this Court in the case of *Queen Mary's School (supra)* to the factum with respect to the entitlement of the Staff Selection Committee of the petitioner no.1/school to appoint the seven teachers in terms of the selection process meeting conducted from 21.2.2012 to 23.2.2012 and its validation and approval by the Managing Committee of the petitioner no.1/school on 24.2.2012.

8. The issue in the present case is now limited to whether the seven teachers could not have been appointed by the petitioner no.1/school on account of the notification of the Director of Education dated 7.10.2011, and as per which the respondents require the teachers to have Central Teachers Eligibility Test (CTET) qualification for being appointed as a teacher in the school. Since the language of this notification is relevant, the same is reproduced in its entirety as under:-

**“DIRECTORATE OF EDUCATION
(Establishment-IV Branch)**

NOTIFICATION

Delhi, the 7th October, 2011

No.F.4(6)(350)/E.IV/2011/621. In pursuance of sub-section(1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009) the National Council for Teacher Education (NCTE) vide Notification No.215 F. No.61-03/20/2010/NCTE/(N&S) dated 23rd August, 2010 laid down one of the minimum essential qualification for a person to be eligible for appointment as a teacher in Class I to VIII in a school referred to in clause (n) of Section 2 of the said Act, that he/she should pass in the Teacher Eligibility Test (TET) which will be conducted by the appropriate Government in accordance with the guidelines framed by National Council for Teacher Education (NCTE) for the purpose.

And Whereas, National Council for Teacher Education (NCTE) vide letter No.76-4/2010/NCTE/Acad./A31222, dated 14th February, 2011 has specified the guidelines for conducting the Teacher Eligibility Test (TET). Para 10 (Applicability) of said guidelines specifies that:-

“TET conducted by a State Government/UT with legislature shall apply to:

(i) A school of the State Government/UT with legislature and local authority referred to in sub-class (i) of clause (n) of the RTE Act; and

(ii) A School referred to in sub-clause (ii) of clause (n) of the Section 2 of the RTE Act in that State/UT.

A school at (i) and (ii) may also consider eligibility of a candidate who has obtained TET certificate awarded by another State/UT with legislature. In case a State Government/UT with legislature decides not to conduct a TET, a school at (i) and (ii) that State/UT would consider the TET conducted by the Central Government.”

And Whereas, the Central Board of Secondary Education (CBSE) has been authorized by the Central Government to conduct the Central Teacher Eligibility Test (CTET) for Primary and Upper Primary level on the behalf of Central Government.

Now therefore, in exercise of the powers conferred by the proviso to Article 309 of the Constitution read with the Government of India, Ministry of Home Affairs Notification No.F.27/59-Him(I), dated the 13th July, 1959, the Lt. Governor of National Capital Territory of Delhi is pleased to recognize only Central Teacher Eligibility Test (CTET) conducted by the Central Board of Secondary Education (CBSE) for appointment of Teachers for Class I to V and Class VI to VIII in the schools of Delhi in lieu of any State Teacher Eligibility Test.

By order and in the Name of Hon’ble
Lt. Governor of Delhi,
SURESH GUPTA, Addl. Secy.”
(underlining added)

9. I cannot agree with the arguments urged on behalf of the respondents that it is this notification which has required the qualification of CTET for appointment of the persons as teachers in a school in Delhi, inasmuch as, all that this notification states is that CTET requirement is a requirement to be complied with for appointment as a teacher to the school and TET will only be valid as a CTET requirement i.e if the CTET qualification is as per the test conducted by the Central Board of Secondary Education (CBSE) and not by a State Board. This notification dated 7.10.2011 therefore cannot be read as stating or giving a date w.e.f which

date there is a requirement of qualification of CTET for being appointed as a teacher in a school in Delhi.

10. The issue then and thus is that from which date would this requirement of a teacher having CTET qualification be applicable for appointment as a teacher in the school in Delhi. The answer to this query posed with respect to CTET qualification is found in the notification of the CBSE dated 30.11.2015 which is applicable even to the schools in Delhi and this notification states that it is only w.e.f 6.3.2012 that it is mandatory for teachers to have CTET qualification for being appointed in schools. This notification of CBSE dated 30.11.2015 reads as under:-

“CENTRAL BOARD OF SECONDARY EDUCATION, DELHI
CENTRAL TEACHER ELIGIBILITY TEST UNIT

PS 1-2, Institutional Area, IP Extension, Patparganj, Delhi-1 10092 Ph. No. : 011-22235774, 22240104 Fax : 011-22235775 E-mail-ctet@cbse. gov.in

Date: 30-11-2015

NOTICE

CENTRAL TEACHER ELIGIBILITY TEST (CTET) – FEBRUARY 2016

The Central Board of Secondary Education, Delhi will be conducting the 9th Edition of Central Teacher Eligibility Test (CTET) on 21-2-2016 (Sunday) for a candidate to be eligible for appointment as a teacher for class I to VIII. Candidates can apply only On-Line for CTET-FEB 2016 on CTET website- www.ctet.nic.in

IMPORTANT DATES

Submission of On-line application	04-12-2015 to 28-12-15
Last Date for submission of fee through E-challan or Debit/Credit Card	29-12-2015(till 3:30 PM)
Final status of Candidates-Check Status & Particulars of candidates whose fees received	30-12-2015

Period for On-line Corrections in Particulars (No correction will be allowed in any particulars after this date)	30-12-2015 to 04-01-2016
Download Admit Card from CTET website	25-01-2016

SCHEDULE OF EXAMINATION

DATE OF EXAMINATION	PAPER	TIMING	DURATION
21-02-2016	Paper-II	09:30 to 12:00Hours	2:30 Hours
21-02-2016	Paper-I	14:00 to 16:30Hours	2:30 Hours

Applicability

(i) The CTET shall apply to schools of the Central Government (KVS, NVS, Central Tibetan School, etc.) and school under the administrative control of UT's of Chandigarh, Dadra & Nagar Haveli, Daman & Diu and Andaman & Nicobar Islands, Lakshadweep and NCT of Delhi.

(ii) CTET may also apply to the unaided private schools, who may exercise the option of considering the CTET.

(iii) Schools owned and managed by the State Government/local bodies and aided schools shall consider the TET conducted by the State Government. However, a State Government can also consider the CTET if it decides not to conduct the State TET.

(iv) According to CBSE Affiliation Bye-Law 53, prescribing the minimum qualifications for teachers to teach various subjects in Classes I to VIII in the schools Affiliated to CBSE stands amended to that extent and it shall be mandatory that the teachers appointed hereinafter i.e. 6th March 2012 to teach classes I to VIII in the Schools affiliated to the CBSE shall qualify/pass the Central Teacher Eligibility Test or Teacher Eligibility Test (TET), conducted by the appropriate Central/State Government in accordance with the Guidelines framed by the NCTE for this purpose.

For eligibility, fees structure, examination pattern, procedure for filling up application and other information regarding CTET-FEB 2016, kindly visit our website www.ctet.nic.in

Please note that Qualifying the CTET would not confer a right on any person for recruitment/employment as it is only one of the eligibility criteria for appointment.

Sd/-
Director(CTET)”
(underlining added)

11. Counsel for the respondents has very vehemently argued that this Notification dated 30.11.2015 should only be read as applicable to schools with respect to CBSE affiliation Bye-Law 53, and that petitioner no.1/school is not affiliated to CBSE, however, I cannot agree because this CBSE Notification relied upon by the respondents themselves gives finality to the CTET qualification which is obtained on account of the CTET test conducted by the CBSE and once CBSE itself fixes the date of requirement of CTET qualification as on or after 6.3.2012, the requirement of CTET qualification for being appointed as teacher in the school in Delhi will also have to be after 6.3.2012 as stated in the Notification dated 30.11.2015. This cut-off date of 6.3.2012 given in Notification dated 30.11.2015 is reasonable and logical for the reason that it is not as if that the CBSE conducts CTET examination every week or every month or at very such similar short intervals. CTET examinations are conducted possibly on limited occasions in a year and after the Right of Children to Free and Compulsory Education Act, 2009 became applicable w.e.f 1.4.2010. Obviously the cut-off date of requirement of CTET qualification, in view of

the factum with respect to CTET qualification becoming mandatory in terms of the Right of Children to Free and Compulsory Education Act, and the fact that CTET examinations were not being conducted every week or every day or every month, hence the cut-off date given by the CBSE in its circular dated 30.11.2015 as 6.3.2012 cannot be questioned by the respondents, much less because of its own notification dated 7.10.2011.

12. Reliance placed on behalf of the respondents on the circular of the Director of Education dated 29.2.2012 does not in any manner further the case of the respondents because this circular dated 29.2.2012 filed as Annexure R-3 to the counter affidavit of the Director of Education does not deal with the issue of which would be the cut-off date from when teachers who would be appointed in the schools in Delhi would require to have CTET qualification, and which subject is actually governed by the circular of the CBSE dated 30.11.2015.

13. In view of the above, so far as the seven teachers whose names have been mentioned above, and which are also contained in the minutes of the meeting of the petitioner no.1/school dated 12.7.2012, these seven teachers; being Mrs. Renu Jinal and Ms. Tripti Rai as TGTs; and Mrs. Shailza Tripathi, Mrs. Gunjan Gulati, Ms. Rose Mary, Mrs. Urvashi Parcha and Ms. Goma Kumari as Assistant Teachers; will be taken as having been

appointed as per their dates of joining in terms of the minutes of the meeting of Managing Committee of the petitioner no.1/school dated 12.7.2012. Impugned order of the Director of Education dated 28.3.2012 is hence set aside subject however to the observations that out of the eight employees who have been given appointments as per the minutes of the meeting of the petitioner no.1/school dated 12.7.2012 only seven persons will stand appointed and not Ms. Mansi as UDC with the further fact that out of the seven teachers appointed, five will be as Assistant Teachers and two teachers will be appointed as TGTs, as stated above.

14. Writ petition is allowed and disposed of in terms of aforesaid observations, leaving the parties to bear their own costs.

JANUARY 06, 2017
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VALMIKI J. MEHTA, J