

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2876 of 2018
and
C.M.P.No.23843 of 2018

Dr.C.Manikandan ... Appellant/Petitioner

vs.

1. Teacher Recruitment Board,
Rep. by its Chairman,
4th Floor, E.V.K. Sampath Maligai,
Chennai - 6.
2. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
Fort St. George, Chennai - 9.
3. The Director of School Education,
DPI Campus, College Road,
Chennai - 6. ... Respondents/Respondents

Prayer:

Writ Appeal is filed under Clause 15 of Letters Patent,
against the order made in W.P.No.572 of 2018, dated 13.06.2018.

W.P.No.572 of 2018:-

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of declaration to declare that G.O.Ms.No.361 (School Education Department) dated 31.12.1999 is repugnant to the National Council for Teacher Education (NCTE) (Determination of Minimum Qualifications for persons to be recruited as Education Teachers and Physical Education Teachers in Pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or College) Regulations 2014 dated 12.11.2014 in so far as it prescribes that Candidates should have studied the same subject in Bachelors Degree and Masters Degree both for academic subjects and Languages for being eligible for the post of PG assistant and hence void and consequently direct the respondents to publish the result of the

petitioner in the TRB exam for the post of Graduate Assistant held on 02.07.2017 and appoint the petitioner as post Graduate Assistant for the subject political science in any of the Government Schools preferably in salem Town.

For Appellant : Ms.P.Uma

For Respondents: Mr.C.Munusamy
Special Government Pleader,
(Education)

JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR, J)

Instant writ appeal has been filed against the order made in W.P.No.572 of 2018, dated 13.06.2018.

2. Short facts leading to the appeal are that the appellant has studied UG degree in B.A. (Tamil) in the year 2006 and B.Ed., at Periyar University, Salem, in the year 2007. He has also acquired M.A., Degree in Political and International Studies in the year 2010 at Pondicherry University and completed Ph.D (Politics and International studies) at Pondicherry University in the year 2016. Whiles0, the Teachers Recruitment Board issued a Notification dated 09.05.2017 inviting applications from the eligible candidates for the post of Post Graduate Assistants by direct recruitment. The qualification for the said post is prescribed as per the G.O.Ms.No.361, School Education Department, dated 31.12.1999, which states that the qualification for direct recruitment to the post of Post Graduate Assistants in Academic subjects should be a Bachelor's Degree and a Master's Degree in subject in respect of which recruitment is made. However, the Notification issued by the National Council for Teacher Education, dated 03.09.2001, states only Master's degree in the relevant subject with Bachelor of Education or its equivalent or two year's integrated M.Sc. Course or an equivalent course for Sr.Secondary/PUC/Intermediate. According to the appellant, although he sent a representation dated 11.05.2017 requesting the respondents 1 and 2, to follow the qualification prescribed by the NCTE, but they did not respond to the said representation. Hence, he has filed W.P.No.14819 of 2017.

3. In W.P.No.14819 of 2017, the appellant has sought for a Writ of Mandamus, to direct the respondents therein, to accept the application of the appellant and to permit the appellant to appear in the examination.

4. Contention has been made before the Writ Court that the appellant is qualified for the post of PG Assistant, in view of

the fact that he possess M.A., in Political Science and B.Ed., and relied on the notification issued by the National Council for Teacher Education, New Delhi. Per contra, inviting the attention of the Writ Court, the learned Additional Advocate General, Government of Tamilnadu, has submitted that as per State rules, Government have issued G.O.Ms.No.361, School Education Department, dated 31.12.1999 in respect of special Rules for the Tamil Nadu Higher Secondary Educational Service with amendments. According to the learned Additional Advocate General, Government of Tamilnadu have issued amendment and the qualification for direct recruitment to the post of PG Assistant in academic subjects is extracted as below:-

"Direct Recruitment - (i) Must have obtained a Master's degree and Bachelor's degree in the same subject or its equivalent in respect of which recruitment is made and

(ii) BT or B.Ed degree of a University in the State or a teaching degree of equivalent standard."

5. After considering the rival submissions, at paragraph Nos.7 and 8, in W.P.No.14819 of 2017, dated 03.07.2017, Writ Court has ordered as hereunder:-

"7. Thus, it is mandatory that a candidate who is aspiring for the post of Post Graduate Assistant should possess the qualification of Bachelor's Degree and Master's Degree in the same subject. The very purpose is that the teacher requires an excellence in both the degrees in a single subject. Further, a candidate who has completed regular studies alone is entitled for recruitment to the post of Post Graduate Assistant. Teaching is a profession and every teacher has to teach the very same subject to the students. Thus excellence in that subject is required. Therefore, the recruitment to the post of Post Graduate Assistant cannot be compared to other posts in other departments. There is a specific reason in prescribing the same subject for basic degree as well as master degree, as far as the appointment to the post of Post Graduate Assistant in teaching line is concerned. Hence, there is no error in prescribing the same subject both for the basic degree and for the master's degree for recruitment to the post of Post Graduate Assistant.

8. Let us now look into the Government of India notification issued by National Council of Teaching Education on 04.09.2002. It merely stipulates a master's degree in the relevant subject with B.Ed., or its equivalent. This cannot be interpreted as if the petitioner is not required to possess the Degree and Master's Degree in the same subject. In other words, the candidate possessing basic degree in one subject and possessing master's degree in another subject cannot be considered for appointment to the post of Post Graduate Assistant. On a reading of the notification issued by the Government of India, this Court is not inclined to accept the contention of the petitioner that the candidates possessing basic and master's degree in different subjects also can be considered for appointment to the post of Post Graduate Assistant, in the absence of any specific rules in this regard. The rules framed by the state will alone prevail and there is no repugnancy in respect of the Government of India notification as well as the State rules. Hence this Court is of the opinion that the writ petitioner is not qualified for recruitment to the post of Post Graduate Assistant under the Special Rules for Tamil Nadu Higher Secondary Educational Service issued by the State Tamil Nadu. Hence the writ petition is devoid of merits and stands dismissed. Connected miscellaneous petition is also closed. No costs."

6. Being aggrieved, he has filed W.A.No.1163 of 2017. Adverting to the challenge made to the order in W.P.No.14819 of 2017, dated 03.07.2017, a Hon'ble Division Bench of this Court in W.A.No.1163 of 2017, dated 23.10.2017, at paragraph Nos.5 to 7, ordered as hereunder:-

"5. It appears that the appellant/writ petitioner possesses Bachelor's Degree in Tamil and Master's Degree in Political Science. The scope for prescribing the qualification both Master's Degree and Bachelor's Degree in one and the same subject cannot be simply brushed aside. The learned Single Judge has also rightly observed that the rules framed by the State alone will prevail and there is no repugnancy in respect of Government of India notification as well as the State Rules.

6. The appellant, having skipped the basic qualification in one subject, cannot claim right to compete for appointment for a post, much less,

a Teaching Profession for which the qualification prescribed is Master's Degree and Bachelor's Degree in one and the same and we cannot ignore the wisdom on the part of the authority who prescribes the qualification for the teaching faculty. The knowledge the appellant could have gained had he studied the Bachelor's Degree in the same subject cannot be claimed to have been equated by possession of mere Master's Degree alone in the particular subject. We cannot sustain the claim made by the appellant based on his interpretation. Moreover, it appears that the appellant has not challenged the relevant notification or Government Order which prescribes the particular qualification and he has sought for a mandamus alone to accept his application and permit him to appear in the examination.

7. Therefore, we do not find any reason to interfere with the order passed by the learned Single Judge and the writ appeal sans merits. Accordingly, it is dismissed. No costs. The connected miscellaneous petitions are also dismissed."

7. Though on the facts and circumstances of the case, a Hon'ble Division Bench of this Court, at paragraph Nos.6 and 7 of the order, has upheld the plea of the respondents therein, based on the observation that notification or the G.O.Ms.No.361, School Education Department, dated 31.12.1999, not being challenged, writ petition No.572 of 2018, has been filed for a Writ of Declaration, to declare that G.O.Ms.No.361, School Education Department, dated 31.12.1999 as repugnant to the National Council for Teacher Education (NCTE) (Determination of Minimum Qualification for persons to be recruited as Education Teachers and Physical Education Teachers in Pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or College) Regulations, 2014, dated 12.11.2014 insofar as it prescribes that candidates should have studied the same subject in Bachelor's degree and Master's degree, both for academic subjects and languages for being eligible for the post of PG Assistant, is void and consequently direct the respondents to publish the result of the appellant in TRB exam for the post of Graduate Assistant held on 02.07.2017 and appoint the appellant as Post Graduate Assistant for the subject political science in any of the Government Schools preferably in Salem Town.

8. Contentions raised before the Writ Court in W.P.No.572 of 2018, are as hereunder:-

"A. The filed of legislation relating to Education is found in entry 25 List III which is the concurrent list in schedule VII. Hence both Parliament and State Legislature have power to legislate. Under entry 25 List III Parliament has enacted the National Council For Teacher Education Act, 1993. The object of the Act is as follows:

"An Act to provide for the establishment of a National Council for Teacher Education with a view to achieving 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 1 [including qualifications of school teachers] and for matters connected therewith"

Section 1 sub clause (4) reads as follows-

[(4) Save as otherwise provided in this Act, the provisions of this Act shall apply to-

(a) institutions;

(b) students and teachers of the institutions;

(c) schools imparting pre-primary, primary, upper primary, secondary or senior secondary education and colleges providing senior secondary or intermediate education irrespective of the fact, by whatever names they may be called; and

(d) teachers for schools and colleges referred to in clause (c).] Section 12 (d) reads as follows

12. Functions of the Council:

(d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher 1 *** in recognised institutions;

Section 12 A reads as follows:

12-A. Power of Council to determine minimum standards of education of school teachers.-For the purpose of maintaining standards of education in schools, the Council may, by regulations, determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or

intermediate school or college, by whatever name called, established, run, aided or recognised by the Central Government or a State Government or a local or other authority:

Section 32(1) and 2(d) read as follows-

32. Power to make regulations.-(1) 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. (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(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;

In exercise of the powers conferred under section 32 of the NCTE Act, 1993 the NCTE framed the Regulations dated 12-11-2014 called the NCTE (Determination of Minimum Qualifications for persons to be recruited as Education Teachers and Physical Education Teachers in pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or College) Regulations, 2014.

The First schedule deals with the minimum academic and Professional Qualifications.

The clause relevant to the instant Writ Petition is clause 5 which reads as follows:

5. Senior Second Intermediate (For Classes XI - XII)	(a) Post Graduate with at least 50% marks (or its equivalent) from recognized University and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution.
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Thus the minimum academic and professional qualification for being recruited as a PG assistant is an occupied filed by Parliament. The state legislature cannot even make a law repugnant to the Central law unless the assent of the President is obtained under article 254(2) of the Constitution to cure the repugnancy. In this case only by an executive order the minimum academic and Professional Qualifications for being recruited as a PG assistant has been prescribed by the state government in G.O.Ms.No.361 School Education Department dated 31.12.1999 that "Candidates should have studied the same subject in Bachelor's Degree and Master's Degree, both for academic subjects and Languages" for being eligible for the post of PG assistant. The said GO is void since it is repugnant to the NCTE Regulations, 2014 dated 12-11-2014. Article 254 of the Constitution of India reads as follows:-

"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State"

The Respondents are bound to follow the qualification prescribed in the NCTE Regulations, 2014 which does not disqualify candidates with cross major or interdisciplinary subjects in under- graduation and post- graduation courses. The Petitioner is fully qualified as per NCTE Regulations, 2014 to be appointed as PG Assistant in Political Science since he is a Post Graduate in Political science and also holds Ph.D in Political Science."

9. Having regard to the background of the case, in particular to the order of the Hon'ble Division Bench in W.A.No.1163 of 2017, dated 23.10.2017, Writ Court, while rejecting the prayer for declaration sought for in W.P.No.572 of 2018, dated 13.06.2018, at paragraph Nos.6 and 7, ordered thus:-

"6. Since the petitioner has already suffered an order passed by this Court in W.P.No.14819 of 2017, dated 03.07.2017, which was also confirmed by the Hon'ble Division Bench on 23.10.2017, passed in W.A.No.1163 of 2017, this Court is not inclined to reopen the case in a different prayer.

7. It may be mentioned herein that in the case of Engineering Subjects, as per the educational qualifications fixed by the AICTE, although the petitioners in W.P.Nos.28040, 18835, 23673, 27072, 27391 and 23330 of 2017 have obtained B.E. in one subject, while pursuing the M.E. degree, they have chosen similar and relevant subject to that of the subject chosen in B.E. degree as per the educational qualification fixed by the AICTE. However, in the present case, the petitioner, who has applied for the post of Post Graduate Assistant, non-engineering post, has obtained B.A. Degree in Tamil, whereas he has obtained Master's Degree in Political and

International studies, which is totally not relevant to the subject he has chosen in UG degree, therefore, the case of the petitioner herein cannot be compared with that of persons who have applied for Engineering Post."

10. Being aggrieved, instant writ appeal is filed on the following grounds:-

"(i) Writ Court erred in law in holding that since the Petitioner has already suffered an order passed by this Hon'ble Court in W.P.No.14819 of 2017 dated 03-07-2017 which was also confirmed by the Hon'ble Division Bench on 23-10-2017 passed in W.A.No.1163 of 2017 this court is not inclined to reopen the case in a different prayer.

(ii) Writ Court failed to appreciate that the scope of the W.P.No.14819 of 2017 is totally different from the scope of W.P.No.572 of 2018 and the decision in W.P.No. 14819 of 2017 does not operate as res judicata to entertain W.P.No.572 of 2018 and decide the writ petition on merits.

(iii) Writ Court failed to appreciate that the field of legislation relating to Education is found in entry 25 List III which is the concurrent list in schedule VII. Hence both Parliament and state Legislature have power to legislate. Under entry 25 List III Parliament has enacted the National Council For Teacher Education Act, 1993. In exercise of the powers conferred under section 32 of the NCTE Act, 1993 the NCTE framed the Regulations dated 12-11-2014 called the NCTE (Determination of Minimum Qualifications for persons to be recruited as Education Teachers and Physical Education Teachers in pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or College) Regulations, 2014.

(iv) The First schedule deals with the minimum academic and Professional Qualifications.

The clause relevant to the instant Writ appeal is clause 5 which reads as follows:

5. Senior Second Intermediate (For Classes XI - XII)	(a) Post Graduate with at least 50% marks (or its equivalent) from recognized University and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution.
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Thus the minimum academic and Professional Qualifications for being recruited as a PG assistant is an occupied field by Parliament. Even the state legislature cannot make a law repugnant to the Central law unless the assent of the President is obtained under article 254(2) of the Constitution to cure the repugnancy. In this case only by an executive order by G.O.Ms. No. 361 School Education Department dated 31-12-1999 prescribed that the minimum academic and Professional Qualifications for being recruited as a PG assistant as "Candidates should have studied the same subject in Bachelor's Degree and Master's Degree, both for academic subjects and Languages" for being eligible for the post of PG assistant. The said GO is void since it is repugnant to the NCTE Regulations, 2014 dated 12-11-2014 and hence the Respondents are bound to follow the qualification prescribed in the NCTE Regulations, 2014 which does not disqualify candidates with cross major or interdisciplinary subjects in under- graduation and post graduation courses.

(v) Writ Court failed to appreciate that the Petitioner is fully qualified as per NCTE Regulations, 2014 to be appointed as PG Assistant in Political Science in Higher Secondary schools since he is a Post Graduate in Political science and also holds Ph.D in Political Science.

(vi) Regulation 6 of the NCTE Regulations, 2014 dated 12-11-2014 reads as follows- Interpretation- If any question arises relating to the interpretation of these Regulations or equivalence of various teacher's training programmes, the council shall decide the same . The 1st Respondent erred in law in stating in clause 4 (b) (2) of the Advertisement No. 03/2017 dated 09-05-2017 calling for applications from eligible candidates for direct recruitment of Post Graduate Assistants in School Education department under the heading Qualifications that as per G.O.Ms.No.361 School Education Department dated 31.12.1999 candidates should have studied the same subject in Bachelors degree and Masters degree both for academic subjects and languages. The 1st Respondent ought to have noted NCTE Regulations, 2014 dated 12-11- 2014 which does not disqualify candidates with cross major or interdisciplinary subjects in under- graduation and post- graduation courses.

(vii) Writ Court erred in law in not noticing that the 1st Respondent ought to have been aware of NCTE Regulations, '2014 dated 12-11-2014 and sought clarification from NCTE before issuing the advertisement contrary to NCTE Regulations without merely relying on a 1999 G.O. and not publishing the result of TRB exam written by the petitioner for the post of Post Graduate Assistant in Political Science .

(viii) Writ Court failed to note the Tamil Nadu Services Manual dealing with Special rules Section 37."

11. Heard Ms.C.Uma, learned counsel for the appellant and perused the material on record.

12. In G.O.Ms.No.720, Education Department, dated 28.04.1981, Government of Tamilnadu, have framed special rules for the Tamilnadu Higher Secondary Educational Service Rules. Government have issued amendments to the said rules in G.O.Ms.No.361, School Education Department, dated 31.12.1999, and the same is extracted hereunder:-

GOVERNMENT OF TAMIL NADU

ABSTRACT

Tamil Nadu Higher Secondary Education Service -
Special Rules - Amendments - issued.

SCHOOL EDUCATION DEPARTMENT

G.O.Ms.No.361

Dated 31.12.99

G.O.Ms.No.720 Education dated 28.04.1981

Order:

The Government reviewed the qualification prescribed for direct recruitment for the post of "Post Graduate Assistants in Academic subjects" and after such careful review direct that the qualification for direct recruitment to the post of "Post Graduate Assistants in Academic subjects" should be a Bachelors Degree and a Masters Degree in the subject in respect of which recruitment is made. They should also possess B.T. or B.Ed degree.

2). Accordingly the following Notification will be published in the Tamil Nadu Government Gazette.

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 300 of the Constitution of India, the Governor of Tamil Nadu hereby make the following amendments to the Special Rules for the "Tamil Nadu Higher Secondary Educational Service (Section 37 in Volume II of the Tamil Nadu Services Manual, 1969).

2. The amendments hereby made shall come into force on 31st day of December, 1999.

AMENDMENTS

In the said Special Rules, in the Annexure, against the entry "Post Graduate Assistants in Academic subjects in column (1).

(a), for the entries "Direct recruitment and Recruitment by transfer" in column (2) the entry "Recruitment by Transfer" shall be substituted,

(b) after the entry "Recruitment by transfer" as to substituted, the following entries in column (2) and (3) shall, respectively, be added, namely,

Direct Recruitment - (i) Must have obtained a Master's degree and Bachelor's degree in the same subject or its equivalent in respect of which recruitment is made and

(ii) BT or B.Ed degree of a University in the State or a teaching degree of equivalent standard.

(BY ORDER OF THE GOVERNOR)

M.A.GOWRISHANKAR
SECRETARY TO GOVERNMENT"

13. In exercise of the powers conferred under Clause (dd) of Sub-section (2) of Section 32 read with Section 12A of the National Council for Teacher Education Act, 1993(73 of 1993) and in supersession of the National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 except as respects things done or omitted to be done before such supersession, the Council hereby makes the following regulations, namely-

1. Short Title and Commencement-

(1) These Regulations may be called the National Council for Teacher Education (Determination and Minimum Qualifications for Persons to be recruited as Education Teachers and Physical Education Teachers in Pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014.

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

2. Applicability-

These Regulations shall be applicable for recruitment of teachers and Physical Education Teachers in any recognised school imparting Pre-primary, Primary, Upper Primary, Secondary or Senior Secondary or Intermediate Schools or Colleges imparting senior secondary education:-

Explanation:- For the purpose of this regulation, the term "School" includes-

(i) A school established, owned and controlled by the Central Government, or the State Government or a local authority.

(ii) A school receiving aid or grants to meet whole or part of its expenses from the Central Government or the State Government or a Local Authority;

(iii) A school not receiving any aid or grants to meet whole or part of its expenses from the Central Government or the State Government or a Local Authority.

4. Qualifications for Recruitment-

(a) The qualification for recruitment of teachers in any recognized school imparting Pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges imparting senior secondary education shall be as given in the First and Second Schedule(s) annexed to these Regulations.

(b) For promotion of teachers the relevant minimum qualifications as specified in the First and Second Schedule(s) are applicable for consideration from one level to the next level.

5. Power to relax

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

Provided, that no relaxation, shall be granted under these Regulations with regard to the minimum qualification for appointment of teachers for Level 3 (Class I to VIII) as specified in the First Schedule.

6. Interpretation

If any question arises relating to interpretation of these Regulations or equivalence of various teacher's training programmes, the Council shall decide same.

First Schedule

(See Sub-regulation (2) of Regulation (4)

The National Council for Teacher Education

(Determination of Minimum Qualification for persons to be recruited as Education Teachers in Pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014.

LEVEL	MINIMUM ACADEMIC AND PROFESSIONAL QUALIFICATIONS
1.Pre-School/Nursery (For children in the age group of 4-6 years)	a.(i) Senior Secondary (Class XII or its equivalent from recognised board with at least 50% marks OR
2.Pre-School/Nursery followed by first two years in a formal school.	(ii) Senior Secondary (Class XII or its equivalent) from recognised board with at least 45% marks in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002. And; b. Diploma in Nursery Teacher Education/Pre-School Education/Early Childhood Education Programme (D.E.C.Ed.) of duration of not less than two years or B.Ed. (Nursery) from National Council for Teacher Education recognised institution.
3. Primary and Upper Primary (For Classes I to VIII)	Minimum qualifications as laid down by National Council for Teacher Education vide its notification dated 23.08.2010 as amended from time to time issued in exercise of the powers conferred under Sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009)

LEVEL	MINIMUM ACADEMIC AND PROFESSIONAL QUALIFICATIONS
4.Secondary/High School (For Classes IX-X)	(a) Graduate/Post Graduate from recognised University with at least 50% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognised institution. (b) Graduate/Post Graduate from recognised University with at least 45% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution {in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002 and National Council for Teacher Education Programme (Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.2007) Or (c) 4-year degree of B.A.Ed/B.Sc.Ed. From any National Council for Teacher Education recognised institution.

LEVEL	MINIMUM ACADEMIC AND PROFESSIONAL QUALIFICATIONS
5. Senior Secondary Intermediate (For Classes XI-XII)	(a) Post Graduate with at least 50% marks (or its equivalent) from National Council for Teacher Education recognised institution. OR (b) Post Graduate with at least 40% marks (or its equivalent) from recognised University and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognised institution (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002 and National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.2007. OR (c) Post Graduate with at least 50% marks (or its equivalent) from recognized University and B.A.Ed./B.Sc.Ed. from any NCTE recognised institution.

14. Teachers Recruitment Board, Government of Tamilnadu, Chennai, has issued a notification/advertisement for the post of Graduate Teachers/Physical Education Directors Grade I in Tamilnadu Higher Secondary Educational Service. As per Clause 4 (b) and (c) of the notification, the educational qualification prescribed are,

1. Candidates should possess a Post Graduate degree in the relevant subject with B.Ed. Degree awarded by an University or Institution recognized by the University Grants Commission. The qualification prescribed above for this post should have been obtained by passing the required qualification after completing 10th and H.Sc. (on its equivalent) followed by an U.G. Degree.

2. As per G.O.Ms.No.361 School Education Department dated 31.12.1999, candidates should

have studied the same subject in Bachelor's Degree and Master's Degree, both for academic subjects and Languages. For the post of Physical Director Grade-I, the candidates may possess any Bachelor's Degree with M.P.Ed. Degree.

3. If a candidate claims that the educational qualification in the subject possessed by him/her is equivalent to, though not the same, as those prescribed for the appointment, he/she has to produce the subject equivalence G.O. issued by the Government of Tamil Nadu at the time of Certificate Verification."

15. In P.U.Joshi and others vs. Accountant General Ahmedabad and others reported in (2003) 2 Supreme Court cases 632 at paragraph 10 of the judgment, the Hon'ble Supreme Court held as follows:

"Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment of eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required

from time to time by abolishing the existing cadres/posts and creating new cadres/posts. 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."

16. Though G.O.Ms.No.361 School Education Department dated 31.12.1999, was not challenged earlier, from the perusal of the affidavit filed in W.P.No.14819 of 2017, for a Mandamus, directing the respondents therein to accept the application submitted by the appellant, and W.P.No.572 of 2018 filed, challenging G.O.Ms.No.361 School Education Department dated 31.12.1999, it is evident that the main contention is with reference to the notification issued by the National Council for Teacher Education, New Delhi. The qualification prescribed by the government for the post of PG Assistant should have been obtained by passing the required qualification after completing 10th and H.Sc. (or its equivalent), followed by an U.G. Degree and that the candidates should have studied the same subject in Bachelor's Degree and Master's Degree, both for academic subjects and Languages. For the post of Physical Director Grade-I, the candidates may possess any Bachelor's Degree with M.P.Ed. Degree. Reason for fixing the educational qualification that candidates should possess a post graduate degree in the relevant subject with B.Ed., degree awarded by an University or Institution recognized by the University Grants Commission, has been considered by a learned Judge in W.P.No.14819 of 2017, dated 03.07.2017 and confirmed by a Hon'ble Division Bench in W.A.No.1163 of 2017, dated 23.10.2017 in the appellant's own case. There is absolutely reason to vary. It is for the rule making or the appointing authority to prescribe the mode of selection and educational qualifications for the post of PG Assistant, Courts should not trench upon the power of the rule making or appointing authority, to prescribe the qualifications, which according to such authority is relevant for the post. What is the educational qualification required for the post depends upon the functions and duties attached to the post. Unless the qualifications prescribed are wholly irrelevant for the post, or against the statute or violative of the constitutional provisions, Court should not interfere.

17. In view of the above, we find no merit in the contentions. In fine, instant writ appeal is dismissed. No Costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dm

1. The Chairman,
Teacher Recruitment Board,
4th Floor, E.V.K. Sampath Maligai,
Chennai - 6.
2. The Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai - 9.
3. The Director of School Education,
DPI Campus, College Road,
Chennai - 6.

W.A.No.2876 of 2018
and
C.M.P.No.23843 of 2018

SSD(CO)
CS/11/02/2019