

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2698 of 2018

C.M.P.No.22043 of 2018

1.Teachers Recruitment Board

Rep. by its Director

4th floor, EVK Sampath building

College Road, Chennai-600006

2.The Principal Secretary to the

Government of Tamil Nadu

Higher Education Department

Fort St.George, Chennai-600009.

... Appellants/Respondents

vs.

K.Bommi

... Respondent/Petitioner

Prayer: Writ Appeal is filed under Clause 15 of Letters Patent, against the order made in W.P.No.33964 of 2013, dated 14.03.2018.

Prayer in W.P.No.33964 of 2013:

Petition under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records of the second respondent in G.O.Ms.No.412, Higher Education Department, dated 07.12.2009 and G.O.Ms.No.32, dated 08.03.2013 issued by the second respondent and quash the same in so far as the same grants 9 marks to the holders of Ph.D. and consequently direct the respondents 1 and 2 to either reduce the marks awarded to Ph.D holders from 9 to 5 marks or in the alternative grant 9 marks to the M.Phil holders with SLET/NET qualifications for appointment as Assistant Professors in Tamil Nadu Collegiate service for Government Arts and Science Colleges and grant the marks for the Teaching experience as Assistant Professor in the Rajan Serfoji Government College (Autonomous), Thanjavur from 01.07.2005 in respect of the selection to the post of Assistant Professor and consequently appoint the petitioner in the said post. (Prayer amended as per the order dated 27.02.2015 in M.P.No.2 of 2015)

For Appellants : Mr.K.Karthikeyan, Govt.Advocate

For Respondent : Mr.P.Srinivas

J U D G E M E N T

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

Instant writ appeal is filed against the order, made in W.P.No.33964 of 2013, dated 14.03. 2018, by which the Writ Court directed the respondents to give appropriate marks to the petitioner for M.Phil. degree in Computer Science issued by the Alagappa University and also award marks for the Teaching experience as Assistant Professor in Rajah Serfoji Government College (Autonomous), Thanjavur from 01.07.2005 in respect of selection to the post of Assistant Professor and to appoint the petitioner as Assistant Professor Higher Education Department and the said exercise, to be done within a period of eight weeks.

2. Shorts facts leading to the appeal are that the writ petitioner/respondent obtained M.Phil. degree from Alagappa University in the subject, Computer Science, through Distance Education System in the year 2005 after completing her PG degree in M.Sc. Computer Science. In response to the Advertisement No.4 of 2013 dated 28.05.2013 of the first appellant, the writ petitioner/respondent applied for the post of Assistant Professor in Computer Science and she was called for certificate verification on 04.12.2013. It was alleged that during evaluation of the certificates, due weightage marks for her educational qualifications were not given.

3. According to the writ petitioner/respondent, she was not given correct marks, on the ground that M.Phil degree was obtained in correspondence mode, and not in regular stream, and that the petitioner was awarded only 7 marks, in the recruitment process, apart from the marks awarded in the interview. Due to the aforesaid act of the first appellant, her chances for selection to the post of Assistant Professor was affected. According to the petitioner, she is entitled to 15 marks for the experience in teaching and 6 marks for the educational qualification, totalling 21 marks. But the respondent has contended that she was awarded only 7 marks. Writ petitioner/respondent experience in teaching, being subsequent to acquiring M.Phil degree, has been totally ignored. The grievance of the writ petitioner/respondent is that prior to 2006, Universities have been offering the courses in M.Phil and Ph.D in correspondence stream and the said degrees were accepted for all purposes. Only after the instructions dated 29.08.2006 issued by the

Government to the Universities, and based on the said instructions Universities have stopped the offer for the said degrees, through distance education stream, and thereafter, the said degrees are not awarded. In respect of the degrees issued prior to the said instructions, for all purposes, the degrees have to be accepted. The degrees issued prior to the instructions/letter dated 29.8.2006 are binding upon the States. Now, the first appellant being an instrumentality of the second appellant, cannot turn around to say that all the Ph.D. and M.Phil degrees obtained under the distance education stream prior to 2006, cannot be honoured. Pending writ petition, the writ petitioner/respondent sought for amendment of the prayer and the same has been allowed by this Court. As per the amended prayer, the writ petitioner/respondent has prayed to quash G.O.Ms.No.412, dated 07.12.2009 and G.O.Ms.No.32, dated 8.3.2013 and consequently sought for appointment in the post of Assistant Professor.

4. After hearing the learned counsel for the parties, vide order dated 14.03.2018 in W.P.No.33964 of 2013, writ court, has ordered as hereunder:-

"8. Learned counsel for the petitioner submitted that the impugned Government Orders have been passed without adhering to the UGC norms that are governing standards for filling up of the posts of Professors and Assistant Professors etc. in higher education. He further submitted that awarding of marks to the Ph.D. holder higher than the candidates who hold the additional qualification of SLET/NET is illegal. Learned counsel would further submit that while the M.Phil holders are required to have the SLET/NET qualification, they are given only 6 marks, whereas the Ph.D. candidates despite not having the SLET/NET qualification are given higher marks of 9. This results in an illegal advantage to the Ph.D. holders.

9. In the case on hand, the petitioner obtained M.Phil Degree from the Alagappa University in the year 2005, of course in the Distance Education System. It is beyond any cavil that prior to 2006, the Universities have been offering the courses in M.Phil. and Ph.D. in correspondence stream and the said degrees were accepted for all purposes. It is seen from the records that only after issuance of Letter (Ms) No.268, Higher Education (K2) Department, dated 29.08.2006, the Universities have stopped to offer the said degrees by distance education stream. Thereafter, by

another government order in G.O.Ms.No.91, Higher Education (K2) Department, dated 03.04.2009, the Government declared M.Phil. and Ph.D. Degrees obtained through Correspondence/Distance Education/Open University system as ineligible for appointment.

10. Admittedly, the petitioner obtained the Degree of M.Phil. in Computer Science during March, 2005 from Alagappa University, prior to the issuance of Letter (Ms) No.268, Higher Education (K2) Department, dated 29.08.2006 and consequential G.O.Ms.No.91, Higher Education (K2) Department, dated 03.04.2009. It is specifically stated in the counter affidavit that the petitioner was admittedly granted six marks for her M.Phil. Degree. That apart, she was granted 14 marks for teaching experience and 8 marks for interview. In all, the petitioner was awarded 28 marks. Therefore, the non consideration of his M.Phil Degree cannot really be agitated by the petitioner, as due weightage of marks was already given having regard to the said qualification.

11. In any event, it is the grievance of the petitioner that when the petitioner who possesses M.Phil. with SLET/NET is being awarded six marks, the candidate with Ph.D., even without SLET/NET is being granted 9 marks and such condition is violative of Article 19 (1) (g) of the Constitution of India.

12. This Court is at a loss to understand as to what is the rationale behind placing a person with M.Phil with SLET/NET below a person with Ph.D. without SLET/NET. It is true that the UGC Regulations provide that holders of Ph.D. need not pursue SLET/NET, but that, in itself, does not confer added advantage to Ph.D. holders in claiming three marks over and above candidates with M.Phil. with SLET/NET. No record or particulars have been placed before this Court giving details as to on what basis such marks for candidates with M.Phil. with SLET/NET or Ph.D. have been prescribed. The difference in marks ought to have been one or two, instead of three, which protects the right of a person, who is also highly qualified with M.Phil. with SLET/NET.

13. In the above circumstances, the writ petitioner has made out the case before this Hon'ble Court and his candidature should be considered by giving appropriate marks to the petitioner for M.Phil. degree in Computer

Science issued by the Alagappa University by awarding marks for the teaching experience, the Assistant Professor, Raja Bahadur College (Autonomous), Thanjavur from 01.07.2005.

14. In the result:

(a) this writ petition is allowed;

(b) the respondents are directed to give appropriate marks to the petitioner for the M.Phil. degree in Computer Science issued by the Alagappa University and also award marks for the Teaching experience as Assistant Professor in Rajah Serfoji Government College (Autonomous), Thanjavur from 01.07.2005 in respect of the selection to the post of Assistant Professor and appoint the petitioner as Assistant Professor under the 1st respondent;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, all connected miscellaneous petitions are closed."

5. Being aggrieved by the same, instant writ appeal is filed on the following grounds inter alia:-

"(1) Writ Court has failed to consider the fact that the qualification prescribed as per the corrigendum to the advertisement No.4 of 2013 dated 28.05.2013 has to be followed uniformly for all the candidates and the Board cannot deviate for the sake of the respondent alone.

(2) Writ Court has failed to consider the fact that the qualification at the relevant point of time alone could be considered for awarding weightage marks for teaching experience and the yardstick filed for awarding marks for the teaching experience, exemption weightage marks for the M.Phil holders completed after 31.12.1999 could be considered from 14.06.2006 and the board cannot deviate from the same.

(3) Writ Court has failed to consider the fact that even assuming the appellant has awarded weightage marks for teaching experience as 15 and the total score changes as 29 marks as per the impugned order the writ petitioner/respondent cannot be selected since last candidates selected with the same in Backward Class (General) turn has secured 30 marks.

(4) Writ Court could have considered the fact that the order of this court dated 12.06.2006, in Dr.M.Vennila vs. TNPSC in

W.P.No.32895 of 20005 and other batches reported in 2006(3) (CTC 449) as held in para 25 of the orders that the terms and conditions of instructions etc., to candidates have to be strictly complied with and has viewed that strict adherence to the terms and conditions is paramount consideration and the same cannot be relaxed.

(5) Writ Court has failed to consider the fact that the service rendered with M.Phil qualification up to 13.06.2006 was not taken as valid teaching experience period as the respondent has completed M.Phil degree on 2005 hence teaching experience could be reckoned from 14.06.2006 only. As per the corrigendum issued by Teachers Recruitment Board, the services rendered with Ph.D., qualification alone is taken from committing teaching experience from 31.12.2002 and hence the claim of the writ petitioner/respondent to consider her M.Phil degree for teaching experience from the date of completion is not feasible for compliance.

(6) Writ court could have considered the fact that it is settled law that the selection procedure stipulated in advertisement must be scrupulously followed and any deviation from the yardstick in determining the teaching experience is allowed it would unsettle the settled issue and would open flood gates for similarly placed persons.

(7) Writ Court could have considered the fact the Board filled all vacancies for the subject computer science and hence the petitioner could not be considered for selection as her merit has not reached the zone of selection."

6. On the above grounds, Mr.K.Karthikeyan, learned Government Advocate made submissions. He also brought to the notice of this Court, the Government Orders passed by the Higher Education Department, with regard to M.Phil and Ph.D degrees, obtained through correspondence/distance education/ open university system, declared as ineligible for appointment. He also submitted that candidates possessing Ph.d qualification in computer science, have secured more marks in the selection. Per contra, inviting the attention of this Court to a decision made in P.Suseela and Others vs. University Grants Commission and Others, (2015) 8 SCC 129, Mr.P.Srinivas made submissions to sustain the order impugned in this appeal.

Heard the learned counsel for the parties and perused the materials placed on record.

7. Let us consider the Government orders, issued from time to time.

(i) G.O.(Ms.)No.91, Higher Education (F2) Department, dated 03.04.2009, is extracted hereunder:

Government of Tamil Nadu

ABSTRACT

Higher Education - M.Phil. and Ph.D. degrees obtained through correspondence / Distance Education / Open University System declared as ineligible for appointment - Orders - Issued.

Higher Education (F2) Department
G.O. (Ms) No:91 Dated: 3-4-2009

Panguni-21
Thiruvalluvar Aandu-
2040 Read:

Letter (Ms) No: 268, Higher Education (K2) Department, dated 29.8.2006.
ORDER:-

During the meeting of the Vice-Chancellors of Universities under the aegis of Higher Education Department held on 21.6.2006 under the Chairmanship of Hon'ble Minister for Higher Education, the Vice-Chancellors have informed that no Ph.D. programme is available in Distance Education. Since the UGC has done away with acquiring of SLET / NET qualification for Ph.D and M.Phil candidates, it has become essential to improve the quality of M.Phil / Ph.D. course. To strengthen this, it was suggested that from the academic year 2007-2008 onwards, M.Phil / Ph.D. programme may not be offered through Distance Education and the same will be offered only in regular courses.

2. Based on the decision taken in the meeting, the Government in Letter (Ms) read above, directed all the Universities under the aegis of Higher Education Department that M.Phil/Ph.D. courses should not be offered through distance education from the academic year 2007-2008 and they should be offered only in the regular stream.

3. The Government have now examined the mater in detail and hereby declare that the M.Phil and Ph.D degrees obtained through the Correspondence / Distance Education / Open University System are ineligible for Government appointments and appointment as

Lecturers in Colleges / Universities
including self-financing colleges.
(BY ORDER OF THE GOVERNOR)

K.GANESAN
Principal Secretary to Government

(ii) G.O.(Ms.)No.412, Higher Education (F2)
Department, dated 03.04.2009, is extracted hereunder:
Government of Tamil Nadu

Abstract

Teachers Recruitment Board - Recruitment of
Lecturers in Government Arts & Science
Colleges & Colleges of Education - Awarding of
Weightage marks - Revised Orders - Issued.

Higher Education (F2) Department

G.O.(Ms).No.412
7.12.2009

Dated:

திருவள்ளூர்வராண்டு 2040
கார்த்திகை 21

Read:-

- 1) G.O.(Ms).No.106, Higher Education,
dated 14.5.2007
- 2) G.O.(Ms).No.146, Higher Education,
dated 1.6.2007
- 3) G.O.(Ms).No.306, Higher Education,
dated 10.9.2009
- 4) From the Chairman, Teachers
Recruitment Board
letter No.2843/A6/2008 dated
20.11.2009.

ORDER:-

In the Government Order third read above,
orders were issued partially amending the
orders issued in the Government Order first
read above for awarding of marks for selection
of Lecturers in Government Arts & Science
Colleges as follows:-

1	For teaching experience in Universities/ Government / aided colleges / self financing colleges in the approved post including the teaching experience (in the relevant subject) of the candidates in Medical/Engineering/Law Colleges. (2 marks for each year subject to a maximum of 15 marks)	15 marks
2	Qualification a) For Ph.D in concerned subject -9 b) For M.Phil with SLET/NET (or) M.Phil prior to 31.12.93 - 6 c) For PG & SLET/NET - 5	9 marks (Maximum)
3	Research contribution/Books/Article Published	5 marks
4	Interview	10 marks
	Total	39 marks

2. In the letter 4th read above, the Chairman, Teachers Recruitment Board has explained in detail, the difficulties and inconsistencies experienced by the Board in the awarding of marks under the item 'Books and Article' during in Certificate Verification in the previous recruitments and stated that the Government may review the marks awarded for the research contributions and teaching experience for the ensuing recruitment of the college lecturers in Government Arts and Science Colleges. He has suggested that the five marks awarded under Item 3 - Research contribution may be dispensed in the ensuing recruitment and in turn, the research contribution of the candidate may be assessed during the interview and suggested the distribution of marks for the ensuing recruitment as follows:-

1	Teaching Experience in Universities / Government / Aided Colleges / Self financing colleges in the relevant subject in the approved post duly countersigned by the RJD and for Universities by Registrar, including Teaching experience in the relevant subject in Medical/Engineering/Law colleges duly countersigned by the appropriate authority (at a rate of 2 mark for more than 6 months, or 1 mark for more than 3 months, but less than 6 months, for each academic year subject to a maximum of 15 vide G.O.No.146, Higher Education (F2) Department, dated 1.6.2007)		10 marks
2	a) Ph.D qualification in the relevant subject	15 marks	15 marks
	b) M.Phil with NET of UGC/CSIR/JRF or SLET of Universities or SLST of Madras Universities-1990 in the relevant subject OR M.Phil obtained prior to 31.12.1993	10 marks	
3	Interview (Test of subject knowledge / teaching ability)		10 marks
Total			35 marks

He has also requested that the qualification mentioned in Sl.No.2 above may also be confirmed by the Government in the light of University Grants Commission norms and requested to issue necessary orders by the Government in this regard.

3. The Government have examined the suggestions of the Chairman, Teachers Recruitment Board carefully and decided to revise the marks awarded for selection of Lectures in Government Arts and Science Colleges and Colleges of Education. Accordingly, the amendments I & II issued in the Government Order third read above are slightly modified as follows:-

Council for Higher Education,
Chennai-5, Letter No.Rc.No.280/2013A dated
28.02.2013

ORDERS:-

In the G.O. 1st read above, the following guidelines were issued for award of marks for teaching experience, higher qualification and interview for selection of Assistant Professors in Government Arts and Science Colleges and Colleges of Education through direct recruitment by Teachers Recruitment Board as follows:-

1.	For Teaching experience in Universities / Government / Aided Colleges / Self Financing Colleges in the approved post including the Teaching experience (in the relevant subject) of the candidates in Medical / Engineering / Law Colleges. (2 Marks for each year subject to a maximum of 15 marks)	Maximum 15 Marks
2.	Qualification:	
	a For Ph/D., in concerned subject	- 9 Marks 9 Marks (maximum)
	b For M.Phil with SLET/NET	- 6 Marks
	c For PG & SLET/NET	- 5 Marks
3	Interview	10 Marks
	Total	34 Marks

2. In the letter 2nd read above the Chairman Teachers Recruitment Board has stated that while adopting the existing procedure of recruitment of Assistant Professors / Lecturers by conducting certificate verification and then followed by interview, the Teachers Recruitment Board faces a lot of difficulties such as Court cases and is answerable to many forums such as Information Commission, SC/ST Commission, Consumer Forums. He has therefore, proposed that a written competitive examination may be conducted in lieu of interview by awarding 10 marks for the same to ensure only meritorious candidates get selected and thereby quality of Higher Education can be assured in all Government Colleges. He has therefore requested orders of the Government on the above proposal.

3. The Government have examined the proposal of Chairman, Teachers Recruitment Board in consultation with Vice-Chairperson,

Tamil Nadu State Council for Higher Education. The Vice-Chairperson, Tamil Nadu State Council for Higher Education has stated that the NET / SLET tests are highly competitive. Considering that the candidate have already proved their worth by passing their degree examination and NET / SLET test, eliminating interviews altogether and replacing them with other State-level written test may prove penalising for the candidates. She has therefore suggested the following criteria and award of marks for conduct of interview for selection of Assistant Professor in Government Arts and Science Colleges and Colleges of Education.

1	Content	- Whether the candidate presents relevant and well organized subject material	30%	3 Marks
2	Delivery	- Whether the candidate is clear, understandable and audible while presenting.	30%	3 Marks
3	Language	- Whether the candidate is proficient in English / Tamil language and articulates concepts well	20%	2 Marks
4	Personal Characteristics	- Whether the candidate is confident and possesses a calm disposition	20%	2 Marks
Total			100%	10 Marks

4. The Government, after careful consideration, have decided to accept the suggestions of Vice-Chairperson, Tamil Nadu State Council for Higher Education. Accordingly, the Government prescribe following criteria and award of marks for conduct of the interview for selection of Assistant Professors in Government Arts and Science Colleges and Colleges of Education through Teachers Recruitment Board apart from awarding marks for teaching experience [15 marks] and higher qualification [9 marks] as per G.O.(Ms.) No.412, Higher Education dated 07.12.2009.

1	Content	-	Whether the candidate presents relevant and well organized subject material	3 30%	Marks
2	Delivery	-	Whether the candidate is clear, understandable and audible while presenting.	3 30%	Marks
3	Language	-	Whether the candidate is proficient in English / Tamil language and articulates concepts well	2 20%	Marks
4	Personal Characteristics	-	Whether the candidate is confident and possesses a calm disposition	2 20%	Marks
Total				10 100%	Marks

5. Teachers Recruitment Board is directed to adhere to the above criteria and award of marks for the interview.

(BY ORDER OF THE GOVERNOR)

APURVA VARMA
PRINCIPAL SECRETARY TO GOVERNMENT.

8. Teachers Recruitment Board, Government of Tamil Nadu, has issued Notification/Advertisement No.4/2013 on 28/05/2013, and Clause 13 of the Advertisement, deals with the scheme of selection deals with awarding of marks for the educational qualifications, which is reproduced here under:

13. Scheme of Selection: Scheme of selection involves two stages. Marks will be awarded to all candidates based on the certificates produced along with the application forms as per criteria and also the marks awarded during the time of interview, as per G.O.Ms.No.412, Higher Education (F2) Dept, dated 04.12.2009, Govt.Lr.No.20575A/F2/2011, dated 27.06.2012 and G.O.(Ms) No.32, Higher Education (F2) Dept dated 08.03.2013 as follows:

Sl. No.	Details	Maximum
1.	For Teaching experience in Universities / Government / Aided Colleges / Self Financing Colleges in the approved post. Including the Teaching experience (in the relevant subject) of the petitioner in Medical / Engineering / Law Colleges. (2 Marks for each year subject to a maximum of 15 marks)	15 Marks
2.	Qualification:	
	a For Ph/D., in concerned subject	- 9 Marks
	b For M.Phil with SLET/NET	- 6 Marks
	c For PG & SLET/NET	- 5 Marks
3	Interview	10 Marks
	Total	34 Marks

9. Government have issued letter No.8609A/F2/2014 dated 13.06.2014, clarifying on the aspect of awarding weightage marks for teaching experience for the candidates, who have obtained M.Phil and Ph.d, through open University system/Distance education. Admittedly the writ petitioner has obtained her M.Phil degree in 2005 from Alagappa University in Computer science, through Distance Education system. Advertisement No.4 of 2013 has been issued by Teachers Recruitment Board, Government of Tamil Nadu on 28.05.2013, for the post of Assistant Professor in Computer Science. In G.O.Ms.No.91 Higher Education Department dated 03.04.2009, it is stated that after the meeting of the Vice Chancellors of Universities, dated 21.06.2016 under the Higher Education Department, a decision has been taken that from the academic year 2007-2008 onwards M.Phil/Ph.d, programmes may not be offered through Distance Education and the same will be offered only as a regular course.

10. At para 3 of the said Government order, Government of Tamilnadu have taken a decision that M.Phil/Ph.d degree obtained through correspondence/Distance Education/Open University system are ineligible for government appointments and appointment as lecturers in Colleges an Universities including self financing colleges. Admittedly, respondent has acquired M.Phil degree, prior to the issuance of Government Letter (Ms)268, Higher Education (K2) Department dated 29.08.2006 and the consequential G.O.Ms.No.91, Higher Education Department (K2) dated 03.04.2009. In G.O.Ms.No.32, Higher Education (F2)

Department dated 08.03.2013, Government have decided to award marks for teaching experience, on the basis of the educational qualifications, for selection to the post of Assistant Professors in Government Arts and Science colleges and colleges of education through direct recruitment by the Teachers Recruitment Board, as hereunder:

1	For teaching experience in Universities/ Government / aided colleges / self financing colleges in the approved post including the teaching experience (in the relevant subject) of the candidates in Medical/Engineering/Law Colleges. (2 marks for each year subject to a maximum of 15 marks)	15 marks
2	Qualification a) For Ph.D in concerned subject - 9 b) For M.Phil with SLET/NET - 6 c) For PG & SLET/NET - 5	9 marks (Maximum)
3	Interview	10 marks
	Total	34 marks

11. As per clause 13 of the scheme of selection in advertisement No.4 of 2013 dated 28.05.2013, issued by the Teachers Recruitment Board, Chennai, marks are awarded based on the basis of educational qualification. At the risk of repetition, Clause 13 is reproduced:

13. Scheme of Selection: Scheme of selection involves two stages. Marks will be awarded to all candidates based on the certificates produced along with the application forms as per criteria and also the marks awarded during the time of interview, as per G.O.Ms.No.412, Higher Education (F2) Dept, dated 04.12.2009, Govt.Lr.No.20575A/F2/2011, dated 27.06.2012 and G.O.(Ms) No.32, Higher Education (F2) Dept dated 08.03.2013 as follows:

Sl. No.	Details	Maximum
1.	For Teaching experience in Universities / Government / Aided Colleges / Self Financing Colleges in the approved post. Including the Teaching experience (in the relevant subject) of the petitioner in Medical / Engineering / Law Colleges. (2 Marks for each year subject to a maximum of 15 marks)	15 Marks
2.	Qualification:	
	a For Ph/D., in concerned subject	- 9 Marks
	b For M.Phil with SLET/NET	- 6 Marks
	c For PG & SLET/NET	- 5 Marks
3	Interview	10 Marks
	Total	34 Marks

12. On the facts and circumstances of this case, though the appellants have contended that the respondent cannot be considered for selection to the post of Assistant Professor in Computer Science in Government/Self Financing Colleges, on the basis of G.O.Ms.No.91, Higher Education Department dated 03/04/2009, writ Court has considered plea of the respondent that she has acquired M.Phil degree, before 2006, and Court also taken note of the fact TRB, Chennai has awarded 6 marks for M.Phil with SLET/NET, 14 marks for the teaching experience and 8 marks for the interview, Writ Court has also observed that the respondent cannot have a grievance that her M.Phil degree, has not been taken note of, because weightage marks has been given. But while addressing the challenge that Ph.D degree holders, who do not possess SLET/NET, cannot be given 9 marks and placed above M.Phil degree holders with SLET/NET, at paragraph 12 of the order made in W.P.No.33964/203, dated 14/3/2018, Writ court has observed as under:-

...12. This Court is at a loss to understand as to what is the rationale behind placing a person with M.Phil with SLET/NET below a person with Ph.D. without SLET/NET. It is true that the UGC Regulations provide that holders of Ph.D. need not pursue SLET/NET, but that, in itself, does not confer added advantage to Ph.D. holders in claiming three marks over and above candidates with M.Phil. with SLET/NET. No record or particulars have

been placed before this Court giving details as to on what basis such marks for candidates with M.Phil. with SLET/NET or Ph.D. have been prescribed. The difference in marks ought to have been one or two, instead of three, which protects the right of a person, who is also highly qualified with M.Phil. with SLET/NET.

13. Material on record shows that V.Vidhya has filed W.P.No.25114 of 2014 and Dr.Neelasetti Balaji and 2 others have filed W.p.No.25621 of 2014 for a declaration, declaring clause 13 of the advertisement No.4/2013 dated 28/5/2013, as illegal. By a common order, dated 18/11/2014, both the writ petitions have been dismissed, on the grounds inter alia that methodology adopted in awarding the marks in the interview and that the petitioners therein having participated in the selection cannot later on challenge the same.

14. Being aggrieved W.A.Nos.126 and 127 of 2015 have been filed. After hearing the learned counsel for the appellants, by a common order made in W.A.Nos.126 and 127 of 2015, dated 6/2/2015, a Hon'ble Division Bench dismissed the writ appeals as hereunder:-

"3. It is not in dispute that the norms were fixed in the notification as well as in the Government Order, which prescribed marks for the interview. The writ petitioners did not question the validity of the notification and the relevant orders before participating in the selection process. After having failed in the selection process, the writ petitioners have come up with the writ petitions.

4. The learned Single Judge have rejected the writ petition on two grounds, firstly, the petitioners cannot be permitted to question the methodology adopted in awarding marks in the interview after participation in the selection process. On the question of merit also, it was examined and found that there was no arbitrariness in the selection process.

5. We have examined both cases carefully. Indisputably, the notification was issued on the basis of the Government Order, which clearly provides selection process and also the methodology to the adopted in awarding marks for the interview. The writ petitioners, having participated in the process, are rightly not permitted to raise the issue, at this stage. On merit also, it is not found that there was any unreasonable arbitrariness in the process. We do not find any reason to take contrary view to that of the learned Writ Court."

15. In the case on hand, earlier the respondent has filed W.P.No.33964 of 2013, for a mandamus directing the appellants to award appropriate marks to the petitioner for M.Phil degree in Computer Science, awarded by Alagappa University, for selecting her to the post of Assistant Professor. Counter affidavit has been filed on 26/3/2014, setting out marks to be awarded to the candidates. At para No.8 of the counter affidavit, Teachers Recruitment Board, Chennai has stated that taking note of the fact that the respondent has acquired SLET qualifications in 2012, the respondent has been awarded 2 marks for her teaching experience. Contending inter alia marks have not been awarded for her M.Phil degree, respondent has chosen to seek for an amendment in M.P.No.1 of 2015 in W.P.No.33964 of 2013, with the following prayer:

"Issue a writ of certiorarified mandamus calling for the records of the second respondent in G.O.Ms.412, Higher Education Department, dated 07.12.2009 and G.O.Ms.No.32 dated 08.03.2013, issued by the second respondent and quash the same grants 9 marks to the holders of Ph.D. and consequently direct the respondents 1 and 2 to either reduce the marks for awarded to Ph.D. Holders from 9 to 5 marks or in the alternative grant 9 marks to the M.Phil holders with SLET / NET qualifications for appointment as Assistant Professors in Tamil Nadu Collegiate service for Government Arts and Science Colleges, and grant the marks for the Teaching experience as Assistant Professor in the Rajah Serfoji Govt. College (Autonomous), Thanjavur from 01.07.2005 in respect of the selection to the post of Assistant Professor and consequently appoint the petitioner in the said post"

16. In reply, to M.P.1 of 2015 in W.P.No.33964 of 2013, Teachers Recruitment Board, Chennai has stated pursuant to the orders issued in W.P.No.5049 of 2014, Government have orders in Lr.No.8609A/F2/2014-1 Higher Education (F2) Department, dated 13/6/2014, and marks were awarded for M.Phil degree course with teaching experience. For brevity, para 8 of the counter affidavit in M.P.No.1 of 2015 in W.P.No.33964 of 2013 is reproduced:

8. It is submitted that subsequently that based on the judgment delivered in WP.No.5049 of 2014 and W.P.No.8075 of 2014, Government examined the matter and vide Lr.No.8609A/F2/2014-1 Higher Education (F2) Department dated 13.06.2014, informed that any Government Order generally takes effect only

from the date of issue of the orders and clarified that the orders issued in G.O.Ms.No.91, Higher Education Department, dated 03.04.2009 takes prospective effect only (i.e) from the date of issue of the order dated 03.04.2009.

In view of the clarification orders issued by Government, the case of the petitioner has been considered and her M.Phil degree obtained in the year - 3/2005 through Alagappa University has since been taken into account for awarding weightage marks. She was awarded 14 marks towards her teaching experience for which she is entitled. Thus the prayer of the petitioner has been complied with. She also attended interview. The total scored by her is 28 marks (14 marks for teaching experience + 6 marks for qualification + 8 marks for interview)."

17. Opposing the amendment sought for, Teachers Recruitment Board, Chennai, at paras 9 to 11, has stated as hereunder:-

9. It is submitted that in the amended prayer the petitioner avers to quash the G.O.Ms.412, Higher Education Department, dated 07.12.2009 and G.O.Ms.No.32 dated 08.03.2013, in so far as the same granting 9 marks to the holders of Ph.D. The petitioner further claims to reduce the marks awarded to Ph.D., holders from 9 to 5 marks or in the alternative grant 9 marks to the M.Phil holders with SLET / MET qualifications for appointment as Assistant Professor. The averment of the petitioner is denied due to the following reasons.

As per the G.O.Ms.No.412, Higher Education Department dated 07.12.2009 Government have issued orders as per the norms of University Grants Commission to award marks for qualification as detailed below:

Qualification:

(a) for Ph.D in concerned subject

9

(b) for M.Phil with SLET / NET

6

(c) for PG & SLET / NET

5

As such, the awarding of marks for Educational Qualification is the policy decision of Government. Hence the averment of the petitioner to quash the G.O.Ms.No.412, Higher Education Department dated 07.12.2009 is not feasible of compliance either on merits

or in accordance with law.

Government vide in G.O.Ms.No.32 Higher Education (F2) Department dated 8.3.2013 have issued orders prescribing the following criteria and awarding of marks during conduct of the interview for selection of Assistant Professors in Government Arts and Science Colleges and Colleges of Education through Teachers Recruitment Board apart from awarding marks for teaching experience [15 marks] and higher qualification [9 marks] as per G.O. (Ms.) No.412, Higher Education dated 07.12.2009.

1	Content	- Whether the candidate presents relevant and well organized subject material	3 Marks 30%
2	Delivery	- Whether the candidate is clear, understandable and audible while presenting.	3 Marks 30%
3	Language	- Whether the candidate is proficient in English / Tamil language and articulates concepts well	2 Marks 20%
4	Personal Characteristics	- Whether the candidate is confident and possesses a calm disposition	2 Marks 20%
Total			10 Marks 100%

Teachers Recruitment Board is directed to adhere to the above criteria and award of marks for the interview..."

10. It is further submitted that in a similar case filed in W.P.No.3474 of 2011 before the Hon'ble High Court, Madras by the NET / SLET Association represented by its Executive Member, Chennai, Challenging the G.O.Ms.No.412, Higher Education Department dated 07.12.2009, the Hon'ble High Court, Madras after observing the plea of the petitioner has dismissed the same on the ground that the petitioner is not entitled to the relief sought for in the writ petition.

11. It is also further submitted that in the W.A.Nos.126 and 127 of 2015 against the

orders of the Hon'ble High Court, Madras in W.P.Nos.25114 and 25621 of 2014 dated 18.11.2014 filed by V.Vidhya & 3 others for the similar prayers, the Hon'ble Division Bench of Madras High Court has dismissed the both writ appeals observing as follows:

"... We have examined both cases carefully. Indisputably, the notification was issued on the basis of the Government Order, which clearly provides selection process and also the methodology to be adopted in awarding marks for the interview. The writ petitions, having participated in the process, are rightly not permitted to raise the issue, at this stage. On merit also, it is not found that there was any unreasonable arbitrariness in the process. We do not find any reason to take contrary view to that of the learned Writ Court."

18. Teachers Recruitment Board, Chennai, has stated that awarding marks for educational qualifications is the policy decision of the Government. Teachers Recruitment Board has also clearly stated that W.P.No.3474 of 2011 filed by the NET/SLET Association by its Executive Member, Chennai, challenging G.O.Ms.No.412 Higher Education (F2) Department, dated 7/12/2009 has been dismissed. As observed in W.A.No.126 and 127 of 2015 dated 6/2/2015, respondent having found that she is unsuccessful in the selection, after getting only two marks for teaching experience, has sought for an amendment. Based on the orders of this Court, in W.P.Nos.5049 and 8075 of 2014 and the consequential orders issued in Government Letter No.8609/F2/2014-1, Higher Education Department, dated 13/06/2014, Teachers Recruitment Board, Chennai has also awarded marks for the educational qualification, M.Phil degree, teaching experience also, besides interview. Therefore, with reference to the prayer for mandamus, writ petition has been answered in the affirmative.

19. Going through the materials on record, we are of the view that Writ Court has failed to consider despite the plea of the appellants that challenge to G.O.Ms.No.412, Higher Education Department dated 07.12.2009 and W.P.No.3474 of 2011, filed by the NET/SLET association filed by its Executive Member, Chennai, has been dismissed, still the Writ Court has raised a doubt as to the methodology in awarding marks and the methodology in awarding more weightage marks for Ph.D degree holder without SLET/NET. Writ Court has failed to consider a Co-ordinate Hon'ble Bench in W.P.No.3474/2011 dated 22.02.2011 has already dismissed a writ petition.

20. Going through G.O.Ms.No.412, Higher Education Department dated 7/12/2009 and G.O.Ms.No.32 dated 8/3/2013, we see difference, in the methodology adopted in awarding marks based on educational qualifications, and teaching experience. We are of the view that decision rendered in W.P.No.3474 of 2011 squarely applies to the case on hand. Moreover, as rightly observed by the Hon'ble Division Bench in common order, made in W.A.Nos.126 and 127 of 2015 dated 06.02.2015, after participating in the selection process, the respondent has challenged the validity of G.O.Ms.No.412, Higher Education Department, dated 07.12.2009 and G.O.Ms.No.32, Higher Education Department, dated 08.03.2013 respectively. Whether a candidate who has participated in the selection process, having not successful, can challenge the same, is considered by the Hon'ble Supreme Court and other High Courts, in few decisions, which we deem it fit to consider,

(i) In Dr.G.Sarna v. University of Lucknow reported in 1976 (3) SCC 585, the Hon'ble Supreme Court held as follows:

"15.We do not, however, consider it necessary in the present case to get into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee....."

(ii) In Om Prakash Shukla v. Akhilesh Kumar Shukla reported in AIR 1986 SC 1043, the Hon'ble Supreme Court held that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

(iii) In Madanlal v. State of J & K reported in AIR 1995 SC 1088, unsuccessful candidates challenged the process of selection of the District Munsifs in the State of Jammu and Kashmir undertaken by the Jammu and Kashmir Public Service Commission on the ground, inter alia that they faired well in the written examination and they were not selected. Besides, they also alleged bias and mala fide in the process of assessment. The Hon'ble Supreme Court rejected the contention and while dealing the locus

of the unsuccessful candidates, who had acquiesced themselves to the selection process, at paragraph 8, the Hon'ble Apex Court held as follows:

"The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted."

(iv) In *Union of India v. N.Chandrasekharan* reported in 1998 (3) SCC 694, selection to the post of Assistant Purchase officer, was challenged. Unsuccessful candidates challenged the process of selection. The Tribunal quashed the promotions made on the basis of the panel of Assistant Purchase Officers. While allowing the appeals preferred by the Union of India, the Hon'ble Supreme Court, at Paragraph 13, held as follows:

"It is not in dispute that all the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn around and contend later when they found they were not selected, by challenging that procedure and contending that the marks prescribed for interview and confidential reports are disproportionately high and that the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential report."

(v) In *Chandra Prakash Tiwari v. Shakuntala Shukla* [Chandra Prakash Tiwari v. Shakuntala Shukla, reported in (2002) 6 SCC 127 : 2002 SCC (L&S) 830], the Hon'ble Supreme Court laid down the principle that when a

candidate who has appeared at an examination without objection and is subsequently found to be not successful, challenge to the process is precluded. Hon'ble Apex Court held that, the question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. The Apex Court held that he or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable.

(vi) In *Union of India v. S.Vinodh Kumar* reported in (2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792, the Hon'ble Court, at Paragraph 18, held as follows:

"18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See *Munindra Kumar v. Rajiv Govil*, (1991) 3 SCC 368 : 1991 SCC (L&S) 1052] and *Rashmi Mishra v. M.P. Public Service Commission*, (2006) 12 SCC 724 : (2007) 2 SCC (L&S) 345.)"

(vii) In *Dhananjay Malik v. State of Uttaranchal* reported in 2008 (4) SCC 171, the Hon'ble Supreme Court held as follows:

"7. It is not disputed that the writ petitioners- respondents herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as B.P.E. or graduate with diploma in physical education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules."

(viii) The Hon'ble Supreme Court in *Sadananda Halo v. Momtaz Ali Sheikh* reported in 2008 (4) SCC 618, at Paragraph 35, held that unsuccessful candidates cannot turn back and assail the selection process, except in certain cases where exceptions have been carved out by the Supreme Court.

(ix) In *Amlan Jyoti Borooah v. State of Assam*, reported in (2009) 3 SCC 227 : (2009) 1 SCC (L&S) 627, the Hon'ble Supreme Court held that it is well settled that the candidates who have taken part in a selection process knowing fully well the procedure laid down therein, are not entitled to question it upon being

declared to be unsuccessful.

(x) In *Manish Kumar Shahi v. State of Bihar* reported in 2010 (12) SCC 576, the Hon'ble Supreme Court held as follows:

"16. We also agree with the High Court [*Manish Kumar Shahi v. State of Bihar*, 2008 SCC OnLine Pat 321 : (2009) 4 SLR 272] that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the judgments in *Madan Lal v. State of J&K* [*Madan Lal v. State of J&K*, (1995) 3 SCC 486 : 1995 SCC (L&S) 712], *Marripati Nagaraja v. State of A.P.* [*Marripati Nagaraja v. State of A.P.*, (2007) 11 SCC 522 : (2008) 1 SCC (L&S) 68], *Dhananjay Malik v. State of Uttaranchal* [*Dhananjay Malik v. State of Uttaranchal*, (2008) 4 SCC 171 : (2008) 1 SCC (L&S) 1005 : (2008) 3 PLJR 271], *Amlan Jyoti Borooah v. State of Assam*, (2009) 3 SCC 227 : (2009) 1 SCC (L&S) 627] and *K.A. Nagamani v. Indian Airlines* [*K.A. Nagamani v. Indian Airlines*, (2009) 5 SCC 515 : (2009) 2 SCC (L&S) 57] ."

(xi) In *Amit Dagar v. Union of India* reported in ILR (2011) 3 Del. 165 : 2011 SCC Online Del 892, the Delhi High Court, at Paragraphs 3 and 6, held as follows:

"3. Having already taken a chance and failed, it is not open to the petitioners to now seek to impugn this aspect of the test and ask for a fresh test to be conducted on a computer. Having participated with their eyes open in the test, it is now not open to them to disavow the same merely because they have not been successful.

6 The proposition that no relief can be granted to a petitioner who has participated in the examination with open eyes and with complete knowledge of all the relevant

circumstances, and then chooses to file a petition once he realizes that he has not been selected in the examination, has been reiterated repeatedly by the Supreme Court, inter alia, in Om Prakash Shukla v. Akhilesh Kumar Shukla, 1986 Supp SCC 285; and again in Chandra Prakash Tiwari v. Shakuntala Shukla, (2002) 6 SCC 127 : AIR 2002 SC 2322, wherein it is stated as follows:

"The law seems to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not 'palatable' to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process."

This proposition has been further reiterated in Union of India v. S.Vinodh Kumar, (2007) 8 SCC 100, which states as follows: "It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same."

(xii) In Vijendra Kumar Verma v. Public Service Commission reported in (2011) 1 SCC 150 : (2011) 1 SCC (L&S) 21, the Hon'ble Apex Court held that candidates who had participated in the selection process were aware that they were required to possess certain specific qualifications in computer operations. Appellants therein had appeared in the selection process and after participating in the interview sought to challenge the selection process as being without jurisdiction. The Hon'ble Supreme Court held that this was held to be impermissible.

(xiii) In Ramesh Chandra Shah v. Anil Joshi reported in 2013 (11) SCC 309, the Hon'ble Supreme Court held as follows :-

"24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."

in (2014) 10 SCC 521, the Hon'ble Supreme Court held that a candidate who had taken a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non-selection.

(xv) In Pradeep Kumar Rai v. Dinesh Kumar Pandey reported in (2015) 11 SCC 493 : (2015) 3 SCC (L&S) 274, the Hon'ble Supreme Court considered, as to whether, a unsuccessful candidate, who had participated in the selection process, not challenged the process of selection, as notified, can file a writ petition and whether a writ petition is maintainable. Answering the same, at Paragraph 17, the Hon'ble Supreme Court held thus:

"17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. This, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted."

(xvi) Same view has been taken in Madras Institute of Development Studies v. Dr.K.Sivasubramaniyan reported in (2016) 1 SCC 454. सत्यमेव जयते

(xvii) In Ashok Kumar v. State of Bihar reported in 2017 (4) SCC 357, the Hon'ble Supreme Court, at Paragraph 12, held as follows:

"12. The appellants participated in the fresh process of selection. If the appellants were aggrieved by the decision to hold a fresh process, they did not espouse their remedy. Instead, they participated in the fresh process of selection and it was only upon being unsuccessful that they challenged the result in the writ petition. This was clearly not open to the appellants. The principle of estoppel would operate."

Court, in exercise of the powers conferred under Article 141 of the Constitution of India, directed the appellant therein, who was still in service, was allowed to continue in the current work. But on the principle of law, the Hon'ble Supreme Court held that an unsuccessful candidate has no indefeasible right to challenge the selection process, having participated and been unsuccessful.

21. On the facts and circumstances of the case, we are of the view that the Writ Court has failed to appreciate the policy decision of the Government, in awarding weightage marks based on educational qualifications and experience in teaching, with higher educational qualifications. Prescription of qualifications, marks to be awarded based on comparative higher educational qualifications are purely the executive domain of the employer/Government. Writ petitioner, who seeks appointment does not have a right to demand that irrespective of higher educational qualification possessed by a candidate, with teaching experience, he should be treated equally. It is the contention of the writ petitioner, that a candidate with a qualification of post graduation, SLET/NET, should be treated on par with a candidate, who possess Ph.d qualification, but does not possess SLET/NET certificate. In nutshell, thus the writ petitioner has alleged violation of Article 14 of the Constitution of India.

22. Government of Tamil Nadu, have exempted those who have Ph.D degree, in a particular subject from appearing in SLET/NET, and taken a policy decision to consider them, in the matter of awarding marks, for selection to the post of Assistant Professors, in Government/Self financing Colleges.

23. Petitioner has contended that there is violation of Article 14 of the Constitution of India that a Ph.d degree holder is placed above a M.Phil degree holder in the method of awarding more weightage marks. Let us consider few decisions of the Hon'ble Supreme Court, dealing with the contention of violation of Article 14 of the Constitution of India,

(i) In State of West Bengal v. Anwar Ali Sarkar, reported in AIR 1952 SC 75, the Hon'ble Supreme Court, has observed as follows:

"17. Even from the point of view of reasonable classification, I can see no reason why the validity of the Act should not be sustained. As already pointed out, wide latitude must be allowed to a legislature in classifying persons and things to be brought under the operation of a special law, and such classification need not be based on an exact or

scientific exclusion or inclusion. I cannot share the view of Das Gupta, J. that the expediency of speedier trial is "too vague and indefinite" to be the basis of a "well defined" classification. Legislative judgment in such matters should not be canvassed by courts applying doctrinaire "definite objective tests". The court should not insist in such cases on what Holmes, J. called "delusive exactness" (*Truax v. Corrigan*, 1921-257 U.S. 312 supra). All that the court is expected to see, in dealing with equal protection claims, is whether the law impugned is 'palpably discriminatory', and, in considering such a question great weight ought to be attached to the fact that a majority of the elected representatives of the people who made the law did not think so, though that is not, of course, conclusive. They alone know the local conditions and circumstances which demanded the enactment of such a law, and it must be remembered that "legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the Courts" (per Holmes, J. in *Missouri K. & T. R. Co. v. May*, [1880] 101 U.S. 22).

The Supreme Court, in the said judgment, has made the following observation:

The difference brought about by a statute may be of such a trivial, unsubstantial and illusory nature that that circumstance alone may be regarded as cogent ground for holding that the statute has not discriminated at all and that no inequality has in fact been created. This aspect of the matter apart, if a statute brings about inequality in fact and in substance, it will be illogical and highly undesirable to make the constitutionality of such a statute depend on the degree of the inequality so brought about. The adoption of such a principle will run counter to the plain language of Article 14."

51. While deciding about the constitutionality of a statute in the light of Article 14 of the Constitution of India, a Constitutional Bench of the Supreme Court, after referring the earlier judgments regarding the intelligible differentia, in its landmark judgment in *Ram Krishna Dalmia v. Justice S.R. Tendolkar*, AIR 1958 SC 538 has narrated the established principles as follows:

<https://hcservices.ecourts.gov.in/hcservices/> 14. The principle enunciated above has

been consistently adopted and applied in subsequent cases. The decisions of this Court further establish-

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and un-known reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

15. In Ram Krishna Dalmia and Ors. vs. Shri Justice S.R. Tendolkar and Ors., [AIR 1958 SC 538], the Hon'ble Apex Court considered the inter-play of the doctrines of equality and classification and held:-

"It is now well established that while Article 14 forbids class legislation, it does

not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely (i) that the classification must be found on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of Supreme Court that article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

Speaking for the Court, Chief Justice S.R. Das enunciated some principles, which have been referred to and relied in all subsequent judgments. These are:

"(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of times and may assume every state of

facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be resumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

(ii) In *Probhudas Morarjee Rajkotia v. Union of India*, reported in AIR 1966 SC 1044, a Constitutional Bench of the Supreme Court, while interpreting Article 14 of the Constitution of India, held as follows:

"8. It cannot be too strongly emphasized that to make out a case of denial of the equal protection of the laws under Art.14 of the Constitution, a plea of differential treatment is by itself not sufficient. An applicant pleading that Article 14 has been violated must make out that not only he had been treated differently from other but he has been so treated from persons similarly circumstanced without any reasonable basis, and such differential treatment is unjustifiably made."

(iii) In *Western M.P. Electric Power & Supply Co. Ltd. v. State of U.P.*, reported in AIR 1970 SC 21, the Hon'ble Supreme Court held that Article 14 of the Constitution of India does not operate against rational classification. The relevant portion is as under:

"7. Article 14 of the Constitution ensures equality among equals; its aim is to protect persons similarly placed against discriminatory treatment. It does not, however, operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relation to the object sought to be achieved by the law."

16. In *Mohd. Shujat Ali vs. Union of India* [1975 (3) SCC 76], the Hon'ble Supreme Court observed that Article 14 ensures to every

person equality before law and equal protection of the laws. However, the constitutional code of equality and equal opportunity does not mean that the same laws must be applicable to all persons. It does not compel the State to run "all its laws in the channels of general legislation". It recognises that having regard to differences and disparities which exist among men and things, they cannot all be treated alike by the application of the same laws. "To recognise marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic." The Legislature must necessarily, if it is to be effective at all in solving the manifold problems which continually come before it, enact special legislation directed towards specific ends limited in its application to special classes of persons or things. "Indeed, the greater part of all legislation is special, either in the extent to which it operates, or the objects sought to be attained by it." At the same time, the Court cautioned against the readymade invoking of the doctrine of classification to ward off every challenge to the legislative instruments on the ground of violation of equality clause and observed:

"The equal protection of the laws is a "pledge of the protection of equal laws". But laws may classify. And, as pointed out by Justice Brawer, "the very idea of classification is that of inequality". The Court has tackled this paradox over the years and in doing so, it has neither abandoned the demand for equality nor denied the legislative right to classify. It has adopted a middle course of realistic reconciliation. It has resolved the contradictory demands of legislative specialization and constitutional generality by a doctrine of reasonable classification. This doctrine recognises that the legislature may classify for the purpose of legislation but requires that the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in treating similarly those similarly situated."

"A reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of the

law. There should be no discrimination between one person or thing and another, if as regards the subject-matter of the legislation their position is substantially the same. This is sometimes epigrammatically described by saying that what the constitutional code of equality and equal opportunity requires is that among equals, the law should be equal and that like should be treated alike. But the basic principle underlying the doctrine is that the Legislature should have the right to classify and impose special burdens upon or grant special benefits to persons or things grouped together under the classification, so long as the classification is of persons or things similarly situated with respect to the purpose of the legislation, so that all persons or things similarly situated are treated alike by law. The test which has been evolved for this purpose is - and this test has been consistently applied by this Court in all decided cases since the commencement of the Constitution - that the classification must be founded on an intelligible differentia which distinguishes certain persons or things that are grouped together from others and that differentia must have a rational relation to the object sought to be achieved by the legislation."

"We have to be constantly on our guard to see that this test which has been evolved as a matter of practical necessity with a view to reconciling the demand for equality with the need for special legislation directed towards specific ends necessitated by the complex and varied problems which require solution at the hands of the Legislature, does not degenerate into rigid formula to be blindly and mechanically applied whenever the validity of any legislation is called in question. The fundamental guarantee is of equal protection of the laws and the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to that guarantee by accommodating it with the practical needs of the society and it should not be allowed to submerge and drown the precious guarantee of equality. The doctrine of classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master, for otherwise, as pointed out by Chandrachud, J., in *State of Jammu & Kashmir v. Triloki Nath Khosa* the guarantee of equality

will be submerged in class legislation masquerading as laws meant to govern well-marked classes characterised by different and distinct attainments". Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the guarantee of equality of its spacious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the law and equal protection of the laws may be replaced by the overworked methodology of classification. Our approach to the equal protection clause must, therefore, be guided by the words of caution uttered by Krishna Iyer, J. in *State of Jammu & Kashmir v. Triloki Nath Khosa*: (at SCC p.42)

"Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality." [Emphasis added]

(iv) In *Mohd. Shujat Ali vs. Union of India*, reported in 1975 (3) SCC 76, the Hon'ble Supreme Court observed that,

Article 14 ensures to every person equality before law and equal protection of the laws. However, the constitutional code of equality and equal opportunity does not mean that the same laws must be applicable to all persons. It does not compel the State to run "all its laws in the channels of general legislation". It recognises that having regard to differences and disparities which exist among men and things, they cannot all be treated alike by the application of the same laws. "To recognise marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic." The Legislature must necessarily, if it is to be effective at all in solving the manifold problems which continually come before it, enact special legislation directed towards specific ends limited in its application to special classes of persons or things. "Indeed, the greater part of all legislation is special, either in the extent to which it operates, or

the objects sought to be attained by it." At the same time, the Court cautioned against the readymade invoking of the doctrine of classification to ward off every challenge to the legislative instruments on the ground of violation of equality clause and observed:

"The equal protection of the laws is a "pledge of the protection of equal laws". But laws may classify. And, as pointed out by Justice Brawer, "the very idea of classification is that of inequality". The Court has tackled this paradox over the years and in doing so, it has neither abandoned the demand for equality nor denied the legislative right to classify. It has adopted a middle course of realistic reconciliation. It has resolved the contradictory demands of legislative specialization and constitutional generality by a doctrine of reasonable classification. This doctrine recognises that the legislature may classify for the purpose of legislation but requires that the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in treating similarly those similarly situated."

"A reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of the law. There should be no discrimination between one person or thing and another, if as regards the subject-matter of the legislation their position is substantially the same. This is sometimes epigrammatically described by saying that what the constitutional code of equality and equal opportunity requires is that among equals, the law should be equal and that like should be treated alike. But the basic principle underlying the doctrine is that the Legislature should have the right to classify and impose special burdens upon or grant special benefits to persons or things grouped together under the classification, so long as the classification is of persons or things similarly situated with respect to the purpose of the legislation, so that all persons or things similarly situated are treated alike by law. The test which has been evolved for this purpose is - and this test has been consistently applied by this Court in all decided cases since the commencement of the

Constitution - that the classification must be founded on an intelligible differentia which distinguishes certain persons or things that are grouped together from others and that differentia must have a rational relation to the object sought to be achieved by the legislation."

"We have to be constantly on our guard to see that this test which has been evolved as a matter of practical necessity with a view to reconciling the demand for equality with the need for special legislation directed towards specific ends necessitated by the complex and varied problems which require solution at the hands of the Legislature, does not degenerate into rigid formula to be blindly and mechanically applied whenever the validity of any legislation is called in question. The fundamental guarantee is of equal protection of the laws and the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to that guarantee by accommodating it with the practical needs of the society and it should not be allowed to submerge and drown the precious guarantee of equality. The doctrine of classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master, for otherwise, as pointed out by Chandrachud, J., in *State of Jammu & Kashmir v. Triloki Nath Khosa* the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well-marked classes characterised by different and distinct attainments". Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the guarantee of equality of its spacious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the law and equal protection of the laws may be replaced by the overworked methodology of classification. Our approach to the equal protection clause must, therefore, be guided by the words of caution uttered by Krishna Iyer, J. in *State of Jammu & Kashmir v. Triloki Nath Khosa*: (at SCC p.42)

"Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward

classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality."

(v) A Constitutional Bench of the Hon'ble Supreme Court in *D.S. Nakara v. Union of India*, (1983) 1 SCC 305, explained the said concept of Article 14 of the Constitution of India, as follows:

"11. The decisions clearly lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled viz. (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that that differentia must have a rational relation to the objects sought to be achieved by the statute in question (see *Ram Krishna Dalmia v. Justice S.R. Tendolkar*, AIR 1958 SC 538). The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus i.e. causal connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

12. After an exhaustive review of almost all decisions bearing on the question of Article 14, this Court speaking through Chandrachud, C.J. in *In re Special Courts Bill*, 1978, AIR 1979 SC 478, restated the settled propositions which emerged from the judgments of this Court undoubtedly insofar as they were relevant to the decision on the points arising for consideration in that matter. Four of them are apt and relevant for the present purpose and may be extracted. They are:

"***

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist

on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. "

(vi) In Prem Chand Somchand Shah and another vs. Union of India reported in 1991 (2) SCC 48, the Hon'ble Supreme Court at paragraph Nos.9, 12 and 16, held thus:-

9. The petitioners, in order to successfully invoke the right guaranteed under Article 14 of the Constitution, will have to establish that they and the Export Houses which were issued Additional Licences under the

Import Policy 1988-91 are similarly situate. A close examination of the Import and Export Policy 1978-79 under which the petitioners have been granted the Additional Licences and the Import and Export Policy 1988-91 shows that there is material difference between the conditions for grant of Additional Licences under Import Policy 1978-79 and the conditions for grant of such licences under the Import Policy 1988-91 and it cannot be said that the petitioners who have been granted Additional Licences under the Import and Export Policy 1978-79 and the Export Houses who are granted Additional Licences under the Import and Export Policy 1988-91 are persons similarly circumstanced.

12. The aforesaid examination of the provisions contained in the Import and Export Policy 1978-79 and the Import and Export Policy 1988-91 shows that while in the Import and Export Policy 1978-79 the emphasis was only on the f.o.b. value of exports without taking into account the outgo of foreign exchange in importing the goods required for achieving the exports by an Export House and Additional Licences were granted for a much larger amount at a higher percentage on the basis of the f.o.b. value of the exports, in the Import and Export Policy 1988-91 there is a more realistic appraisal of actual benefit to the country's economy by the exports by taking into account the net foreign exchange earnings after deducting the value of the imports and Additional Licences are issued on the basis of the net foreign exchange earnings for a much lesser value on a smaller percentage. The petitioners who were granted Additional Licences to the extent of 33.33 per cent of the f.o.b. value of the exports made by them during the year 1977-78 cannot, therefore, be said to be persons similarly circumstanced as Export Houses who exported goods in the year 1987-88 and in subsequent years and obtain Additional Licences for a much lesser value under the Import Policy 1988-91 on the basis of the net foreign exchange earnings. The provisions conferring flexibility in the matter of imports contained in sub-para (4) of para 215 of the Import and Export Policy 1988-91 are intended to give an incentive to Export Houses to increase the exports in a way as to enhance the net foreign exchange earnings of the country. The petitioners were not granted Additional

Licences on the basis of net foreign exchange earnings and they have secured the Additional Licences on the basis of the f.o.b. value of the exports, without taking into account the value of the goods imported by them for achieving the exports. They cannot claim to be entitled to the same facilities that have been provided to Export Houses who are granted Additional Licences under the Import and Export Policy 1988-91.

16. Here we find that in the Import and Export Policy 1988-91 there has been relaxation to a limited extent in respect of imports by Export Houses who are granted Additional Licences under the said Policy on the basis of their exports during that period 1987-88 and subsequent periods. Since the basis for the grant of Additional Licences which are entitled to this relaxation is different from the basis on which Additional Licences were granted to the petitioners, the petitioners cannot claim the benefit of the same relaxation and assail the validity of sub-para (10) of para 218 of the Import and Export Policy 1988-91.

(vii) In *Sri Srinivasa Theatre and others vs. Government of Tamil Nadu and others*, reported in (1992) 2 SCC 643, while explaining the scope of Article 14, the Hon'ble Supreme Court at paragraph Nos.9 and 10, held thus:-

"9. Article 14 of the Constitution enjoin upon the State not to deny to any person 'Equality before law' or 'the equal protection of laws' within the territory of India. The two expressions do not mean the same thing even if there may be much in common. Section 1 of the XIV Amendment to U.S. Constitution uses only the latter expression whereas the Irish Constitution (1937) and the West German Constitution (1949) use the expression "equal before law" alone. Both these expressions are used together in the Universal Declaration of Human Rights, 1948, Article 7 whereof says "All are equal before the law and are entitled without any discrimination to equal protection of the law." While ascertaining the meaning and content of these expression, however, we need not be constrained by the interpretation placed upon them in those countries though their relevance is undoubtedly great. It has to be found and determined having regard to the context and scheme of our Constitution. It

appears to us that the word "law" in the former expression is used in a generic sense—a philosophical sense—whereas the word "law" in the latter expression denotes specific laws in force.

10. Equality before law is a dynamic concept having many facets. One facet—the most commonly acknowledged—is that there shall be no privileged person or class and that none shall be above law. A facet which is of immediate relevance herein is the obligation upon the State to bring about, through the machinery of law, a more equal society envisaged by the preamble and part IV of our Constitution."

(viii) In *Venkateshwara Theatre vs. State of Andhra Pradesh and Others*, reported in (1993) 3 SCC 677, at paragraph Nos. 20 and 23, the Hon'ble Supreme Court, held thus:-

"20. Article 14 enjoins the State not to deny to any person equality before the law or the equal protection of the laws. The phrase "equality before the law" contains the declaration of equality of the civil rights of all persons within the territories of India. It is a basic principle of republicanism. The phrase "equal protection of laws" is adopted from the Fourteenth Amendment to U.S. Constitution. The right conferred by Article 14 postulates that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Since the State, in exercise of its governmental power, has, of necessity, to make laws operating differently on different groups of persons within its territory to attain particular ends in giving effect to its policies, it is recognised that the State must possess the power of distinguishing and classifying persons or things to be subjected to such laws. It is, however, required that the classification must satisfy two conditions namely, (i) it is founded on an intelligible differentia which distinguishes those that are grouped together from others; and (ii) the differentia must have a rational relation to the object sought to be achieved by the Act. It is not the requirement that the classification should be scientifically perfect or logically complete. Classification would be justified if it is not palpably arbitrary. [See: *Re Special Courts Bill*, [1979] 2 SCR 476 at pp. 534-5361.

It there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstance arising out of a peculiar situation some included in a class get and advantage over others, so long as they are not singled out for special treatment. [See: Khandige Sham Bhat v. Agricultural Income-Tax Officer, [1963] 3 SCR 809 at p. 8 171.

23. Just a difference in treatment of persons similarly situate leads of discrimination, so also discrimination can arise if persons who are unequals, i.e. differently placed, are treated similarly. In such a case failure on the part of the legislature to classify the persons who are dissimilar in separate categories and applying the same law, irrespective of the differences, brings about the same consequence as in a case where the law makes a distinction between persons who are similarly placed. A law providing for equal treatment of unequal objects, transactions or persons would be condemned as discriminatory if there is absence of rational relation to the object intended to be achieved by the law."

In K. Thimmappa v. Chairman, Central Board of Directors, SBI, (2001) 2 SCC 259 that the classification under Article 14 of the Constitution of India need not be a scientifically perfect one and it is sufficient if the distinction is on just and reasonable relation to the object of the legislation. The relevant portion is as under:

"3. Before we deal with the respective contentions of the parties it would be appropriate for us to notice that what Article 14 prohibits is class legislation and not reasonable classification for the purpose of legislation. If the rule-making authority takes care to reasonably classify persons for a particular purpose and if it deals equally with all persons belonging to a well-defined class then it would not be open to the charge of discrimination. But to pass the test of permissible classification two conditions must be fulfilled:

(a) that the classification must be founded on an intelligible differentia which distinguishes persons or things which are grouped together from others left out of the group; and

(b) that the differentia must have a rational relation to the object sought to be achieved by the statute in question.

The classification may be founded on different basis and what is necessary is that there must be a nexus between the basis of classification and the object under consideration. Article 14 of the Constitution does not insist that the classification should be scientifically perfect and a court would not interfere unless the alleged classification results in apparent inequality. When a law is challenged to be discriminatory essentially on the ground that it denies equal treatment or protection, the question for determination by court is not whether it has resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of legislation. Mere differentiation does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object which the legislature has in view. If a law deals with members of a well-defined class then it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. It is for the rule-making authority to determine what categories of persons would embrace within the scope of the rule and merely because some categories which would stand on the same footing as those which are covered by the rule are left out would not render the rule or the law enacted in any manner discriminatory and violative of Article 14. It is not possible to exhaust the circumstances or criteria which may afford a reasonable basis for classification in all cases. It depends on the object of the legislation, and what it really seeks to achieve."

(ix) In *L.I.C. of India and Another vs. Consumer Education & Research Centre and Others*, reported in (1995) 5 SCC 482, the Hon'ble Apex Court reiterated the above noted principal in the following words:-

"The doctrine of classification is only a subsidiary rule evolved by the courts to give practical content to the doctrine of equality, Overemphasis on the doctrine of classification

or anxious or sustained attempt to discover some basis for classification may gradually and imperceptibly erode the profound potency of the glorious content of equality enshrined in Article 14 of the Constitution. The overemphasis on classification would inevitably result in substitution of the doctrine of classification to the doctrine of equality and the Preamble of the Constitution which is an integral part and scheme of the Constitution. Maneka Gandhi v. Union of India [1978 (1) SCC 248] ratio extricated it from this moribund and put its elasticity for egalitarian path finder lest the classification would deny equality to the larger segments of the society. The classification based on employment in Government, semi-Government and reputed commercial firms has the insidious and inevitable effect of excluding lives in vast rural and urban areas engaged in unorganized or self-employed sectors to have life insurance offending Article 14 of the Constitution and socio-economic justice."

(x) In Prafulla Kumar Das v. State of Orissa, reported in (2003) 11 SCC 614, a Constitutional Bench of the Supreme Court, deciding about the validity of a legislation, held thus it would be impossible to declare a law ultra vires merely because it would cause hardship, unless a case for discrimination or unreasonableness has been made out.

"45. In this case, the petitioners seek benefit to which they are not otherwise entitled. The legislature, in our opinion, has the requisite jurisdiction to pass an appropriate legislation which would do justice to its employees. Even otherwise a presumption to that effect has to be drawn. If a balance is sought to be struck by reason of the impugned legislation, it would not be permissible for this Court to declare it ultra vires only because it may cause some hardship to the petitioners. A mere hardship cannot be a ground for striking down a valid legislation unless it is held to be suffering from the vice of discrimination or unreasonableness. A valid piece of legislation, thus, can be struck down only if it is found to be ultra vires Article 14 of the Constitution of India and not otherwise. We do not think that in this case, Article 14 of the Constitution is attracted."

(xi) In *Amita vs. Union of India*, reported in (2005) 13 SCC 721, at paragraph No.11, the Hon'ble Supreme Court, held thus:-

"11.Article 14 of the Constitution of India guarantees to every citizen of India the right to equality before the law or the equal protection of law. The first expression "equality before the law" which is taken from the English common law, is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. It also means that amongst the equals the law should be equal and should be equally administered and that likes should be treated alike. Thus, what forbids is discrimination between persons who are substantially in similar circumstances or conditions. It does not forbid different treatment of unequal. Article 14 of the Constitution of India is both negative and positive right. Negative in the sense that no one can be discriminated against anybody and everyone should be treated as equals. The latter is the core and essence of right to equality and state has obligation to take necessary steps so that every individual is given equal respect and concern which he is entitled as a human being. Therefore, Art.14 contemplates reasonableness in the state action, the absence of which would entail the violation of Art.14 of the Constitution."

(xii) In *Confederation of Ex-Servicemen Association vs. Union of India*, reported in AIR 2006 SC 2945, at paragraph No.27, the Hon'ble Supreme Court, held thus:-

"27. Before more than five decades, a Constitution Bench of this Court was called upon to consider a similar contention in the well known decision in *State of West Bengal v. Anwar Ali Sarkar & Another*, (1952 SCR 284 : AIR 1952 SC 75). In that case, validity of certain provisions of the West Bengal Special Courts Act, 1950 was challenged on the ground that they were discriminatory and violative of Article 14 of the Constitution. Dealing with the contention, S.R. Das, J. (as His Lordship then was), made the following pertinent observations which were cited with approval in several cases;

"It is now well established that while article 14 is designed to prevent a person or class of persons from being singled out from others similarly situated for the purpose of

being specially subjected to discriminating and hostile legislation, it does not insist on an "abstract symmetry" in the sense that every piece of legislation must have universal application. All persons are not, by nature, attainment or circumstances, equal and the varying needs of different classes of persons often require separate treatment and, therefore, the protecting clause has been construed as a guarantee against discrimination amongst equals only and not as taking away from the State the power to classify persons for the purpose of legislation. This classification may be on different bases. It may be geographical or according to objects or occupations or the like. Mere classification, however, is not enough to get over the inhibition of the Article. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while the Article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense I have just explained." (emphasis supplied)"

(xiii) In *Satyawati Sharma vs. Union of India* and another, reported in AIR 2008 SC 3148, at paragraph Nos.14 to 17, the Hon'ble Supreme Court, observed thus:-

"14. Article 14 declares that the state

shall not deny to any person equality before

the law or the equal protection of the laws. The concept of equality embodied in Article 14 is also described as doctrine of equality. Broadly speaking, the doctrine of equality means that there should be no discrimination between one person and another, if having regard to the subject matter of legislation, their position is the same. The plain language of Article 14 may suggest that all are equal before the law and the State cannot discriminate between similarly situated persons. However, application of the doctrine of equality embodied in that Article has not been that simple. The debate which started in 1950s on the true scope of equality clause is still continuing. In last 58 years, the courts have been repeatedly called upon to adjudicate on the constitutionality of various legislative instruments including those meant for giving effect to the Directive Principles of State Policy on the ground that same violate the equality clause. It has been the constant refrain of the courts that Article 14 does not prohibit the legislature from classifying apparently similarly situated persons, things or goods into different groups provided that there is rational basis for doing so. The theory of reasonable classification has been invoked in large number of cases for repelling challenge to the constitutionality of different legislations.

(xiv) In *Transport and Dock Workers Union v. Mumbai Post Trust* reported in 2011 (2) SCC 575, the Hon'ble Apex Court explained equality before law, Article 14 of the Constitution of India and also the role of Judges, in exercise of their powers of judicial review, as hereunder:

"20. In our opinion Article 14 of the Constitution does not take away from the State or its instrumentality the power of classification, which to some degree is bound to produce some inequality, vide *State of Bombay v. F.N. Balsara* [AIR 1951 SC 318 : (1951) 52 Cri LJ 1361]. However, in our opinion, mere inequality is not enough to violate Article 14. Differential treatment, per se, does not constitute violation of Article 14. It denies equal protection only when there is no reasonable basis for differentiation, vide *Ameerunnissa Begum v. Mahboob Begum* [AIR 1953 SC 91] AIR para 11, *Rabul Amthalal Mehta v. Collector of Customs*

[AIR 1957 SC 877] AIR para 16, etc. If the law or the practice deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

21. It has been repeatedly held by this Court that Article 14 does not prohibit reasonable classification for the purpose of legislation or for the purposes of adoption of a policy of the legislature or the executive, provided the policy takes care to reasonably classify persons for achieving the purpose of the policy and it deals equally with all persons belonging to a well-defined class. It is not open to the charge of denial of equal protection on the ground that the new policy does not apply to other persons. In order, however, to pass the test of permissible classification, as has been laid down by the Supreme Court in a catena of its decisions, two conditions must be fulfilled: (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (2) that the differentia must have a rational relation to the object sought to be achieved by the statute in question, vide *Gopi Chand v. Delhi Admn.* [AIR 1959 SC 609 : 1959 Cri LJ 782] (see also Basu's Shorter Constitution of India, 14th Edn., 2009, p. 81).

22. Thus the classification would not violate the equality provision contained in Article 14 of the Constitution if it has a rational or reasonable basis. However, the question remains: what is "rational" or "reasonable"? These are vague words. What may be regarded as rational or reasonable by one Judge may not be so regarded by another. This could lead to chaos in the law.

23. Should this vagueness or uncertainty be allowed to remain so that Judges may have total freedom or discretion? We think not. The law should be, as far as possible, clear and certain so that people know where they stand and conduct their affairs accordingly. Also, if total freedom is given to Judges to decide according to their own individual notions and fancies the law will run riot. Hence, in our opinion an attempt should be made to clarify the meaning of the words "reasonable" or "rational".

24. Numerous decisions of this Court on Articles 14 and 19 of the Constitution have no doubt held certain classifications to be reasonable while other classifications have been held to be unreasonable. But what is reasonable and what is unreasonable does not appear to have been discussed in depth by any decision of this Court, and no tests have been laid down in this connection. All that has been said is that it is not prudent or pragmatic to insist on a mathematically accurate classification covering diverse situations and all possible contingencies in view of the inherent complexities involved in society, vide *State of Karnataka v. Mangalore University Non-Teaching Employees' Assn.* [(2002) 3 SCC 302] SCC para 10, *Ombalika Das v. Hulisa Shaw* [(2002) 4 SCC 539] SCC para 11, etc.

25. In our opinion while it is true that a mathematically accurate classification cannot be done in this connection, there should be some broad guidelines. There may be several tests to decide whether a classification or differentiation is reasonable or not. One test which we are laying down and which will be useful in deciding this case, is: is it conducive to the functioning of modern society? If it is then it is certainly reasonable and rational.

.....

33. In our opinion, Article 14 cannot be interpreted in a doctrinaire or dogmatic manner. Absolute and inflexible concepts are an anathema to progress and change. As observed by the great Justice Holmes of the US Supreme Court, the machinery of the Government would not work if it were not allowed some free play in its joints, vide *Missouri, Kansas and Texas Railway Co. v. May* [48 L Ed 971 : 194 US 267 (1903)] .

34. Excessive interference by the judiciary in the functions of the executive is not proper. In several decisions, we have held that there must be judicial restraint in such matters, vide *Aravali Golf Club v. Chander Hass* [(2008) 1 SCC 683 : (2008) 1 SCC (L&S) 289] . In *Govt. of A.P. v. P. Laxmi Devi* [(2008) 4 SCC 720] the doctrine of judicial review of statutes has been discussed in great detail, and it has been observed that the judiciary must show great restraint in this connection.

35. Those who entered service after 1-11-1996 knew that they have to work for seven-and-half hours excluding lunch break and with open eyes they accepted the employment. Hence there is no question of violation of Article 14 of the Constitution. In our opinion, fixing of hours of work, provided they do not violate any statutory provision or statutory rule, are really management functions and this Court must exercise restraint and not ordinarily interfere with such management functions.

36. Differential treatment in our opinion does not per se amount to violation of Article 14 of the Constitution. It violates Article 14 only when there is no conceivable reasonable basis for the differentiation. In the present case, as pointed out above, there is a reasonable basis and hence in our opinion there is no violation of Article 14 of the Constitution.

37. In our opinion it is not prudent or pragmatic for the Court to insist on absolute equality when there are diverse situations and contingencies, as in the present case. In view of the inherent complexities involved in modern society, some free play must be given to the executive authorities in this connection.

.....

39. In our opinion, there is often a misunderstanding about Article 14 of the Constitution, and often lawyers and Judges tend to construe it in a doctrinaire and absolute sense, which may be totally impractical and make the working of the executive authorities extremely difficult if not impossible.

40. As Lord Denning observed:

"This power to overturn executive decision must be exercised very carefully, because you have got to remember that the executive and the local authorities have their very own responsibilities and they have the right to make decisions. The courts should be very wary about interfering and only interfere in extreme cases, that is, cases where the court is sure they have gone wrong in law or they have been utterly unreasonable. Otherwise you would get a conflict between the courts and the Government and the authorities, which would be most undesirable. The courts must act very warily in this matter." (See Judging the World by Garry

41. In our opinion Judges must maintain judicial self-restraint while exercising the powers of judicial review of administrative or legislative decisions. "In view of the complexities of modern society", wrote Justice Frankfurter, while Professor of Law at Harvard University, "and the restricted scope of any man's experience, tolerance and humility in passing judgment on the worth of the experience and beliefs of others become crucial faculties in the disposition of cases. The successful exercise of such judicial power calls for rare intellectual disinterestedness and penetration, lest limitation in personal experience and imagination operate as limitations of the Constitution. These insights Mr Justice Holmes applied in hundreds of cases and expressed in memorable language: It is misfortune if a Judge reads his conscious or unconscious sympathy with one side or the other prematurely into the law, and forgets that what seem to him to be first principles are believed by half his fellow men to be wrong."

.....

43. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimisation of the Judges' preferences. The Court must not embarrass the administrative authorities and must realise that administrative authorities have expertise in the field of administration while the Court does not. In the words of Chief Justice Neely, former Chief Justice of the West Virginia Supreme Court of Appeals:

"I have very few illusions about my own limitations as a Judge. I am not an accountant, electrical engineer, financier, banker, stockbroker or system management analyst. It is the height of folly to expect Judges intelligently to review a 5000 page record addressing the intricacies of a public utility operation. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school master substituting its judgment for that of the administrator."

44. In administrative matters the Court should, therefore, ordinarily defer to the judgment of the administrators unless the decision is clearly violative of some statute or is shockingly arbitrary. In this connection, Justice Frankfurter while Professor of Law at Harvard University wrote in The Public and its

Government:

"With the great men of the Supreme Court constitutional adjudication has always been statecraft. As a mere Judge, Marshall had his superiors among his colleagues. His supremacy lay in his recognition of the practical needs of the Government. The great Judges are those to whom the Constitution is not primarily a text for interpretation but the means of ordering the life of a progressive people."

.....

48. In *Kesavananda Bharati v. State of Kerala* [(1973) 4 SCC 225 : AIR 1973 SC 1461] (vide AIR para 1547) Khanna, J. observed: (SCC p. 821, para 1535)

"1535. In exercising the power of judicial review, the courts cannot be oblivious of the practical needs of the Government. The door has to be left open for trial and error."

(xv) In *Shayara Bano vs. Union of India*, reported in 2017 (9) SCC 1 the Hon'ble Supreme Court, held thus:-

63. In the pre-1974 era, the judgments of this Court did refer to the rule of law or positive aspect of Article 14, the concomitant of which is that if an action is found to be arbitrary and, therefore, unreasonable, it would negate the equal protection of the law contained in Article 14 and would be struck down on this ground. In *S.G. Jaisinghani v. Union of India*, (1967) 2 SCR 703, this Court held: In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey Law of the Constitution 10th Edn., Introduction cx). Law has reached its finest moments, stated Douglas, U. in *United States v. Wunderlick* [342 US 98],

when it has freed man from the unlimited discretion of some ruler. Where discretion, is absolute, man has always suffered. It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes [(1770) 4 Burr. 2528 at 2539], means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague, and fanciful. (pages 718 719) This was in the context of service rules being seniority rules, which applied to the Income Tax Department, being held to be violative of Article 14 of the Constitution of India."

24. Higher educational qualifications, is a relevant consideration in the matter of evaluation of inter se merit moreso, considering the nature of duties to be performed by an Assistant Professor in a college. Efficiency of an Assistant Professor in a college with a higher educational qualification like P.hd., in the subject, is likely to be better than a less qualified person. It cannot be contended that candidates with postgraduate qualification with SLET/NET or M.Phil with SLET/NET, are not being considered for the post of Assistant Professor in the college. But the gradation in the weightage marks is, on the basis of academic attainments, which according to us, a factor, absolutely required to be considered while assessing the inter se merit. Nexus being the efficiency in the performance of duties with higher educational qualifications, and also for the betterment of students. Standards of measuring academic attainment considered by the government in awarding more weightage marks to P.hd., degree holders, M.Phil degree holders, and postgraduates cannot be said to without any basis. Higher standards of education would enable a teacher to perform better than a mere post graduate. It cannot be disputed that a deep study in the subject, M.Phil or P.hd., qualifications as the case may be, is not equal to a mere post graduate, through all the three qualifications, may be suitable for the post of Assistant Professor in a college. Considering the nature of the job, there is nothing manifestly illegal in awarding more weightage marks on the basis of educational qualification. Government in its wisdom has taken a policy decision to award weightage marks on the basis of educational qualifications.

25. Awarding higher weightage marks on the basis of higher educational qualifications, in exercise of state's power and jurisdiction, a policy decision, cannot be said to be arbitrary and violative of Article 14 of the

Constitution of India. Policy decision of the government cannot be said to be unfair, contrary to any provision. Intelligible differentia and the object sought to be achieved, are manifest, in awarding weightage marks for the educational qualifications. Decision of the Government of Tamil Nadu to give weightage marks on the basis of higher educational qualifications, cannot at any stretch of imagination be held to be arbitrary, we are of the view that there is a clear nexus to the educational qualification in the matter of awarding marks. A candidate with a mere post graduation with SLET/NET, cannot be said to be equivalent to the one who possess M.Phil or Ph.d degree.

26. It is also worthwhile to consider few decisions of the Hon'ble Supreme Court, which held there can be variance in pay on the basis of the higher educational qualifications. At Paragraph 5 of the judgment reported in 1993 Supp. (1) SCC 522, the Hon'ble Supreme Court held thus,

"5. Learned counsel for the respondent, has, in reply, contended that both the trained and untrained teachers have been performing identical duties and there should, therefore, be parity in their salary in accordance with the well established doctrine of equal pay for equal work. We are not in a position to subscribe to this view. The question as to whether different pay scales can be legitimately prescribed for persons employed in the same service depending on their educational qualifications has been considered by this Court in several cases and answered in the affirmative. In the State of Mysore v. P. Narasing Rao [(1968) 1 SCR 407 : AIR 1968 SC 349] , the High Court, agreeing with the respondent Narasing Rao held that there was no valid reason for making a distinction in the pay of two groups of Tracers as both matriculate and non-matriculate Tracers were doing the same kind of work. On appeal, this Court reversed the judgment and held that higher educational qualifications are relevant considerations for fixing a higher pay scale and the classification of two grades of Tracers was not violative of the constitutional provisions. This view has been reiterated in V. Markendeya . State of A.P. [(1989) 3 SCC 191] and other cases. The efficiency of a person having a higher qualification is likely to be better than a less qualified person, provided, of course, the qualification is of a nature likely to

enable him to perform his duty better, and for this reason, there cannot be any legitimate objection to the grant of a better scale of pay. In the present case, the additional qualification of being trained is of such a nature as to enable the teacher to do his duty better and for that reason the distinction made in the Rules must be upheld as valid.

27. In *V. Markendeya v. State of Andhra Pradesh* reported in 1989 (3) SCC 191, the Hon'ble Apex Court considered a case, where there was a difference in the pay, based on the educational qualifications, in the same post of Supervisors, one with a degree and other without degree. At Paragraph 7, the Hon'ble Apex Court held thus,

".....Classification in service founded on the basis of educational and academic qualifications is now well recognised. It is open to the administration to give preference to a class of employees on the basis of educational qualifications having regard to the nature of duties attached to the post for the purposes of achieving efficiency in public services. It is permissible to give preference to degree-holders as was held by this Court in *Union of India v. Dr. S.B. Kohli* [(1973) 3 SCC 592 : 1973 SCC (L&S) 136] and *State of J&K v. Triloki Nath Khosa* [(1974) 1 SCC 19 : 1974 SCC (L&S) 49]. Since classification on the basis of educational qualification is a valid consideration for discriminating in matters pertaining to promotion to the higher post, there is no reason as to why the same principle is not applicable for prescribing scales of pay. Having regard to the findings recorded by the Constitution Bench in *Mohd. Shujat Ali* case [(1975) 3 SCC 76 : 1974 SCC (L&S) 454 : (1975) 1 SCR 449] that graduate supervisors and non-graduate supervisors constitute two distinct classes, the non-graduate supervisors cannot validly claim parity with the graduate supervisors regarding pay scales. The appellants' grievance that they have been denied equality in violation of Article 14 or 16 of the Constitution is not sustainable."

28. On the aspect of judicial review on policy matters, we deem it fit to consider few decisions of the Hon'ble Apex Court,

(i) In *Sher Singh v. Union of India* [(1995) 6 SCC 515.], the Court opined that there shall be no judicial review if the policy decision is neither unfair nor mala

(ii) In Assam Madhyamik Sikshak Aru Karmachari Santha, Nagaon v. State of Assam [AIR 1996 SC 2257 : (1996) 9 SCC 186.], the Court has opined that a policy decision shall not be normally questioned in a Court of law and the Court cannot find fault with discrimination based on policy.

(iii) In Narmada Bachao Andolan Vs. Union of India and Others reported in 2000 (10) SCC 664, the Hon'ble Supreme Court observed as follows:-

"232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the Court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The Court has come down heavily whenever the executive has sought to impinge upon the Court's jurisdiction.

233. At the same time, in exercise of its enormous power, the Court should not be called upon to or undertake governmental duties or functions. The Courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under values of the Constitution and the rights of Indians. The Courts must therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the Court will not interfere. When there is a valid law requiring the Government to act in a particular manner the Court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the Court itself is not above the law.

234. In respect of public projects and policies which are initiated by the Government the Courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide,

it will not be in public interest to require the Court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation, the Court should not refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the Court to go into the matter afresh and, in a way, sit in appeal over such a policy decision."

(iv) In *Balco Employees' Union v. Union of India* reported in (2002) 2 SCC 333, it has been held that a court cannot strike down a policy decision taken by the Government merely because it feels that another policy would have been fairer or wiser or more scientific or logical. It is not within the domain of the court to weigh the pros and cons of the policy or to test the degree of its beneficial or equitable disposition. At Paragraphs 88 and 89, the Hon'ble Supreme Court held as follows:

"88. It will be seen that whenever the Court has interfered and given directions while entertaining PIL it has mainly been where there has been an element of violation of Article 21 or of human rights or where the litigation has been initiated for the benefit of the poor and the underprivileged who are unable to come to court due to some disadvantage. In those cases also it is the legal rights which are secured by the courts. We may, however, add that public interest litigation was not meant to be a weapon to challenge the financial or economic decisions which are taken by the Government in exercise of their administrative power. No doubt a person personally aggrieved by any such decision, which he regards as illegal, can impugn the same in a court of law, but, a public interest litigation at the behest of a stranger ought not to be entertained. Such a litigation cannot per se be on behalf of the poor and the downtrodden, unless the court is satisfied that there has been violation of Article 21 and the persons adversely affected are unable to approach the court.

89. The decision to disinvest and the implementation thereof is purely an administrative decision relating to the economic policy of the State and challenge to the same at the instance of a busybody cannot fall within the parameters of public interest litigation."

(v) In Federation of Railway Officers Vs. Union of India, reported in 2003 (4) SCC 289, the Hon'ble Supreme Court observed as follows:-

"12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters."

(vi) In The Director, National Institute of Technology, Surathkal, Dakshina Kannada v. N.S.Harsha reported in 2003 SCC Online Kar 649 : 2003 (7) Kant LJ 533 (DB), a Hon'ble Division Bench of Karnataka High Court, at Paragraph 22, held as follows:

"22. In Tata Iron and Steel Company Limited v. Union of India [(1996) 9 SCC 709.], the Supreme Court has held that unless policy decision is inconsistent with Constitution or law, Court must exercise jurisdiction with circumspection, particularly when the issues are intertwined with policy decision and technical issues. In Shri Sitaram Sugar Company Limited v. Union of India [AIR 1990 SC 1277 : (1990) 3 SCC 223.], the Apex Court held that the Court does not possess the expertise required to determine the matter, and the determination has been made by experts appointed by the Government."

(vii) In State of Himachal Pradesh v. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh reported in 2011 (6) SCC 597, the Hon'ble Supreme Court, while dealing with the pervasive power and authority, vested in

the Government to frame a policy, at Paragraphs 21 and 22, held thus,

"21. The High Court has lost sight of the fact that education is a dynamic system and courses/subjects have to keep changing with regard to market demand, employability potential, availability of infrastructure, etc. No institute can have a legitimate right or expectation to run a particular course forever and it is the pervasive power and authority vested in the Government to frame policy and guidelines for progressive and legitimate growth of the society and create balances in the arena inclusive of imparting technical education from time to time. Inasmuch as the institutions found fit were allowed to run other courses except the three mentioned above, the doctrine of legitimate expectation was not disregarded by the State. Inasmuch as ultimately it is the responsibility of the State to provide good education, training and employment, it is best suited to frame a policy or either modify/alter a decision depending on the circumstance based on relevant and acceptable materials. The courts do not substitute their views in the decision of the State Government with regard to policy matters. In fact, the court must refuse to sit as appellate authority or super legislature to weigh the wisdom of legislation or policy decision of the Government unless it runs counter to the mandate of the Constitution.

22. With regard to the importance of human resources, especially manpower requirement in various professional and technical fields, the Government is free to frame its policy, alter or modify the same as to the needs of the society. In such matters, the courts cannot interfere lightly as if the Government is unaware of the situation."

(viii) In Hardev Singh v. Union of India reported in 2011 (10) SCC 121, the Hon'ble Supreme Court, at Paragraphs 25 and 26, held as follows:

"25. In our opinion, it is always open to an employer to change its policy in relation to giving promotion to the employees. This Court would normally not interfere in such policy decisions. We would like to quote the decision of this Court in Virender S. Hooda v. State of Haryana [(1999) 3 SCC 696 : 1999 SCC (L&S) 824] where this Court had held in para 4 of the judgment that: (SCC p. 699)

"4. ... When a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules and instructions issued to the Public Service Commission from time to time and so long as these instructions are not contrary to the rules, the respondents ought to follow the same."

In the present case, it is a Teacher Recruitment Board (TRB), exclusively for recruiting teachers, like Tamil Nadu Uniformed Service Recruitment Board (TNUSRB) for police service, Medical Recruitment Board for medical services, other than doctors and Tamil Nadu Public Service Commission (TNPSC) for posts in Government.

(ix) In *State of Jharkhand v. Ashok Kumar Dangi* reported in 2011 (13) SCC 383, the Hon'ble Supreme Court, at Paragraph 24, held as follows:

"24. It has further been submitted that since the process of the appointment commenced with the advertisement which being an integral part of appointment the same would come to an end on the declaration of result and the consequential appointment, hence the candidates are required to be considered on the basis of the eligibility criteria initially provided in the Rules and the advertisement."

(x) In *State of Gujarat v. Arvindkumar T. Tiwari* reported in 2012 (9) SCC 545, the Hon'ble Supreme Court, while dealing with the policy and scheme of compassionate appointment, on the aspect of fixing eligibility and additional norms, at Paragraph 9, observed thus,

"9. The eligibility for the post may at times be misunderstood to mean qualification. In fact, eligibility connotes the minimum criteria for selection, that may be laid down by the executive authority/legislature by way of any statute or rules, while the term "qualification", may connote any additional norms laid down by the authorities. However, before a candidate is considered for a post or even for admission to the institution, he must fulfil the eligibility criteria."

(xi) In *Balbir Singh Bedi v. State of Punjab* reported in 2013 (11) SCC 746, while dealing with the issue, as to how, seniority cum merit has to be adjudged on the Court's interpretation on policy matters, at Paragraph 20, observed thus,

"20. In view of the above, the law as

regards this point can be summarised to the effect that, where a promotion is to be given on the principle of "seniority-cum-merit", such promotion will not automatically be granted on the basis of seniority alone. Efficiency of administration cannot be compromised with at any cost. Thus, in order to meet said requirements, all eligible candidates in the feeder cadre must be subject to a process of assessment to determine whether or not an individual in fact possesses the specified minimum necessary merit, and in the event that he does possess the same, his case must be considered giving due weightage to his seniority. Furthermore, the statutory authority must adopt a bona fide and reasonable method to determine the minimum necessary merit, as is required to be possessed by the eligible candidate. It must also take into account his period of service, educational qualifications, his performance during his past service for a particular period, his written test, interview, etc. The authority must further be competent to allocate separate maximum marks on each of the aforesaid counts. Fixing such criteria, or providing for minimum necessary merit, falls within the exclusive domain of policy-making. Thus, it cannot be interfered with by courts in the exercise of their judicial powers, unless the same is found to be off the mark, unreasonable, or mala fide."

(xii) In *Census Commr. v. R. Krishnamurthy* [Census Commr. v. R. Krishnamurthy reported in (2015) 2 SCC 796 : (2015) 1 SCC (L&S) 589, at Paragraph 25, the Hon'ble Supreme Court held as follows:

"25. Interference with the policy decision and issue of a mandamus to frame a policy in a particular manner are absolutely different. The Act has conferred power on the Central Government to issue notification regarding the manner in which the census has to be carried out and the Central Government has issued notifications, and the competent authority has issued directions. It is not within the domain of the court to legislate. The courts do interpret the law and in such interpretation certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court may also fill up the gaps in certain spheres applying the doctrine

of constitutional silence or abeyance. But, the courts are not to plunge into policy-making by adding something to the policy by way of issuing a writ of mandamus. There the judicial restraint is called for remembering what we have stated in the beginning. The courts are required to understand the policy decisions framed by the executive. If a policy decision or a notification is arbitrary, it may invite the frown of Article 14 of the Constitution. But when the notification was not under assail and the same is in consonance with the Act, it is really unfathomable how the High Court could issue directions as to the manner in which a census would be carried out by adding certain aspects. It is, in fact, issuance of a direction for framing a policy in a specific manner."

29. It is not the case that those who possess M.Phil Degree with SLET/NET are not considered. Awarding weightage mark is, on the basis of academic attainments, which according to us, a factor, absolutely required to be considered, while assessing the inter-se merits and that the same would be useful to the students. Nexus being betterment for the students, in gaining knowledge from the better/higher qualified candidates, efficiency in performance, in our view, cannot be disputed by the respondent. Standard of measuring academic attainment, required to be considered by the Government, in the matter of awarding higher weightage marks, is purely a policy decision and the said decision cannot be said to be mala fide, arbitrary or contrary to any proviso.

30. We have given our due consideration to the decision relied on by the learned counsel for the respondent, and on the facts and circumstances of the case before us, we hold that it is in apposite. On merits, it is the contention of the appellants that there are more meritorious candidates with Ph.D degree qualifications, which the Teachers Recruitment Board, Chennai is bound to consider.

31. Giving due consideration to the policy decision of the Government, orders issued by the Government periodically, we hold that there is no arbitrariness or violation of Article 14 of the Constitution of India, in G.O.Ms.No.412, Higher Education Department, dated 07.12.2009 and G.O.Ms.No.32, Higher Education Department, dated 08.03.2013 respectively, to be declared as ultra vires of the Constitution of India.

of the Hon'ble Supreme Court, and when Teachers Recruitment Board, has already awarded marks for M.Phil qualification and teaching experience, directions issued, by the writ court to appoint the respondent to the post of Assistant Professor, in Government/Self Financing Colleges, is liable to be set aside. Accordingly, set aside. Writ appeal is allowed. No costs.

Sd/-

Assistant Registrar(imp cell)

//True Copy//

Sub Assistant Registrar

kpr

To,

1. The Director ,
Teachers Recruitment Board
4th floor, EVK Sampath building
College Road, Chennai-600006

2.The Principal Secretary to the
Government of Tamil Nadu
Higher Education Department
Fort St.George, Chennai-600009.

+1 cc to Government Pleader Sr.No. 3980

+1cc to Mr. P.Srinivas, Advocate SR.No. 3719

W.A.No.2698 of 2018

and

C.M.P.No.22043 of 2018

ss (CO)
A.SK(01/07/2019)

सत्यमेव जयते

WEB COPY