



W.P.Nos.17895 and 19587 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON

W.P.No.19587 of 2022 : 05.08.2022

W.P.No.17895 of 2022 : 29.08.2022

DELIVERED ON:20.10.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.Nos.17895 & 19587 of 2022
and WMP.Nos.17235 &18884 of 2022

W.P.No.17895 of 2022

R.Sakthivel

..

Petitioner

vs.

- 1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
School Education Department,
Fort St.George, Chennai-600 009.
- 2.The Commissioner of School Education,
DPI Campus, College Road,
Chennai-600 006.
- 3.The Joint Director of School Education,
DPI Campus, College Road,
Chennai-600 006.

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Respondents

W.P.No.19587 of 2022

- 1.V.Vanaja
- 2.K.Prabhu
- 3.P.Prabhakar
- 4.P.Subramanian



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- 5.V.Manonmani
- 6.B.Sridhaladevi
- 7.G.Arumugam
- 8.R.Vasanthi
- 9.R.Manimegalai
- 10.P.Vijayalakshmi
- 11.R.Lakshmi
- 12.J.Malathi
- 13.R.Chitra
- 14.D.Amudha
- 15.J.Geetha Sahayarani
- 16.S.Arokkiya Lurthuraj
- 17.R.Jayanthi
- 18.R.Kavitha
- 19.M.Prema
- 20.G.Kavivaradharajan
- 21.R.Dhavamani
- 22.P.Shenbagam
- 23.V.Kalaiselvi
- 24.S.Abraham
- 25.P.Selvambal
- 26.M.Emreen Haseen
- 27.V.Senthamarai
- 28.V.Prema
- 29.S.Santhi
- 30.S.Dhanasekaran
- 31.S.Selvarani
- 32.G.Annamailee
- 33.R.Jayaraman
- 34.K.Subramaniyan
- 35.V.Rajeshkannan
- 36.S.Manigandan
- 37.V.Vijayalakshmi
- 38.V.Selvarani
- 39.P.Dhanalakshmi
- 40.C.Thangarasu
- 41.R.Moorthi

.. Petitioners

vs.



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1. The State of Tamil Nadu,
Rep. By its Principal Secretary to Government,
School Education Department,
Fort St. George, Chennai-600 009.
2. The Commissioner of School Education,
Directorate of School Education,
DPI Campus, College Road, Chennai-600 006.
3. The Joint Director of School Education (Personnel),
DPI Campus, College Road,
Chennai-600 006.
4. The Director of Elementary Education,
Directorate of School Education (Personnel Department),
DPI Campus, College Road,
Chennai-600 006.

.. Respondents

Prayer in W.P.No.19587 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent in proceedings having Ref.No.Na.Ka.No.35593/C2/E2/2022 dated 11.07.2022 insofar as the said proceedings has postponed the promotion counselling scheduled to be held on 14.07.2022 and 15.07.2022 for the post of B.T. Assistant from the post of Secondary Grade Teachers pursuant to the proceedings of the 2nd respondent having Ref.No.Na.Ka.No.35593/C2/E2/2022 dated 30.06.2022 and quash the same and consequently issue a direction to the 2nd respondent to instruct all the respective Chief Educational Officers to conduct the promotion counselling for the petitioners for the post of BT Assistants in High Schools and Higher Secondary Schools from the post of Secondary Grade Teachers within a time frame.



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Prayer in W.P.No.17895 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent in proceedings having Ref.No.Na.Ka.No.35593/C2/E2/2022 dated 30.06.2022 and the subsequent order passed by the third respondent in Na.Ka.No.62448/C2/E1/2022 dated 30.06.2022 and quash the same as illegal to the extent of making promotion from unqualified persons and direct the respondents to give promotion or appointment from TET passed persons.

For Petitioners

W.P.No.17895 of 2022

: Mr.B.Balavijayan
Mr.V.Sivalingam

W.P.No.19587 of 2022

: Mrs.Nalini Chidambaram,
Senior Counsel for
Mrs.C.Uma

For Respondents:

: Mr.S.Silambanan,
Additional Advocate General
assisted by
Mr.T.Chezhiyan,
Additional Government Pleader
Mrs.Kavitha Rameshwar
Amicus Curiae

COMMON ORDER

Challenge in W.P.No.17895 of 2022 is to the impugned proceedings of the second respondent in Na.Ka.No.35593/C2/E2/2022 dated 30.06.2022 and the subsequent order passed by the third respondent in Na.Ka.No.62448/C2/E1/2022 dated 30.06.2022 and quash the same as illegal to the extent of



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making promotion from unqualified persons and direct the respondents to give promotion or appointment from TET qualified persons.

2. Challenge in W.P.No.19587 of 2022 is to the impugned proceedings of the second respondent dated 11.07.2022 in Na.Ka.No.35593/C2/E2/2022 dated 11.07.2022 insofar as the said proceedings has postponed the promotion counselling scheduled to be held on 14.07.2022 and 15.07.2022 for the post of BT Assistants from the post of Secondary Grade Teachers, pursuant to the proceedings of the second respondent in Na.Ka.No.35593/C2/E2/2022 dated 30.06.2022 and to quash the same and for a consequential direction to the second respondent to instruct all the respective Chief Educational Officers to conduct promotion counselling for the petitioners for the post of BT Assistants in High Schools from the post of Secondary Grade Teachers within a time frame.

3. Since the issue involved in the writ petitions and the subject matter of proceedings, which is under challenge is one and the same, these writ petitions are taken up together and disposed by this common order. For the sake of brevity, the array of parties in W.P.No.17895 of 2022 is adopted.



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FACTS OF THE CASE IN W.P.NO.17895 OF 2022

4.1. The petitioner is qualified in M.Sc., Chemistry, M.Ed., under 10+2+3 regular pattern of education. According to the petitioner, he is fully qualified and eligible for appointment as Graduate Teachers (B.T. Assistant) in Science subject. The petitioner have passed in Teacher Eligibility Test [in short “TET”] conducted in the month of August 2013 and he participated in the selection process based on the marks secured in the Schools, Under Graduation and in TET. According to the petitioner, as far as appointment of B.T. Assistants are concerned, they can be appointed either by direct recruitment or by transfer or by promotion and the post of Primary School Headmasters and Secondary Grade Teachers are the feeder categories for promotion to the post of B.T. Assistants, provided they possess the required qualification for the Post. The necessary qualification for the post of B.T. Assistant is Under graduation, B.Ed. Degree and a pass in TET.

4.2. The Government of Tamil Nadu has framed Special Rules for Tamil Nadu Elementary Education Subordinate Service, vide G.O.Ms.No.12, School Education (EE1) Department dated 30.01.2020. The said Rules



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indirectly state that a teacher need not possess TET qualification, which is against RTE Act, 2009 and the Rules framed thereunder.

4.3. Following the said Rule, the third respondent has issued a proceedings dated 13.04.2022, directing all the Chief Education Officers to prepare panel in the cadre of Secondary Grade Teacher for promotion to the post of B.T. Assistant. Challenging the same, TET Passed Candidates Welfare Association has filed W.P(MD).Nos.9707 and 9708 of 2022 before the Madurai Bench of Madras High Court, wherein an order of interim direction was issued to the effect that any promotion order passed by the respondents, will be subject to the outcome of the final order passed in the said writ petitions.

4.4. While so, again the third respondent has issued a proceedings dated 30.06.2022 directing all the Chief Educational Officers to prepare the panel in the cadre of Secondary Grade Teacher for promotion to the post of B.T. Assistant. Subsequently, the third respondent has issued a proceedings in Na.Ka.No.35593/C2/E2/2022 dated 30.06.2022 directing all the CEOs to prepare the panel for promotion to the post of B.T. Assistant fixing the date



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of counselling to the post of B.T. Assistant from 11.07.2022 to 15.07.2022.

Challenging the same, the petitioner has filed the present writ petition.

FACTS OF THE CASE IN W.P.NO.19587 OF 2022

5. The case of the petitioners, briefly narrated and as averred in the writ petition, are as follows:

5.1. The petitioners are directly appointed between the years 1991-2002 as Secondary Grade Teachers and Special Teachers coming under the Tamil Nadu Educational Subordinate Service in various High Schools and Higher Secondary Schools based on Employment Exchange seniority by the School Education Department and they have been working as Secondary Grade Teachers for the last 20 to 25 years without any single promotion. They are eligible to be promoted as BT Assistants and most of the petitioners are to retire only as BT Assistants, despite their long service in the School Education Department.

5.2. The Hon'ble Supreme Court in SLP (Civil) Nos.18227 – 18228 of 2018 passed the following order dated 20.10.2008:



“Having regard to the fact that a large number of vacancies in the State have remained unfilled, the State Government sought leave to fill up the posts. On the submissions made, the following interim order accepting the State's proposal is passed:

“Appointment to the post of Secondary Grade Teachers may be made by the State Government by calling the list of eligible persons from all District Employment Exchanges and by paper advertisements throughout the State so that any willing candidate even though registered in different districts can participate in the selection. It shall be made clear in the public advertisement that the selection would be based on Employment Exchange seniority. This aforesaid arrangement will apply for any recruitment to be made pending disposal of these appeals.”

5.3. The Right to Children to Free and Compulsory Education Act, 2009 [Act 35 of 2009], hereinafter referred to as “RTE Act”, to provide for free and compulsory education to all children of the age of 6 to 14 years. In exercise of powers conferred under Section 23(1) of the RTE Act, the National Council for Teacher Education [in short “NCTE”], being the academic authority authorized by the Central Government, issued a notification dated 23.08.2010, prescribing minimum qualification for a person to be eligible for appointment as a Teacher in Class I to III in a school with effect from the date of the notification. The minimum qualification is a pass in Teachers Eligibility Test [in short “TET”] for appointment as Teacher for Classes I to V and Classed VI to VIII. But Clause 5 of the NCTE



Regulation reads as follows:

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“Teacher appointed after the date of this Notification in certain cases. Where an appropriate Government or local authority or a school has issued an advertisement to initiate the process of appointment to teachers prior to the date of this Notification, such appointments may be made in accordance with the NCTE (Determination of Minimum Qualifications for recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time).”

5.4. By Notification dated 29.07.2011, NCTE amended its notification dated 23.08.2010 but Clause 5 of the notification dated 23.08.2010 was retained as Clause 5(a). Accepting the recommendation and the notification issued by NCTE, the Government of Tamil Nadu issued G.O.Ms.No.181, School Education (C2) Department dated 15.11.2011. While issuing G.O.Ms.No.181 dated 15.11.2011, the first respondent failed to note Clause 5 of the NCTE Notification dated 23.08.2010 and that even while NCTE issued amendment dated 29.07.2011 to the NCTE Notification dated 23.08.2010, Clause 5 as it existed in the Notification dated 23.08.2010 was retained and thus, the benefit of Clause 5 was extended to teachers appointed prior to Notification dated 29.07.2011 to be governed by NCTE (Determination of Minimum Qualifications for recruitment of Teachers in Schools) Regulations, 2001. The NCTE Regulations 2001 did not make TET compulsory. Thus, all teachers appointed prior to 29.07.2011 do not have to pass TET.



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5.5. By order dated 05.09.2013, the Hon'ble Apex Court had passed final orders in C.A.Nos.6186-6187 of 2008 as follows:

“We record the statement of Mr.Venkataramani (Senior Counsel for the State) to the following effect, namely “that the teachers who were appointed prior to G.O. Dated 15.11.2011 will remain protected.”

Thus, according to the petitioners, all the teachers appointed prior to 15.11.2011 are protected and their services will not be terminated for not passing TET as per the order of the Hon'ble Supreme Court.

5.6. The first respondent has issued G.O.Ms.No.12, School Education [EE1(1)] dated 30.01.2020 framing Special Rules for the Tamil Nadu Elementary Education Subordinate Service in supercession of the Rules contained in the Tamil Nadu Services Manual, 2016. The mode of appointment was specified in the said rules for the post of Graduate Teachers by (i) Promotion, (ii) Transfer, (iii) Direct Recruitment.

5.7. G.O.Ms.No.13, School Education [S.E.3(1)] Department dated 31.01.2020 was issued framing the Special Rules for the Tamil Nadu School Educational Subordinate Service. The said rule dealt with the appointment of several classes and categories of the service. Among the said categories of



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service is the post of Graduate Teacher Tamil and other subjects constituting Class II, Class III and Class IV. The mode of appointment to the post of Graduate Teacher was given as by Direct Recruitment or by promotion from any other etc.

5.8. While that being so, the second respondent has issued proceedings dated 30.06.2022, prescribing the schedule for the conduct of promotion counselling as follows:

“12.07.2022 – Promotion counselling for the post of Higher Secondary School Headmasters.

13.07.2022 – Promotion counselling for the post of High School Headmasters.

14.07.2022 – Promotion counselling for the post of Secondary Grade Teachers, Special Teachers for promotion to the post of BT Assistants.”

5.9. In pursuant to the interim order passed by this Court on 08.07.2022 in the writ petitions filed by High School Headmasters and Higher Secondary School Headmasters, praying that Special Transfer



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Counselling for High School Headmasters and Higher Secondary School

Headmasters should be held prior to the promotion counselling for the said posts of Headmaster, the promotion counselling which was scheduled to be held on 13.07.2022, was deferred for a period of two weeks.

5.10. Now the second respondent has issued a proceedings dated 11.07.2022 deferring the proposed promotion counselling to be held between 11.07.2022 and 15.07.2022 as per the order of this Court dated 08.07.2022 and aggrieved over the said postponement of the promotion counselling for the post of BT Assistants, the petitioners have filed the present writ petition.

6. When the matter was listed before on this Court on 08.07.2022, this Court, relying upon the order dated 07.04.2022 in W.P.Nos.28284 of 2021 etc. batch, has raised a question to the respondents as to whether the persons participating in the Transfer and Promotion Counselling to the post of Headmaster in Government High Schools, High Schools and Higher Secondary Schools, possess the eligibility criteria of pass in TET.



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WEB COPY 7. Mr.B.Balavijayan, learned counsel for the petitioner in W.P.No.17895 of 2022 contended that the impugned order is violative of Articles 14 and 16 of the Constitution of India, as the same is contrary to RTE Act, Rules framed thereunder and also the notifications issued by NCTE. It is further submitted that the respondents are trying to appoint unqualified persons in the post of B.T. Assistant and whereas number of qualified persons are waiting in line for several years without any employment and without considering the same, the respondents sought to prepare the panel for promotion to the post of B.T. Assistant among unqualified persons and therefore, on that ground prays for setting aside the impugned order.

8. Mrs.Nalini Chidambaram, learned Senior Counsel for the petitioners in W.P.No.19587 of 2022 contended that since the petitioners were appointed prior to 01.04.2010, i.e., before the Right of Children to Free and Compulsory Education Act, 2009 came into force, it is not mandatory for acquiring the minimum qualification of pass in TET. However, in view of the larger issue involved, this Court felt that the matter requires elaborate



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discussion and therefore, appointed Mrs.Kavitha Rameshwar as Amicus Curiae to assist the Court.

9. Mrs.Kavitha Rameshwar, learned Amicus Curiae has done a detailed working on the emergence of TET, legal background, landmark judgments on the said subject and filed her written submissions along with compilation of judgments.

10. Mr.S.Silambanan, learned Additional Advocate General and Mr.T.Thirumalaisamy, learned Central Government Standing Counsel appearing for the State and Central Government respectively have reiterated their stand taken in the earlier writ petition in W.P.No.28284 of 2021 etc., batch dated 07.04.2022 ***[K.Vasudevan v. The Principal Secretary to Government, School Education Department and Others]*** that it is mandatory for all the teachers who were appointed prior to the enactment of the RTE Act to acquire/possess the minimum eligibility criteria of pass in TET to continue as teachers.



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11. This Court has considered the rival submissions and also perused the entire materials placed before it.

12. The larger issue to be decided in the present writ petition is whether the minimum eligibility criteria of pass in TET as per the provisions of Section 23 of the RTE Act, 2009, applies to all teachers appointed prior to the RTE Act ?

13. Education is the systematic instruction, schooling or training given to the young persons in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. Education connotes the process of training and developing the knowledge, skill, mind and character of students by formal schooling. The excellence of instructions provided by an educational institution mainly depends directly on the excellence of the teaching staff. Therefore, unless they themselves possess a good academic record/minimum qualifications prescribed as an eligibility, standard of education cannot be maintained/enhanced. Education is necessary to develop the personality of a person as a whole and in totality as it provides the process of training and acquiring the knowledge, skills,



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developing mind and character by formal schooling. Therefore, it is necessary to maintain a high academic standard and academic discipline along with academic rigor for the progress of a nation. Article 21-A has been added in the Constitution with a view to facilitate the children to get proper and good quality education. However, the quality of education would depend on various factors but the most relevant of them is excellence of teaching staff. In view thereof, quality of teaching staff cannot be compromised. The selection of the most suitable persons is essential in order to maintain excellence and the standard of teaching in the institution. It is not permissible for the State that while controlling the education, it may impinge the standard of education. It is, in fact, for this reason that norms of admission in institutions have to be adhered to strictly.

FACTUAL SCENARIO PRIOR TO THE INTRODUCTION OF TET:

14. The factual and legal background prior to the advent of the RTE Act, 2009 that has a bearing on the issue relating to the selection and seniority of Secondary Grade Teachers, needs to be noted. From 1960 onwards, recruitment to the post of Secondary Grade Teachers in Government Schools, Panchayat Union Schools and Corporation Schools



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were being made at District Level by calling for the names of eligible candidates from respective Employment Exchanges and selection was made on the basis of interview. However, the Government had changed the policy of selection in the year 1991 and holding of interview was dispensed with and the selection was being made on the basis of seniority in the roll of the respective District Employment Exchange. However, the Government has issued G.O.Ms.No.1251 Education Department dated 14.12.1992, whereunder the task of appointment to the post of Secondary Grade Teachers in Government Schools, Panchayat Union Schools was entrusted to the Teachers Recruitment Board [TRB] by holding selection test and interview. The selected candidates were appointed in various districts irrespective of their place of residence. Subsequently, the Government issued G.O.Ms.No.447 dated 16.7.1996. The aforesaid Government Order was always understood to mean that selection shall be made from among the candidates whose names had been registered in the Employment Exchange register for the concerned district. Thereafter, by G.O.Ms.No.241 dated 22.9.2007, the Government permitted filling up of vacancies in the post of Secondary Grade Teachers and Physical Education Teachers in the Panchayat Union, Municipal, Corporation Elementary and Middle Schools by calling



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for names of candidates registered with the Employment Exchange of the concerned District alone.

15. These Government Orders in G.O.Ms.No.447, Education of Science and Technology Department dated 16.07.1966 and G.O.Ms.No.447, School Education Department 22.09.2017 were challenged before this Court in W.P.Nos.10583 and 6377 of 2007 dated 04.02.2007 insofar as they prescribed District wide recruitment of Secondary Grade Teachers in the Government / Panchayat Union/ Municipal Schools in the State, and a direction was sought for in the writ petitions seeking that the recruitment should be State-wide i.e., following the Statewide registration seniority in the Employment Exchange. The writ petitions filed by the Unemployed Secondary Grade Teachers Welfare Association came to be dismissed and on appeal, the Division Bench of this Court in the decision in ***“The Unemployed Secondary Grade Teachers Welfare Association v. The State of Tamil Nadu and Others [Manu/TN/0636/2008]”*** while going into the issue in detail and having reference to the provisions of the Tamilnadu State and Subordinate Rules, the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 and the Rules made thereunder, as also the constitutional



provisions, reversed the judgment of the Single Judge and allowed the appeals, holding as follows:-

“26. We do not agree with the conclusion of the learned single Judge that the meaning of "local employment exchange" in the context in which it has been used in the Rules means the office of an Employment Exchange in a particular district. The Rules which are required to be read along with the Act only mean that in respect of the posts indicated under Rule 3(1) shall be notified to the Central Employment Exchange, whereas in respect of those coming within Rule 3(2), it may be notified to the local employment exchange concerned, namely, the concerned State. At any rate, even assuming that the interpretation by the learned single Judge is correct, the provisions of such Act and the Rules are required to be construed in a manner consistent with the provisions of the Constitution and not in a manner offending such provisions.

27. The main intention of the Act and the Rules is for the purpose of highlighting the availability of posts so that the persons whose names have been registered and who are sponsored by the Employment Exchange are not required to apply specifically for the post, but the provisions of the Act and the Rules cannot be construed to mean that the employment has to be confined to those whose names have been included in the employment register and even assuming that it can be so, if a person's name is entered in the Employment Exchange register of a particular district, such person cannot be denied the right of employment in another district of the very same State on the ground that his name finds place in the Employment Exchange of one district and not of the other district. Any such interpretation would clearly be violative of Article 16(2) as well as Article 19(1) and also Article 14 of the Constitution.

29. Even though the learned single Judge appears to be conscious of the position of law that confining the recruitment to the names registered in an Employment Exchange may be contrary to the decisions of the Supreme Court, particularly in (1996) 6 SCC 216 and (2006) 8 SCC 111 (cited supra), the



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learned single Judge has observed that in the absence of any challenge to the validity of such Rule, such question need not be decided.

34.As a matter of fact the decision of the Supreme Court in (2002) 6 SCC 562 (cited supra) is a complete answer to such imaginary excuses put forth by the State. In a very recent decision, the Supreme Court has expressed its grave concern relating to possible balkanization of the country because of the spread of non-tolerance displayed in some parts of the country. The submissions which are now being made by the learned Additional Advocate General or the counsel for the Interveners bring only to fore the above unwelcome trend. We do not think that such a course can ever be countenanced. As a citizen of India one has to imbibe the spirit of the Constitution and follow the adage made famous by no less a personality than Justice Krishna Iyer that "Kashmir to Kanyakumari, India is one". However, a reading of the counter filed by the State Government and the stand so painstakingly put forth by the learned Addl. Advocate General, though more in desperation rather than with any conviction, one gets the feeling that even though Kashmir to Kanyakumari - India may be one, Dharmapuri to Kanyakumari - Tamil Nadu is not one. The net result of the policy hitherto followed by some curious logic is that a duly qualified person, who is born in one part of the Tamil Nadu and gets himself registered in the district of his residence, cannot seek employment under the Government in another district of the very same State. If this does not amount to denial of right to equality under Article 14 and more particularly Article 16(2) and the right under Article 19(1), we fail to imagine what else can be the denial of such fundamental rights.

35.In view of the above discussion, in our considered opinion, confining the question of selection to the candidates sponsored by the Employment Exchange of a particular district without considering the willingness, availability and suitability of similar candidates who have been registered in the other district employment exchanges, is clearly violative of fundamental rights and, therefore, cannot be countenanced. The



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impugned G.O.Ms.No.447, dated 16.07.1996 is liable to be quashed. Accordingly, a direction is issued to consider the question of selection of eligible candidates, even though such candidates' names have been registered in other District Employment Exchanges. For the aforesaid purpose, obviously intimation is required to be given to all the District Employment Exchanges and public advertisement throughout the State is required to be made so that any willing candidate even though registered in a different district can offer his candidature."

16. The Division Bench of this Court in the aforesaid judgment categorically laid down that selection and seniority in respect of Secondary Grade Teachers can only be made on the basis of Statewide seniority in the Employment Exchange and calling for names for recruitment by restricting it to the District Employment Exchanges concerned without permitting willing candidates, though registered in a different district, to participate in the process of selection, will amount to violation of Articles 14, 16 and 19 of the Constitution of India. It is in these circumstances that Statewide seniority came to be followed in the State of Tamil Nadu for selection of Secondary Grade Teachers.

17. The matter was taken up for appeal by way of Special Leave Petitions (SLP) before the Hon'ble Supreme Court, wherein the State had highlighted that while candidates had wanted Statewide selection, they had



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sought for transfer outside the district after their appointment and in the light

of the said submissions of the State, the Supreme Court passed the following

Interim Order at the admission stage:-

“Appointment to the post of Secondary Grade Teachers may be made by the State Government, by calling the list of eligible persons from all the District Employment Exchanges and by newspaper public advertisements throughout the State so that any willing candidate even though registered in different Districts can participate in the selection. It shall be made clear in the Public Advertisement that the selection would be based on the Employment Exchange Seniority. It shall also be made clear that any person selected and appointed in a particular School within a District cannot aspire for or seek transfer to another School outside the District.”

**THE RTE ACT, 2009 AND RELEVANT NCTE NOTIFICATIONS –
THEIR SCOPE, EXTENT AND IMPACT**

18. The Right to Education Act 2009, also known as the RTE Act 2009, was enacted by the Parliament of India on 4 August 2009. It describes modalities of the importance of free and compulsory education for children aged between 6-14 years in India under Article 21 (A) of the Constitution of India. This act came into effect on 1 April 2010 and made India one of the 135 countries to have made education a fundamental right for every child. It



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prescribes minimum norms for elementary schools, prohibits unrecognised schools from practice and advocates against donation fees and interviews of children at the time of admission. The Right to Education Act keeps a check on all neighbourhoods through regular surveys and identifies children who are eligible for receiving an education but do not have the means to. Educational challenges have been prevalent at both the centre and states for many years in India. The Right to Education Act 2009 maps out roles and responsibilities for the centre, state and all local bodies to rectify gaps in their education system in order to enhance the quality of education in the country.

The following are the salient features of the RTE Act, 2009:

1. Compulsory and free education for all

It is obligatory for the Government to provide free and compulsory elementary education to each and every child, in a neighbourhood school within 1 km, up to class 8 in India. No child is liable to pay fees or any other charges that may prevent him or her from pursuing and completing elementary education. Free education also includes the provisions of textbooks, uniforms, stationery items and special educational material for children with disabilities in order to reduce the burden of school expenses.



2. The benchmark mandate

WEB COPY The Right to Education Act lays down norms and standards relating to Pupil-Teacher-Ratios (number of children per teacher), classrooms, separate toilets for girls and boys, drinking water facility, number of school-working days, working hours of teachers, etc. Each and every elementary school (Primary school + Middle School) in India has to comply with this set of norms to maintain a minimum standard set by the Right to Education Act.

3. Special provisions for special cases

The Right to Education Act mandates that an out of school child should be admitted to an age-appropriate class and provided with special training to enable the child to come up to age-appropriate learning level.

4. Quantity and quality of teachers

The Right to Education Act provides for rational deployment of teachers by ensuring that the specified Pupil-Teacher-Ratio is maintained in every school with no urban-rural imbalance whatsoever. It also mandates appointing appropriately trained teachers i.e. teachers with the requisite entry and academic qualifications.



5. Zero tolerance against discrimination and

harassment

The Right to Education Act 2009 prohibits all kinds of physical punishment and mental harassment, discrimination based on gender, caste, class and religion, screening procedures for admission of children capitation fee, private tuition centres, and functioning of unrecognised schools.

The Right to Education (RTE) Forum's Stocktaking Report 2014 suggested that across the country, less than 10 per cent of schools comply with all of the Right to Education Act norms and standards. While the enactment of the Right to Education Act 2009 triggered significant improvements, concerns regarding the privatisation of education remain. Educational inequalities have held a strong ground in India for many years. While the Right to Education Act offers the first step towards an inclusive education system in India, effective implementation of the same still remains to be a challenge.

6. Ensuring all-round development of children

The Right to Education Act 2009 provides for the development of a curriculum, which would ensure the all-around development of every child. Build a child's knowledge, human potential and talent.



7. Improving learning outcomes to minimise detention

The Right to Education Act mandates that no child can be held back or expelled from school till Class 8. To improve the performances of children in schools, the Right to Education Act introduced the Continuous Comprehensive Evaluation (CCE) system in 2009 to ensure grade-appropriate learning outcomes in schools. Another reason why this system was initiated was to evaluate every aspect of the child during their time in school so that gaps could be identified and worked on well in time.

8. Monitoring compliance of RTE norms

School Management Committees (SMCs) play a crucial role in strengthening participatory democracy and governance in elementary education. All schools covered under the Right to Education Act 2009 are obligated to constitute a School Management Committee comprising of a headteacher, local elected representative, parents, community members etc. The committees have been empowered to monitor the functioning of schools and to prepare a school development plan.

9. Right to Education Act is justiciable

The Right to Education Act is justiciable and is backed by a Grievance Redressal (GR) mechanism that allows people to take



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action against non-compliance of provisions of the Right to Education Act 2009.

To ensure all schools follow this mandate, Oxfam India in collaboration with JOSH filed a complaint at the Central Information Commission (CIC) in 2011 evoking Section 4 of the Right to Information Act (RTI Act) 2005. Section 4 of the RTI Act is a proactive disclosure section mandating all public authorities to share information with citizens about their functioning. Since schools are public authorities, compliance to Section 4 was demanded.

10. Creating inclusive spaces for all

The Right to Education Act 2009 mandates for all private schools to reserve 25 per cent of their seats for children belonging to socially disadvantaged and economically weaker sections. This provision of the Act is aimed at boosting social inclusion to provide for a more just and equal nation.

19. The RTE Act, 2009 aimed at raising the standard of education, and came into force on 01.04.2010. Under the Act, the term ‘school’ is defined as follows:

“2(n) “School” means any recognized school imparting elementary education and includes –



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(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and (iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.”

20. Section 23 of the RTE Act, 2009 reads as follows:-

“23. Qualifications for appointment and terms and conditions of service of teachers.—

(1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section(1), shall acquire such minimum qualifications within a period of five years.”

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



Education (Amendment) Act, 2017 (24 of 2017)]

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

21. The above provision would make it clear that the intention of the Legislature to prescribe minimum qualifications for teachers was made while being alive to the fact that there may be certain States which do not have adequate institutions offering courses or training in teacher education, or where teachers possessing minimum qualifications are not available in sufficient numbers. It is in this context that the Proviso to Section 23(2) of the RTE Act states that a teacher who, at the commencement of this act, does not possess minimum qualification as laid down under sub section (1), shall acquire such minimum qualification from five years. The legislature therefore has made it mandatory for every teacher, who, at the time of commencement of the Act, does not possess minimum qualification as prescribed under the Act, to acquire the said minimum qualification within a period of 5 years. The emphasis on the words ***“at the commencement of this Act”*** would make it clear that the ***legislature intended to laid down uniform standard for all teachers i.e., for teachers who are already in service at the commencement of the Act, as well as those to be appointed after the commencement of the***



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22. NCTE, being the Academic Authority constituted by the Central Government under Section 23(1) of the RTE Act, has issued a notification dated 23.08.2010, prescribing the minimum qualification for teachers and it was subsequently, amended vide notification dated 27.09.2011.

TAMIL NADU RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION RULES, 2011

23. The State Government, in exercise of powers conferred by sub-Section (1) of Section 38 of RTE Act, 2009, has framed the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011, vide G.O.(Ms.)No.173, School Education (C2) Department dated 08.11.2011.

Rule 16 of the said Rules reads as under:

“16. Acquiring minimum qualification– (1) The State Government shall provide adequate teacher education facilities to ensure that all teachers in schools referred to in sub-clause (i) and (ii) of clause (n) of section 2, who do not possess the minimum qualification as laid down by the academic authority authorized by the Central Government at the time of commencement of the Act, to acquire such minimum qualification within a period of five years from the commencement of the Act.

(2) For a teacher, of any school referred to in sub-clause (iv) of clause (n) of Section 2, who does not possess the minimum qualification as laid down by the academic authority



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authorized by the Central Government at the time of commencement of the Act, the management of such school shall enable such teacher to acquire such minimum qualifications within a period of five years from the commencement of the Act.”

G.O.(Ms.)No.181, SCHOOL EDUCATION (C2) DEPARTMENT
DATED 15.11.2011 AND THE LITIGATION THAT FOLLOWED:

24. Pursuant to the Central Act, State Rules, as well as the notification issued by NCTE, the State Government had issued G.O.(Ms.)No.181 School Education (C2) Department dated 15.11.2011, whereby it has been mentioned in the Paragraph 3 as follows:

“3. The said section clearly specifies that teachers who at the commencement of this Act, do not possess minimum qualifications as prescribed by the academic authority authorized by the Central Government shall acquire such minimum qualifications within a period of 5 years. Hence, the “Teacher Eligibility Test (TET)” would have to be conducted for recruiting teachers for the primary and upper primary classes. The teachers working in unaided private schools are required to pass teacher Eligibility Test within 5 years. In the State of Tamilnadu, Secondary Grade teachers (those teaching classes I to V) are required to have minimum qualifications of D.T.Ed. and graduate Assistants (BT Assistant) (those teaching classes V to VIII) are required to have minimum qualifications of B.Ed. they should also pass Teacher Eligibility Test forthwith.”

Further in Paragraph 7 of the said Government Order, it has been stated that,

“I. In respect of Secondary Grade Teachers, the



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statewide seniority in Employment Exchange Registration will continue to be followed till the disposal of the SLP filed in the Supreme Court of India.

ii. In respect of Graduate Assistant (B.T. Teachers recruited by TRB for the classes VI to X) in all middle schools, High/Higher Secondary Schools, selection through written examinations (“Teacher Eligibility Test”) in accordance with the guidelines frames by National Council for teacher Education and certificate verification, will be followed.”

25. This specification in the above State Government Order in Para 7 that in respect of Secondary Grade Teachers, the statewide seniority in Employment Exchange Registration will continue to be followed till the disposal of the SLP filed in the Supreme Court, came to be interpreted by some as meaning that for Secondary Grade Teachers, TET was not mandatory.

26. Writ Petition in W.P.No.28342 of 2012 came to be filed seeking that Secondary Grade Teachers should be appointed only if they possess the eligibility criteria of pass in TET. The writ petition was disposed of by recording the statement of the Chairman of TRB as well as the State Government that all selections for Secondary Grade Teachers will be only based on TET. On an appeal by a private respondent who opposed TET in



W.A.No.1736 of 2012 dated 22.08.2012, the Hon'ble First Bench of this Court, in the case of ***R.Rajaraman Vs. Additional Chief Secretary to Government, Secretariat, Chennai***, had confirmed the judgment of the Learned Single Judge and held as follows:

*“12. This Court, after thoroughly analysing the subject matter involved in the writ appeal in the backdrop of the facts involved in the case, discussed the concept of legitimate expectation in great detail as earlier dealt with by this Court in P. Suseela & Others vs. University Grants Commission [W.A. Nos.893 of 2010 dated 6.12.2010], observed that the principles of legitimate expectation will have no application to the facts and circumstances of the present case as even in terms of the Right to Education Act, it was mandatory for the State to recruit Secondary Grade Teachers and B.T. Teachers only by conducting the Teacher Eligibility Test, **the object being to bring national standards and benchmark of teacher quality in the recruitment process and with a view to induce the teachers and the educational institutions to further improve their performance and with a view to send a positive signal to all stake-holders that the Government lays special emphasis on teacher quality.** (emphasis supplied)*

13. In our considered opinion, therefore, the principles laid down in the above judgment squarely answer the questions raised in the present case. The learned single Judge was



perfectly right in accepting the statement made by the learned Special Government Pleader and the stand taken in the counter affidavit filed on behalf of the Teachers Recruitment Board that only those appear and pass the Teacher Eligibility Test will be eventually selected for appointment to the post of Secondary Grade Teachers.”

27. Therefore there has never been any dispute, as far as the State of Tamilnadu is concerned, that TET is mandatory for selection and appointment, as neither the State authorities nor this Court has expressed any doubt on the applicability of the eligibility of a pass in TET for the purpose of appointment as teacher, either as a Secondary Grade Teacher or a BT Assistant.

28. In the meanwhile, the SLPs filed against the order in the case of ***Unemployed Secondary Grade Teachers Welfare Association's case*** came to be numbered as Civil Appeal Nos.6186-6187 of 2008 and were disposed of by the Hon'ble Supreme Court on 05.09.2013 by recording that,

“the teachers who were appointed prior to the GO dated 15.11.2011 will remain protected and as far as the transfers sought by the teachers outside their Districts are concerned, it



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is for them to apply to the authority concerned and the authority concerned will consider their applications in accordance with their rules.”

29. It is to be made clear at this juncture that the observation in the order of the Hon’ble Supreme Court dated 05.09.2013 in C.A.Nos.6186-6187 of 2008 cannot be stretched to mean anything beyond the scope of the said case, which arose out of the question whether selection was to be made from District Employment Exchange Registration or Statewide Employment Exchange Registration seniority. The reading of the said order cannot in any way alter the legal position that the RTE Act as well as the NCTE notifications, which make it mandatory for every teacher to acquire TET as an eligibility criteria, with the only exception that those who are already in service at the commencement of the Act are allowed a period of 5 years to acquire the said eligibility criteria.

30. The question relating to who are the category of persons who would be entitled to the benefit of Paragraph 5(a) of the notifications of the NCTE date 29.07.2011 came up for consideration in the case of ***S.Daisy rani Vs. The Chairman and the Director of School Education***



[MANU/TN/1929/2013 = 2014 (1) LLN 726 (Mad.)] and in T.S.Anbarasu

and Ors. Vs. The State of Tamilnadu and Ors.[2015 (8) MLJ 385] and once again it was categorically held that only those persons whose appointment had been finalized prior to 29.07.2011, but who came to be appointed after the date of the notification i.e., 29.07.2011 are entitled to the exemption of acquiring TET at the time of their appointment. Even here, such appointment is subject to the condition that the petitioner shall qualify for TET within a period of 5 years from the date of appointment. In this regard the following paragraphs of the judgment in *Daisy Rani*, cited supra are as follows:-

“146. A cursory reading of the proviso to Section 23(2) of the RTE Act along with Rules 17, 18 and 19 of the RTE Rules and Clause 5 of the notification dated 28.10.2010 and the amended notification dated 29.07.2011 makes it clear that the teachers, who are working, at the time of commencement of the RTE Act, in the "school" covered under Section 2(n) of the RTE Act have to acquire such minimum qualifications within a period of five years from the commencement of the Act and the said exemption cannot be claimed by the petitioners who are all not "teachers" at the time of commencement of the RTE Act. Admittedly, these petitioners are not in employment as teachers in the schools, at the time of the commencement of the RTE Act.

147. Hence, as stated above, the submission of the



learned Senior Counsel for some of the petitioners and some of the learned counsels that in view of the proviso to Section 23(2) of the RTE Act, the petitioners shall be appointed based on the certificate verification that took place prior to 29.07.2011, the date of the amended notification of NCTE, subject to the condition that the petitioners shall qualify TET within a period of five years from the date of appointment has no basis.

*148. At the risk of repetition, it is reiterated, as held in the earlier paragraphs, that in these cases, senior candidates, who participated in the certificate verification along with the petitioners herein, were selected for the notified vacancies and they were appointed without insisting a pass in TET, but these petitioners were not selected. Those selected/appointed candidates alone come under the exempted category of Clause 5 and 5(a) of NCTE notification dated 23.08.2010 and 29.07.2011. Those appointments are to be termed as "SUCH APPOINTMENT" as used in the NCTE notification. **Since even the teachers, who were in service at the time of commencement of the RTE Act, are required to acquire TET within a period of five years, in my view, "SUCH APPOINTEES", who were appointed pursuant to certificate verification, shall also acquire TET within five years from the date of the appointment. The non-selected Secondary Grade Teachers/Graduate Assistants (B.T. Teachers), i.e., persons like the petitioners, cannot seek appointment in the future***



vacancies based on certificate verification, without a pass in TET.

149. Therefore, if the plea of the petitioners herein is accepted, then more than about 20,000 persons could enter without having the minimum qualification of TET as prescribed in RTE Act read with NCTE Regulations. This Court cannot issue such a direction to appoint them contrary to the statutory provisions and the constitutional mandate as held by the Apex Court in C.Rekhi Ray v. High Court of Delhi, MANU/SC/0080/2010 : (2010) 2 SCC 637] in view of the aforesaid reasons...”

31. It is also useful to refer to the following paragraphs of the judgment in ***T.S.Anbarasu and Others v. The State of Tamil Nadu and Others*** [MANU/TN/3454/2015 = (2015) 8 MLJ 385]:

“(v) In the notification dated 29.07.2011, paragraph No. 5 of the notification dated 23.08.2010, was substituted by a new paragraph No. 5 consisting of two sub-paragraphs viz. 5(a) and 5(b). Paragraph 5(a) of the new notification dated 29.7.2011, is in pari materia with paragraph 5 of the original notification dated 23.08.2010.

(vi) The sheet anchor of the petitioners contention is that in their cases, the Government has notified the number of vacancies under various Government Orders and the process of



recruitment has commenced prior to 23.08.2010 and therefore, they are not required to pass TET.

(vii) We are unable to accept the contentions raised by the learned counsels for the petitioners as it would amount to misreading of the notifications dated 23.08.2010/27.09.2011. Paragraph 5/5(a) of the notification makes it abundantly clear that the exemption carved out is in respect of such appointments made, pursuant to recruitment process initiated prior to the date of the notification. Therefore, the emphasis is on the expression "such appointment" as contained in paragraph 5/5(a) of the notification. Therefore, the benefit of the notification would enure in favour of those candidates who participated in the recruitment process initiated prior to 23.08.2010 and appointed against the posts advertised or as notified in the instant case. Therefore, it is only those appointments which would fall within the expression "such appointment" as contained in the notification issued by the NCTE."

32. Further in the case of ***State of Tamil Nadu and Ors. vs.***

R.Arivazhagan and Ors. [MANU/TN/1407/2017] it was held as follows:-

"41. This Court, on an overall consideration of the factual matrix of the matter, is of the considered view that in the absence of conduct of regular TET examination further to the



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issuance of the Government Order, the Teachers, in the instant case, who were holders of either a Diploma or Degree in Teacher Education and who were waiting in the rolls of the Employment Exchange for decades, particularly those who were possessed of the requisite qualifications for appointment to the post of a Teacher, prior to the issuance of the Government Order, cannot be left in lurch on the only ground that they have not passed the TET examination as mandated by the Government Order, they having put in quite a number of years of service. This Court feels that the ends of substantial justice would be met that if those persons, who have been appointed subsequent to the issuance of the Government Order, be given one opportunity to appear for Teacher Eligibility Test and to qualify themselves, taking into consideration the services rendered by them at the time of exigency. Any other course than the one directed above would be detriment both to the career of the students as also the livelihood of the persons, who have all along been in employment, the crux of the issue being that the Teachers Recruitment Board had not conducted the Teacher Eligibility Test after 2013. Accordingly, to meet the ends of justice, the writ appeals and the writ petitions are disposed with the following directions:

(i) The Teachers herein, who have been appointed subsequent to the issuance of the Government Order, are granted one opportunity to appear for the Teacher Eligibility



Test to be conducted by the Teachers Recruitment Board and in the event of their passing in the Teacher Eligibility Test, their appointments shall be approved else, they have no other option but to quit the service/ousted from service;

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

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

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

(v) The Teachers Recruitment Board is directed to take note of the above observations and to issue notification for



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conducting Teacher Eligibility Test on or before the end of February 2017, indicating the date of exam to be either in the last week of March 2017 or in the first week of April 2017.

EFFECT OF AMENDMENT ACT OF 2017- APPLICABILITY OF TET TO TEACHERS APPOINTED PRIOR TO THE RTE ACT, 2009-

33. Subsequently, on 09.08.2017, RTE Act was amended by Act No. 24 of 2017 with effect from 01.04.2015, by inserting the following second proviso to Section 23(2) of the RTE act. The said proviso reads as follows:-

“23(2) ...

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

34. A perusal of the said proviso would further reaffirm the intention of the Legislature that all teachers should conform to uniform eligibility criteria.

The words “every teacher appointed or in position as on 31st March 2015” would clear any semblance of doubt as to the category of persons whom it



refers to, meaning thereby that every teacher who is in service as on 31st March 2015 has been mandated under the Act to acquire the minimum qualifications within a period of four years from the date of commencement of the amendment Act of 2017 (i.e., Act 24 of 2017) to the RTE Act w.e.f 01.04.2015.

35. It is to be seen that the question whether teachers appointed prior to the notification of the NCTE dated 29.07.2011 would require to pass the TET for continuing in service came up for consideration in the case of ***M.Maharani Vs. The State of Tamilnadu and Ors. [MANU/TN/0608/2019]*** wherein it has been held that :

“

10. However, there is no cut off date specified in the said G.O. Ms. No. 181, with regard to acquiring the qualification of pass TET to continue in service as B.T. Assistants /Secondary Grade Teachers, who are working as such in the respondent Schools. In this regard, a cursory glance at Clause (5) of the notification dated 23.08.2010 and its amended notification dated 29.07.2011 issued by the NCTE, the contents of which are reproduced at paragraph nos. 8.2 and 8.4 above, would reveal that if the process of appointment of teachers was initiated prior to the date of notification by issuing advertisement, such



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appointments have to be made in accordance with NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 and the same was amended with effect from 29.07.2011. As per the said NCTE Regulations 2001, there is no qualification prescribed with regard to possession of TET certificate, for appointment to the post of B.T Assistant and Secondary Grade Teachers. The qualification of passing TET was first introduced by the notification dated 23.08.2010 and it was amended vide notification dated 27.09.2011. Thus, it could be inferred that the cut-off date for acquiring the TET qualification is 27.09.2011 and the teachers, who were appointed prior to that date need not pass TET and even in the case of the teachers who were appointed after that date, if the advertisement to initiate the process of appointment of teachers was made prior to that date, then, their appointments also can be in accordance with the NCTE Regulations 2001 and they need not acquire the TET qualification.

12. In the ultimate analysis, this Court has no hesitation to hold that the petitioners are entitled to seek exemption from passing TET, as they were appointed prior to the cut-off date and the respondents are directed not to insist TET certificate from the petitioners as a pre-condition for their continuance in service as B.T. Assistants.”



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36. The said judgment in *Maharani's case* cited supra was also followed in *V.Fathima Riswana and ors. Vs. The Chief Educational Officer, Tirunelveli and Ors. reported in MANU/TN/4852/2020 dated 13.08.2020*.

37. It is to be pointed out that the decisions in *Maharani's case* and *Fathima Riswana's case* cited supra cannot be said to be good law for the reason that the insertion of the second proviso by the Amendment Act 2017 to the RTE Act 2009, RTE Rules, 2011 as well as the subsequent communications between the Central and State Government have not been considered in the said decision.

38. In the case of *V.Venugopal Vs. The District Educational officer, Sivagangai and Ors. dated 10.03.2022 [MANU/TN/4232/2022]*, the question was whether a Secondary Grade Teacher, while seeking promotion to the post of BT Assistant, should mandatorily clear TET, even if her initial appointment as Secondary Grade Teacher was made prior to the NCTE notification dated 23.08.2010 and thereafter 29.07.2011. In this regard the



observation made by this Court in the said case are as follows:

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“22. In my considered view, the mandate for obtaining a TET qualification would apply only for fresh recruits, appointed after 23.08.2010. Had the intention of the Centre and the States been that even teachers who are in service on 23.08.2010 or were in the process of being appointed prior to 23.08.2010 acquire the qualification, there would have been no necessity to insert clause 4 of the parent notification.

23. However, this has to be seen only in the context of the intention of Legislature not to disturb existing appointments of teachers by imposing a condition that did not form part of their original recruitment rules and not as a sanction for stagnation or a waiver granted to teachers in service, for all purposes. The Right of Children to Free and Compulsory Education (Amendment) Act, 2017, (Act No. 24 of 2017), introduced the second proviso to Section 23(2) reading as follows:

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

24. Thus, the acquisition of eligibility, by clearing the



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TET was extended for four years from commencement of the amendment act, i.e., the 9th August, 2021. It is relevant to see that the proviso uses the phrase 'every teacher appointed or in position as on 31.03.2015', meaning that time was granted till 9th of August 2021 to those teachers who had been recruited post 23.08.2010, to acquire the qualification. Thus it appears clear that no mandate as such was imposed upon teachers who were in service pre 23.08.2010, to clear the TET for validation of their services."

39. While reliance was placed upon Paragraph 4 of the parent notification dated 23.8.2010, the meaning and scope of the said paragraph was not attempted to be understood in the light of Section 23 of the RTE Act, 2009 in the above cited judgment. Here it is to be stressed once again that the RTE Act with the First Proviso to Section 23 mandating every teacher who, at the commencement of the Act, did not possess the minimum qualifications under the Act, to acquire the same with the period of five years, came into force on 01.04.2010. The NCTE notifications came it to force on 23.08.2010 and 29.07.2011. It is therefore necessary to reconcile the said notifications with the intention of the legislature as clearly spelt out in Section 23 of the RTE Act. An independent reading of the NCTE notification without reference or recourse to the RTE Act would not be in accordance with legal



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date of commencement of RTE Act, 2009, are entitled to annual increments and to continue in service as Teachers?

..

18. In the cases on hand, the contention of the petitioners is that their appointments were approved by the authorities/Department prior to the Government Order in G.O.(Ms.) No. 181, School Education (C2) Department dated 15.11.2011 and therefore, it is unreasonable and unfair and on the part of the educational authorities to insist upon pass in TET for sanction of increments. It is to be pointed out at this juncture that Section 23 of the RTE Act, 2009 has initially granted time limit for a period of five years for completion of TET. Subsequently, the Ministry of Human Resources Development, Department of School Education and Literacy, vide Gazette Notification dated 17.10.2017, in exercise of powers conferred under Section 38 of the RTE Act, made the following amendment to Section of the RTE Act, which reads as follows:

"The Right of Children to Free and Compulsory Education Act, 2009 (Principal Act) was amended by the Right of Children to Free and Compulsory Education (Amendment) Act, 2017 and a new proviso was inserted in sub-section (2) of Section 23 of the Principal Act relating to qualifications for appointment and terms and conditions of service of teachers. The inserted new proviso reads as "Provided



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

19. Thereafter, The Principal Secretary to Government, School Education Department, Government of Tamilnadu/first respondent, vide D.O. Letter No. 2343/MS/2019-1 dated 30.01.2019 addressed to the Ministry of Human Resource Development, Department of School Education & Literacy, Government of India, New Delhi, has sought for further extension of two years for completion of TET. In response to the same, the Under Secretary to Government, Ministry of Human Resource Development, Department of School Education & Literacy has sent a communication to the first respondent dated 27.02.2019, informing that it would not be possible to consider any request related to extension of deadline for training of untrained in-service elementary teachers. Thereafter, the Principal Secretary to Government, School Education Department, Chennai-9, vide Letter No. 2343/MS/2019-1 dated 02.05.2019 has issued instruction to Director of School Education, Elementary Education and Matriculations Schools that since the Government of India, Ministry of Human Resource Development, Department of School Education has



not extended the time limit, requested to take necessary action relating to teachers who have not acquired minimum qualification as prescribed in Section 23 of RTE Act, 2009 and ensure compliance and a report on action taken may be sent to the Government before commencement of the academic year.

20. The fact remains that despite lapse of many years i.e., almost twelve years after the enactment of RTE Act, 2009, the said statutory provision has not been complied with, the petitioners and teachers are allowed to continue in service without possessing the minimum eligibility condition of pass in TET, as per Section 23 of the RTE Act, 2009 and also as per the RTE (Amendment Act), 2017. It is mandatory for the teachers, who did not possess the minimum qualification of pass in TET prior to RTE Act, 2009 to acquire the same within the period of nine years i.e., on or before 31.03.2019. Thus, the teachers, who do not possess the minimum qualification of pass in TET are not entitled to continue their service in the schools/educational institutions. Therefore, the issue is answered as against the writ petitioners.

21. Education is a process of acquiring knowledge and skills in general, and the field of teachers' education is special. Quality teachers' education is the need of the hour. Effective teaching depends on the teacher with updated knowledge, skills and technology. The main purpose of the Teacher Eligibility Test (TET) is to assess the candidate's aptitude for the



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profession, that is, to assess the teachers whether they have adequate teaching competency and a positive attitude towards teaching or not. The rationale for including the TET as a minimum eligibility criterion for a person to be appointed as a teacher is to bring national standards and benchmark for quality in the recruitment process and to lay special emphasis on teachers' quality. It is necessary to ensure teachers with the essential aptitude and ability are recruited to meet the challenges of teaching and for the benefit of student community at large, the teachers should be competent enough with national standards. This would ensure that despite alternate pathways open to become teachers, standards of teaching are maintained.

....

25. The claim of the writ petitioners herein is that their appointments were already approved by the department and now insisting upon them to pass in TET is totally arbitrary and unreasonable and therefore, the respondents ought not to have stopped annual increments paid to the petitioners. The third respondent has clearly stated in the counter affidavit that since the petitioners do not possess the minimum qualification of pass in TET as per the guidelines of TET and in the absence of TET, no incentives can be granted to the petitioners.

26. As discussed above and recording the stand taken by the third respondents in the counter affidavit and that despite



lapse of nearly 12 years from the date of the notification of the Act, the petitioners did not acquire the minimum qualification of pass in TET and therefore, in the light of Section 23 of the RTE Act, the petitioners are not entitled to any annual increment and the relief sought for by the petitioners is liable to be rejected.

27. In view of the aforesaid reasons and discussions, this Court passes the following order:

(i) The relief sought for by the petitioners is rejected.

(ii) The respondents are directed to ensure strict compliance of the instructions issued by the Principal Secretary to Government, School Education Department, Chennai-9, vide Letter No. 2343/MS/2019-1 dated 02.05.2019, failing which appropriate action shall be taken in accordance with law.

(iii) The respondents are also directed to ensure strict compliance of the Guidelines issued by NCTE dated 11.02.2021, by conducting TET examination once in every year, so as to enable the teachers to qualify themselves in TET.

It is open to the first respondent to seek appropriate remedy before the fifth respondent, if required.”

41. One of the petitioners in ***K.Vasudevan's case*** cited supra filed a review in Rev.Appl.(Writ) No.131 of 2022 on the ground that the provisions of Section 23 of the RTE Act, 2009 should be interpreted in such a way that



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Section 23(1) applies to teachers who were already in service and Section 23(2) pertains to fresh recruits. The said review application was considered in detail by this Court and vide order dated 19.10.2020, this Court dismissed the review application with a direction to the State Government to comply with the directions issued by this Court in W.P.Nos.28284 of 2022 etc., batch dated 07.04.2022 [K.Vasudevan's case] and file a compliance report before this Court within a period of six months.

42. The Hon'ble Apex Court in the decision in *Society for Unaided Private Schools of Rajasthan v. Union of India and another [(2012) 6 SCC 1]* has observed that *“The provisions of the Statute shall not remain a dead letter, remember we are dealing with the lives of our children, a national asset, and the future of the entire country depends upon their upbringing. Our children in the future have to compete with their counterparts elsewhere in the world at each and every level, both in curricular and extra-curricular fields. Quality education and overall development of the child is of prime importance upon which the entire future of our children and the country rests”*.



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43. In *Bhartiya Seva Samaj Trust and another v. Yogeshbhai Ambalal Patel and another* [(2012) 9 SCC 310], the Hon'ble Apex Court observed that *“Elementary/basic education has to be qualitative and for that, trained teachers are required. The Legislature in its wisdom after consultation with the expert body fixes the eligibility for a particular discipline taught in a school. Thus, the eligibility so fixed requires very strict compliance with and any appointment made in contravention thereof must be held to be void”*.

44. The NCTE, being the Academic Authority authorized by the Central Government by virtue of Section 23(1) of the RTE Act, prescribed the minimum qualification for recruitment as teachers for Classes I to VIII. The language used in proviso to Section 23 of the RTE Act, 2009 is very clear that teacher who, at the commencement of the Act, does not possess minimum qualification, as laid down under sub-section (1), shall acquire such minimum qualification within a period of five years. The period of five years was initially granted by the Act / statute in order to enable the existing teachers, who were already in service at the commencement of the Act, to acquire such minimum qualification of pass in TET and also in circumstances



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where a State not having adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under Sub-Section (1) are not available in sufficient numbers. Even the RTE Rules, 2011 framed by the State Government also emphasised that all teachers in schools are required to acquire such minimum qualification within a period of five years from the commencement of the Act i.e., 31.03.2015. The Government of Tamil Nadu have also issued G.O.Ms.No.181, School Education Department dated 15.11.2011, making the TET compulsory and designated Teachers Recruitment Board as the nodal agency for conducting TET and for recruitment of teachers. Subsequently, vide RTE Amendment Act, 2017, the period to acquire the minimum qualification was extended for a further period of 4 years i.e., within 31.03.2019. The intention of the Central Government is to ensure strict enforcement of Section 23 of the RTE Act, 2009 and therefore, they have declined to grant further extension of time sought for by the State Governments for completion of TET by teachers, vide communication of the Under Secretary to Government of India, Ministry of Human Resource Development, Department of School Education and Literacy, dated 27.02.2019.



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45. In the light of the above narration and taking note of the factual background, the legal provisions spelling out the intention of the legislature, the effect of the subordinate legislation pursuant thereto, the inescapable conclusion would be that every teacher whether Secondary Grade or B.T. Assistant, whether appointed by direct recruitment or promotion in the case of BT Assistant, whether initially appointed prior to the RTE Act, NCTE amended notifications or appointed thereafter, must necessarily possess/acquire the eligibility of a pass in TET. The only allowance to those appointed prior to the RTE Act 2009 is that they have been given five years initially and another four years from 01.04.2015 to acquire the eligibility of pass in TET. Therefore, the claim that Secondary Grade Teachers appointed prior to the commencement of the Act and notifications will now be eligible for promotion to the post of BT Assistant without passing TET, cannot be countenanced in the light of the above analysis.



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46. In view of the discussions made in the foregoing paragraphs, it is crystal clear that as per RTE Act, 2009, RTE Amendment Act, 2017, RTE Rules, 2011 and the Notifications of NCTE, TET is mandatory for all the teachers, who are in service on the date of commencement of the Act. In the light of the earlier decision of this Court in ***K.Vasudevan's case [W.P.Nos.28284 of 2022 etc., batch dated 07.04.2022]*** as well as the order dated ***19.10.2022 made in Rev.Appl.(Writ) No.131/2022***, teachers, who do not possess the minimum qualification of pass in TET are not entitled to continue in service in the schools/educational institutions. While that being so, the claim of the petitioners in W.P.No.19587 of 2022, who are seeking promotion to the post of B.T. Assistants and Headmasters in High Schools, is liable to be rejected. This Court finds some force in the contention of the petitioner in W.P.No.17895 of 2022 and therefore, the impugned notification of the second respondent to conduct promotion counselling is liable to be quashed.

47. In the light of the reasons assigned above and the decisions cited supra, the impugned proceedings of the second respondent in



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Na.Ka.No.35593/C2/E2/2022 dated 30.06.2022 and 11.07.2022 are quashed.

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The respondents are directed to proceed with the promotion counselling by issuing fresh notification for promotion to the post of B.T. Assistants and Headmasters in High Schools from among qualified teachers, who possess the minimum eligibility criteria of pass in TET, in the light of Section 23 of the RTE Act, 2009, Rule 16 of the RTE Rules, 2011 and the corresponding communications between the Central and State Government dated 30.01.2019 and 27.02.2019 and complete the entire process of promotion counselling as early as possible.

48. In view of the above directions, ***W.P.No.17895 of 2022 stands allowed and consequently, W.P.No.19587 of 2022 stands dismissed.*** No costs. Consequently, connected miscellaneous petitions are closed.

49. This Court place it on record the valuable service rendered by Mrs.Kavitha Rameshwar, learned Amicus Curiae who took efforts to render necessary assistance to this Court.

20.10.2022

Index : Yes / No

Internet : Yes / No



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To

1. The Principal Secretary to Government,
School Education Department,
Secretariat, Fort St. George, Chennai-600 009.
2. The Commissioner of School Education,
DPI Campus, College Road, Chennai-600 006.
3. The Director of School Education,
Chennai Central District,
DPI Campus, College Road, Chennai-600 006.
4. The Secretary,
The Union of India,
Ministry of Education, 124-C, Shastri Bhawan, New Delhi-110 001.



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D.KRISHNAKUMAR. J

Jvm

Common Order in
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20.10.2022