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W.P.Nos.27830 of 2017 and



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.27830, 27831, 27832, 27833,
27834 and 27835 of 2017

and

W.M.P.Nos.29823, 29824, 29826, 29827, 29828, 29829, 29830,
29831, 29832, 29833, 29834, 29835, 29836, 29837,
29838, 29839, 29840 and 29825 of 2017

W.P.No.27830 of 2017:

K.Bhuvaneswari

..

Petitioner

Vs.

1. The Principal Secretary / The State Project Director
SarvaSikshaAbiyan (SSA), Chennai - 600 006.
2. The Additional Chief Educational Officer (SSA)
Cuddalore, Cuddalore District.

3. The Secretary
Sudha Sanmarga Nilayam
Mazhavandhangal, Cuddalore District.

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Respondents

Prayer in W.P.No.27830 of 2017 : Writ Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned advertisement / notification published in the Tamil Daily Dhinamalar on 11.08.2017 and quash the same as illegal and consequently direct the respondents to permit the petitioner to continue in service as B.T.Assistant upto 31.03.2019 without passing the TET.



For Petitioner
(All Wps)
For Respondents
(All Wps)

: Mr.G.Vijayakumar
: Mrs.S.Mythreye Chandru
Special Government Pleader
for respondents 1 and 2

No Appearance
for respondent 3

COMMON ORDER

W.P.No.27830 of 2017:

The relief sought for in the present writ petition is for a direction to direct the respondents to permit the writ petitioner to continue as B.T. Assistant in the minority aided school upto 31.03.2019.

2. The writ petitioner states he was recruited as a Graduate Teacher in Tamil and posted at Kasthurba Gandhi Baliga Vidyalaya Residential School 22.08.2013. The third respondent is the NGO Administrator looking after the residential school. The third respondent published a impugned notification in the Tamil Daily Dhinamalar on 11.08.2017 for recruitment of teachers who have cleared Teachers Eligibility Test (TET). The Central Government has stated that passing of TET is extended up to 31st March 2019 to continue in service as B.T. Assistant. Thus, the petitioner is constrained to move the present writ petition.

3. Pursuant to the interim order, a temporary approval to continue in



service was granted subject to the final orders to be passed in the present writ petition.

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4. The learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of *Paramathi Educational and Cultural Trust Vs. Union Of India and others*, reported in (2014) 4 MLJ 486 (SC) and further, relied on the judgment of the Hon'ble Division Bench of this Court in the case of *The Secretary to Government, Government of Tamil Nadu, Education Department, Fort St.George, Chennai – 6 and others Vs. S.Jeyalakshmi & another*, reported in [2016] (4) L.W.841 that Teachers Eligibility Test (TET) is not required as far as the Minority Aided Educational Institutions are concerned. In other words, it is contended that the Minority Schools are exempted from passing the Teachers Eligibility Test (TET).

5. Applicability of the Teachers Eligibility Test (TET), which is mandatory as per the NCTE Regulations for Minority Aided Educational Institutions, this Court elaborately considered the principles and the judgments of the Hon'ble Supreme Court of India including the Constitution Bench judgments in the case of *B.Manjula Vs. The District Elementary*



Educational Officer made in W.P.No.4511 of 2015 dated 18.08.2022.

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6. The learned counsel for the petitioner in support of his contentions relied on the judgment of the Hon'ble Division Bench of this Court in the case of ***The Secretary to Government, Government of Tamil Nadu, Education Department, Fort St.George, Chennai – 6 and others Vs. S.Jeyalakshmi & another***, reported in ***[2016] (4) L.W.841***, the Division Bench made the following observations:

“50. In the light of the above discussed cases, it is clear that the State can impose reasonable regulations on the minority institutions for protecting the larger interest of the State and the nation, but it should not destroy the minority character of the institutions. It is also not in dispute that the management of the minority Schools should be given freedom in the appointments of Teachers and there should not be any external controlling agency and the procedure for selection of Teachers should be evolved by the Management itself.

51. Now, we shall look at the intention of the Government while issuing G.O.Ms. No. 181, School Education (C2) Department, dated 15.11.2011. The intention is to ensure the quality of education imparted to the children and to maintain uniformity in teaching. In other words, G.O.Ms. No. 181 has been issued only to standardise the quality education imparted to children across the various



types of institutions. Thus, it is evident that the policy decision of the Government is not to compromise on the quality of Teachers, but to appoint quality Teachers and therefore, the same cannot be found fault with.

52. However, the Government, before issuing G.O. Ms. No. 181 dated 15.11.2011, lost sight of one important fact, namely imposition of a condition on the Teachers, who were appointed prior to the issue of G.O., in non minority and minority Schools, both aided and unaided, to qualify themselves with TET within a period of five years, in order to continue in service, would cause great hardship to them. Moreover, if the Teachers who have put in more number of years of service, could not pass TET within five years, their continuation in service would be in jeopardy. Further, it is seen that the percentage of pass in the TET examination conducted in 2012 and 2013 was very minimal.

56. We are, therefore, of the considered view that the Government may seek a clarification from the NCTE, in the light of what is stated in the preceding paragraph, whether the prescription of minimum qualification of TET can be made applicable prospectively for the Teachers who were appointed subsequent to the date of the issue of G.O., in both non minority and minority institutions and not retrospectively as the same would cause undue hardship to the Teachers who have been serving for a quite a long time.

58. In our opinion, non qualifying in TET by the



Teachers already in service should not defeat the object of the Government to provide quality and standard education and therefore, the Government may, in the alternative, conduct a refresher course and also some interactive sessions during annual vacation, in order to ensure and enhance the quality of education.

59. Insofar as minority institutions are concerned, the contention of the learned senior counsel appearing for the minority Schools is that when Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 received the assent of the President of India and it is still in force, it cannot be supplanted by an Executive Order, namely by G.O. Ms. No. 181 dated 15.11.2011. Further, the Apex Court has clearly held in Pramati Educational & Cultural Trust that RTE Act, 2009 is not applicable to the minority institutions. Therefore, we have no hesitation to hold that the right conferred under Article 30(1) of the Constitution cannot be abrogated. Consequently, G.O.Ms. No. 181 dated 15.11.2011, which was issued pursuant to the directions of NCTE, cannot be made applicable to the minority institutions.

60. In the light of the above, we are of the view that the Government cannot insist upon the minority institution, both aided or unaided, to abide by any Regulation framed under the provisions of the RTE Act. Therefore, we hold that G.O.Ms. No. 181, School Education (C2) Department dated 15.11.2011 issued by the Government of Tamil Nadu, is not



applicable to the minority institutions. Similarly, G.O. Ms. No. 76 dated 18.3.2015 issued by the Government of Puducherry, is also not applicable to the minority institutions.”

7. In the case of ***M.Ani Vs. The Government of Tamil Nadu, Rep.by its Additional Chief Secretary, The Department of School Education (C2) in order dated 21.04.2022*** in ***W.P.No.32873 of 2017***, the learned Single Judge also followed the judgment of the Hon'ble Supreme Court of India in ***Pramti Educational and Cultural Trust and Ors. vs. Union of India and ors., (2014) 4 MLJ 486 (SC)*** and based on the judgment passed in the case of ***M.Jayaraj Vs. Commissioner of School Education, Chennai and ors (W.P.No.23710 of 2021 dated 02.12.2021)***, directed the educational authorities to grant annual increments and other benefits to the Teachers. The annual increment in the above case was stopped as Teacher has not passed the Teachers Eligibility Test.

8. The learned counsel for the petitioner reiterated that subsequently, the Division Bench in the case of ***A.Firdose Begum Vs. The Secretary to Government, School Education Department***, reported in ***(2016) SCC Online Mad 26972*** also reiterated the principles laid down in the case of



S.Jeyalakshmi (cited supra). The Division Bench was of the opinion that a refresher courses and some interactive sessions to all the Teachers during actual vacation is to be conducted to improve the quality of Teachers. It is held that “Though the intention of the Government is that there should not be any discrimination among the Teachers working in non-minority Schools and minority Schools with respect to qualification and that there should be uniformity in the teaching imparted to the children, in view of the decision of the Apex Court in **Pramati Educational & Cultural Trust (cited supra)**, the Minority Institutions are to be exempted from passing of Teachers Eligibility Test”.

9. Another Division Bench of the High Court of Madras in the case of ***State of Tamil Nadu, Represented by its Secretary to Government and Others, Vs. P.Loveline and another***, reported in **(2019) SCC Online Mad 38097** also held that the view taken by the earlier Division Bench is to be followed based on the judgment of the Hon'ble Supreme Court of India in ***Pramati Educational & Cultural Trust (cited supra)***.

10. In the case of ***V.Mary Sneka Rita Vs. Chief Educational Officer and others***, reported in **(2020) SCC Online Mad 24514**, the learned Single



Judge of the Madras High Court followed the Division Bench of this Court and held that “*on perusal of the aforesaid judgment, it appears that the Teachers, who are working in the Minority Institutions are not required to qualify the TET examination. Therefore, the issue is no more res integra*”.

11. The petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Christian Medical College Vellore Association vs. Union of India and others***, reported in **(2020) 8 SCC 705**, wherein the Hon'ble Supreme Court considered the earlier judgments of the Hon'ble Supreme Court of India, regarding the rights of the minority institutions.

12. The learned counsel for the petitioner relied on the judgment of the High Court of Bombay at Goa in the case of ***Archdiocesan Board of Education and Another Vs. Goa University*** reported in **(2022) SCC Online Bom 1196**, wherein the rights of the Minority School Management are considered.

13. The learned Government Advocate appearing on behalf of the 1st and 2nd respondents objected the contentions raised by the writ petitioner by stating that, Kasthurba Gandhi Baliga Vidyalaya Residential School is



receiving grant-in-aid from the Government of Tamil Nadu. The said School Management being a Minority Institution has appointed the writ petitioner as B.T. Assistant on 22.08.2013 and the third respondent published a impugned notification in the Tamil Daily Dhinamalar on 11.08.2017 for recruitment of teachers who have cleared Teachers Eligibility Test (TET). The Central Government has stated that passing of TET is extended up to 31st March 2019 to continue in service as B.T. Assistant. Since the writ petitioner has not qualified in the Teacher Eligibility Test, the third respondent is not allowing the petitioner to continue his service. As per G.O.Ms.No.173, School Education (C2) Department dated 08.11.2011, passing of Teachers Eligibility Test is mandatory. Subsequently, another Government Order was issued in G.O.Ms.No.181, School Education (C2) Department dated 15.11.2011 and paragraph 4, which stipulates the condition for passing Teachers Eligibility Test. When the Government order was issued stipulating the condition that Teachers must pass the Teachers Eligibility Test conducted by the State Government, then it is to be followed by the School Management.

14. It is contended that as per the Right to Education Act 2009 Chapter - 4 Section - 23 Sub Section 1, passing the Teacher Eligibility Test is mandatory, but the person appointed by the Management is not qualified in



the Teacher Eligibility Test and the same was not refuted by the Writ Petitioner. The Writ Petitioner and the 5th respondent are well aware of the above rules and made an appointment contrary to the Government order in force, and approaching this court for a remedy, which is not tenable in the eye of law.

15. The [G.O.Ms.No.181](#) School Education (C2) Department, dated 15.11.2011 in paragraph No.4 runs as follows:

“However, with the passing of RTE Act, it is now mandatory for all the State Governments to recruit Secondary Grade and BT Assistants only by conducting Teacher Eligibility Test”.

Based on the Act and the Government order cited *supra*, the 4th respondent cannot accord approval for the appointment made by the management which is contrary to the rules in force.

16. The Government order was not something that came out of the blue, but was a sequel to Section 23(1) of the Right of Children to Free and Compulsory Education Act, 2009. The validity of the Act came under challenge before the Supreme Court in *Society for Un-aided Private Schools of Rajasthan V. Union of India [(2012) 6 SCC 1]*. The Hon'ble Apex Court



pointed out that the Right of Children is not only to receive education but right to have the quality of education. It was with a view to ensure quality in education, that the Teacher Eligibility test was prescribed. It is further submitted that as a matter of fact, in a decision which in *W.P.(MD)No.4478 of 2012 dated 14.12.2012 (Murugan V. Union of India)*, this Court had rolled out some statistics, that were shocking.

17. In any recruitment that took place after the year 2010, no appointment was made by the State Government to any of the Government Schools, of persons who had not passed the Teacher Eligibility Test. In [G.O.Ms.No.181](#) dated 15.11.2011, the contention that the Act gives a time limit of five years but it is restricted to the existing employees who are appointed before the issue of the said Government order and it will not enure to the benefit of a person who come into service after the Government Order was issued.

18. The contention of the Writ Petitioner that no rhyme or reason is not tenable. The principles of natural justice is followed strictly for the appointment in the Government and the writ petitioner cant seek exemption



from the process of law. Hence the acts of the respondents is strictly in accordance with law.

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19. The duty of the Government concerned to appoint a qualified teacher for the quality in education. Before passing any order the interest of the larger community to be borne in mind. In the instant case the Government has acted based on the interest of the larger community. It is submitted that the order of the respondents is in accordance with law. The writ petitioner has clearly flouted the Government order, by knowing the fact that all appointments after issuance of Government order No.181 requires passing of TET. Even in the Government schools, no Teacher is appointed after the issuance of Government order without passing TET.

20. It is to be noted that, a batch of writ petitions were filed before this Hon'ble High Court by various teachers contending that those teachers who were already in service need not pass the Teacher Eligibility Test. The above issue came to be decided by this Hon'ble High Court in a batch of writ petitions in W.P.Nos.28284 of 2021 etc., W.P.Nos.1813 of 2022 etc., dated 07.04.2022.



21. In the said judgment, this Hon'ble High Court noted that after the advent of Right of Children to Free and Compulsory Education Act, 2009 (in short RTE Act) the National Council for Technical Education (NCTE) appointed under Section 23(1) of the Act issued Notification dated 23.08.2010 describing educational qualification for teachers of Standard 1 to 8 which include passing of Teachers Eligibility Test (TET). Subsequently NCTE issued Notification dated 27.09.2011 imposing condition that passing of TET, conducted by appropriate Government has to be considered as one of the eligibility condition for appointment to the above post of teachers.

22. Consequently State Government issued G.O.Ms.No.181 School Education Department dated 15.11.2011 appointing Teachers Recruitment Board (TRB) as Nodal Agency to conduct TET and also make appointment to post of Secondary Grade Teachers based on TET. When the authorities insisted that TET Exam should be passed by all teachers, petitioners and others contended that the same cannot be insisted for teachers who are already in service. A pass in TET in the Exam was essential as per the NCTE guidelines issued in its Memorandum dated 11.02.2011. It is to be noted that in accordance with the guidelines framed by NCTE, the State Government had issued G.O.Ms.No.181 dated 15.11.2011 in which 5 ears time was



granted to the teachers in service to acquire the minimum qualification of TET. The various orders of this Hon'ble High Court granted time for the teachers to pass TET as one time opportunity.

23. It is to be pointed out that Section 23 of the RTE Act, 2009 initially granted time limit for a period of 5 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, 2009 extended the time for passing the TET Exam for a further period of 4 years from the date of commencement of the RTE Act.

24. Though the State Government vide letter dated 30.01.2019 sought for further extension for 2 years for completion of TET from the Ministry of Human Resource Development, Department of School Education and Literacy, Government of India the same was declined by the Government of India. Thereafter the Principal Secretary to Government, School Education Department, Chennai-9 vide letter dated 02.05.2019 that necessary action may be taken relating to teachers who have not acquired minimum qualification of TET.



25. When the above issue was contested before this Hon'ble High Court in the above said batch of writ petitions this Hon'ble High Court in the order dated 07.04.2022 in the above writ petitions observed that it is necessary to ensure that teachers with essential attitude 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. The Hon'ble High Court rejected the contentions of the writ petitioner and ordered that strict compliance of instructions by the Principal Secretary to Government, School Education Department dated 2.5.2019 failing which appropriate action shall be taken in accordance with law.

26. On the same lines of the above judgment another Judge of this Hon'ble High Court in W.P.No.19083 of 2019 dated 28.4.2022 was also pleased to hold that it is mandatory for the teachers to pass TET even though they have been appointed much prior to the RTE Act.

27. It is also pertinent to point out that this Hon'ble High Court in W.P(MD)No.19491 of 2013 by order dated 26.8.2019 has gone into the issue with regard to applicability of TET to minority institutions and after referring to various judgments of the Hon'ble Supreme Court held that “so far as the



statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal. The State or other controlling authorities, can always prescribe the minimum qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as a Teacher of an educational institution. If the argument that TET is not applicable to minority institution is accepted, then there will be clear discrimination arises among the teachers. The same is against Article 14 of the Constitution.”

28. It is submitted that the High Courts have followed the principle laid down by the Hon'ble Supreme Court of India. The Respondent gives below the references of certain judgments of Hon'ble Supreme Court including the judgments referred by this Hon'ble High Court in its order in W.P (MD)No.19491 of 2013:

- i) 2017 (1) SCC Pg.322 - V.Lavanya Vs. State of Tamil Nadu and others
- ii) 2008 (6) SCC Pg.1 - Ashoka Kumar Thakur Vs. UOI and others
- iii) TMA Pai Foundation Vs. State of Karnataka



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- iv) Civil Appeal No.5808 of 2017 - S.K.Md.Rafique Vs. Managing Committee, Contai Rahamania High Madrasah and others
- v) Writ Petition (C)No.416 of 2012 dated 06.05.2014 – Paramathi Educational and Cultural Trust Vs. UOI and others
- vi) Appeal (Civil) No.9595 of 2003 dated 21.08.2006 Committee of Management Kanya Junior High School Bal Vidya Mandir, Etah, UP Vs. Sachiv, UP Basic Siksha Parishad, Allahabad, UP and others
- vii) 04.04.1997 State of Bihar Vs. Syed Asad Raza and others
- viii) 1996 SCC (3) 15 Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Vs. State of Tamil Nadu and others
- ix) W.P.(Civil) No.1868 of 1980 ordered dated 06.12.1991 - Saint Stephen's College Vs. University of Delhi
- x) 1975 SCC (2) 283 - Gandhi Faizem College, Shahajahanpur Vs. University of Agra and another

29. The consistent stand of the Hon'ble Supreme Court of India and this Hon'ble High Court over the years on education has been consistent that the State has control on the educational institutions to prescribe the minimum qualification in the national interest, whether the institution is run by majority or the minority such a limitation must be read into Article 30. Any right under Article 19(1) (g) of the Constitution on India is subject to reasonable



restriction in terms of Clause 6 thereof. The right under Clause (1) of Article 30 is not absolute, but subject to reasonable restriction which, inter alia, may be framed having regard to public interest and national interest of our great Nation.

30. The excellence in education and interest of the student community at large and the development of State would depend on the educational standards in the State. The State cannot be allowed to compromise on the educational standards and the uniform standard with minimum qualification with all institutions including minority institutions both aided and unaided institutions. If the same is compromised the students and the State at large will be affected and it will also affect the growth of our great Nation. The right of the State to have overall control of the minimum educational qualification to be imparted in educational institutions including minority institutions cannot be whittled down.

31. The writ petitioner's contention that the State cannot interfere and lay down the minimum educational qualification for the teachers in minority institutions does not have any legal grounds. Further it has been settled by the Hon'ble Courts that all teachers who have been appointed before the



introduction of TET were given 9 years time to qualify for the same. Hence it cannot be argued at this point of time that the teachers in minority institutions who have not passed TET cannot be asked to clear the TET. For all the above said reasons the writ petition is devoid of merits.”

32. No doubt, two Division Benches of the Madras High Court formed an opinion that the Teachers appointed in Minority Institutions need not pass the Teachers Eligibility Test and they may be provided with a refresher course. Based on the Hon'ble Division Bench orders, some writ petitions are also decided in favour of the Teachers, who did not possess the Teachers Eligibility Test as per the Regulations issued by the National Council for Teachers Education, which was adopted by the Government of Tamil Nadu to maintain uniformity in educational standards.

33. Question arises, whether those judgments of the Division Benches and the judgments of the learned Single Judges of the High Court of Madras are running counter to the principles settled by the Hon'ble Supreme Court of India regarding the right of Minority School Management and in the matter of maintenance of educational standards and regulation of the standards of education uniformly in the State, so all the prescription of minimum



educational qualification for appointment of teachers.

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34. In the context of uniformity in standard of education, which is to be maintained by the State in public interest, this Court has to consider the scope of the Right to Education Act, 2009 [in short, 'RTE Act'] and the regulations issued by the National Council for Teachers Education and the consequential Government orders passed, adopting the regulations issued by the National Council for Teachers Education.

35. As per the Government orders issued in G.O.Ms.No.181, School Education Department dated 15.11.2011, as per the RTE Act, it is now mandatory for all the State Governments across the country to recruit Secondary Grade Assistant and BT Assistants only by conducting Teachers Eligibility Test. The standard of education is being maintained Nation wide based on the provisions of the RTE Act and the consequential Regulations issued by the National Council for Teachers Education based on the provisions of the RTE Act. The validity of the RTE Act was upheld by the Hon'ble Supreme Court of India in the case of ***Society for Un-aided Private Schools of Rajasthan Vs. Union of India***, reported in (2012) 6 SCC 1, wherein it is held that the Right of Children is not only to receive education



but right to have the quality of education. *With a view to ensure uniform standards in quality of education across the country, Teachers Eligibility Test was prescribed by the National Council for Teachers Education, which is bound to be adopted by all the States across the country. Accordingly, the Government of Tamil Nadu issued Government Order in G.O.Ms.No.181 dated 15.11.2011.*

36. The Hon'ble Supreme Court of India had taken a consistent view so also various High Courts across the country over the years that educational institutions have to prescribe the uniform minimum educational qualifications in the national interest, whether the institution is run by majority or the minority. Any right under Article 19(1)(g) of the Constitution of India is subject to reasonable restriction in terms of Clause 6 thereof. The right under Clause (1) of Article 30 is not an absolute one but subject to reasonable restrictions, which inter alia may be framed having regard to public interest and national interest of our great Nation. It is needless to state that every fundamental right under Chapter III of the Constitution of India is not absolute, but subject to reasonable restriction, which must be tested with the touchstone of the Constitutional Philosophy and Ethos. The development of the State depends on the educational standards in the State. There cannot be



any compromise on the educational standards, more so, uniformity in maintenance of standards with minimum educational qualifications, which is to be prescribed for appointment of Teachers in all educational institutions including the Minority Institutions, both aided and unaided Institutions, since such institutions are to be recognized by the State under the relevant provisions of the Act and Rules. Thus, the uniform standards in education and prescription of educational qualifications and to maintain non discrimination in the matter of appointment of Teachers in all educational institutions with reference to the standard of education. Under the guise of minority right, no minority institution can claim exemption from passing of the mandatory qualification of Teachers Eligibility Test.

37. Let us now consider the observations made by the Hon'ble Supreme Court of India with reference to the right of the Minority institutions to administer and with reference to the minimum educational qualifications prescribed by the State for appointment of Teachers in all institutions including the Minority institutions.

38 (a). In the case of *Sk.Md.Rafique Vs. Managing Committee, Contai Rahamania High Madrasah and Ors*, reported in



MANU/SC/0004/2020, the Hon'ble Supreme Court of India held as follows:

Article 30(1) gives two rights to the minorities,

(1) to establish and

(2) to administer, educational institutions of their choice.

The right to administer cannot obviously include the right to mal-administer. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable Regulations to ensure the excellence of the institutions to be aided.

Khanna, J. in his concurring opinion

Regulation which is designed to prevent maladministration of an educational institution cannot be said to offend Clause (1) of Article 30. At the same time it has to be ensured that under the power of making Regulations nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice.

Balance has, therefore, to be kept between the two objectives,



that of

- 1. ensuring the standard of excellence of the institution*
- 2. preserving the right of the minorities to establish and administer their educational institutions.*

Regulations which embrace and reconcile the two objectives can be considered to be reasonable. a law which interferes with a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution is void as being violative of Article 30(1). It is, of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers.

(b) In the case of *Secretary, Malankara Syrian Catholic College Vs. T.Jose and Ors*, reported in MANU/SC/5280/2006, the Hon'ble Supreme Court of India held as follows:

“19. The general principles relating to establishment and administration of educational institution by minorities may be summarized thus:

- (i) The right of minorities to establish and administer educational institutions of their choice comprises the following rights:*



a) To choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution;

b) To appoint teaching staff (Teachers/Lecturers and Head-masters/Principals) as also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees;

c) To admit eligible students of their choice and to set up a reasonable fee structure;

d) To use its properties and assets for the benefit of the institution;

(ii) The right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-à-vis the majority. There is no reverse discrimination in favour of minorities. The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation etc. applicable to all, will equally apply to minority institutions also.

(iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence.



*There can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. **Regulations made by the State concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non-teaching), regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30(1).***

(iv) Subject to the eligibility conditions/qualifications prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers/Lecturers by adopting any rational procedure of selection.

(v) Extension of aid by the State, does not alter the nature and character of the minority educational institution. Conditions can be imposed by the State to ensure proper utilization of the aid, without however diluting or abridging the right under Article 30(1).

20. Aided institutions give instruction either in secular education or professional education. Religious education is barred in educational institutions maintained out of State fund.



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These aided educational minority institutions providing secular education or professional education should necessarily have standards comparable with non-minority educational institutions. Such standards can be attained and maintained only by having well qualified professional teachers. An institution can have the services of good qualified professional teachers only if the condition of service ensures security, contentment and decent living standards. That is why State can regulate the service conditions of the employees of the minority educational institutions to ensure quality of education. Consequently, any law intended to regulate the service conditions of employees of educational institutions will apply to minority institutions also, provided that such law does not interfere with the overall administrative control of the managements over the staff.”

(c) In the case of ***State of Kerala Vs. Very Rev.Mother Provincial, reported in MANU/SC/0065/1970***, the Constitution Bench of the Hon'ble Supreme Court of India emphatically held as follows:

“9. The next part of the right relates to the administration of such institutions.

Administration means 'management of the affairs' of the institution.



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This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right.

10. There is, however, an exception to this and it is that the standards of education are not a part of management as such.

These standards concern the body politic and are dictated by considerations of the advancement of the country and its people. Therefore, if universities establish syllabi for examinations they must be followed, subject however to special subjects which the institutions may seek to teach, and to a certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the right of the State to regulate education, educational standards and allied matters cannot be denied.

The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management



must be left to them, they may be compelled to keep in step with others.

These propositions have been firmly established in the State of Bombay v. Bombay Education Society MANU/SC/0029/1954 : [1955]1SCR568 , The State of Madras v. S.C. Dorairajan MANU/SC/0007/1951 : [1951]2SCR525 , In re the Kerala Education Bill 1957 MANU/SC/0029/1958 : [1959]1SCR995 , Sidharajbhai v. State of Gujarat MANU/SC/0076/1962 : [1963]3SCR837 , Katra Education Society v. State of U.P. and Ors. [1966] 3 S.C.R. 728 Gujarat University, Ahmedabad v. Krishna Ranganath Mudholkar and Ors. [1963] Su 1 S. C. R. 112 and Rev. Father W. Proost and Ors. v. State of Bihar MANU/SC/0248/1968 : [1969]2SCR73 . In the last case it was said that the right need not be enlarged nor whittled down. The Constitution speaks of administration and that must fairly be left to the minority institutions and no more. Applying these principles we now consider the provisions of the Act.”

(d) In the case of *All Saints High School, Hyderabad and Ors Vs. Government of Andhra Pradesh and Ors*, reported in MANU/SC/0059/1980, the Three Judges Bench of the Hon'ble Supreme Court of India made the following observations:

“3. These decisions show that while the right of the religious and linguistic minorities to establish and administer



educational institutions of their choice cannot be interfered with, restrictions by way of regulations for the purpose of ensuring educational standards and maintaining the excellence thereof can be validly prescribed. For maintaining educational standards of an institution, it is necessary to ensure that it is competently staffed. Conditions of service which prescribe minimum qualifications for the staff, their pay scales, their entitlement to other benefits of service and the laying down of safeguards which must be observed before they are removed or dismissed from service or their services are terminated are all permissible measures of a regulatory character.

*As observed by Das C.J., in Re: Kerala Education Bill, (supra) "Right to administer cannot obviously include the right to mal-administer", and in the words of Shah J., in Rev. Sidhajibhai, (supra) "The right is subject to reasonable restrictions in the interest of efficiency of instruction, discipline, health, sanitation, morality, public order and the like". Hidayatullah C.J. said in Very Rev. Mother Provincial (supra) that **"Standards of education are not a part of management as such", that the "minority institutions cannot be permitted to fall below the standard of excellence expected of educational institutions" and that "the right of the State to regulate education, educational standards and the allied matters cannot be denied". Justice Jaganmohan***



Reddy, in D.A.V. College (supra) reiterated while upholding Clause 18 of the Guru Nanak University, Amritsar Act, 1961 that regulations governing recruitment and service conditions of teachers of minority institutions, which are made in order to ensure their efficiency and excellence do not offend against their right to administer educational institutions of their choice

27. Another important factor which has to be noticed is that the terms in which Article 30 is couched are absolute and unconditional as compared to Article 19 which is hedged in by reasonable restrictions which may be imposed by the State in public interest. Thus, in a way the fundamental right contained in Article 30 is more effective and wider than the fundamental rights contained in Part III of the Constitution. This, however, does not mean that the State is completely deprived of even the right to regulate the working of the minority institutions and to make rules in order to improve the standards of education imparted therein so as to achieve excellence and efficiency in the educational standards of these institutions. Regulatory measures cannot in any sense be regarded as placing restrictions or curbing the administrative autonomy of the institutions concerned. But care must be taken by the State to see that in passing regulatory measures it does not transcend its limits so as to interfere with the internal administration of the management of the institutions concerned so as to violate the spirit and policy of Article 30. The question of the scope



and ambit of Article 30 of the Constitution of India was very exhaustively considered as far back as in 1959 in Re: Kerala Education Bill (Supra). This case arose when the President of India called for the opinion of the Supreme Court on a Reference being made to it under Article 143(1) of the Constitution of India. The Reference was heard by 7 Judges of this Court out of which 6 of them excepting Venkatarama Aiyar, J. gave a unanimous opinion regarding various clauses of the Bill. The provisions of the Kerala Education Bill are not pari materia with the provisions of the Act with which we are concerned in this case, but this Court while delivering its opinion has laid down a number of salutary principles which throw a flood of light on the scope and interpretation of Article 30 of the Constitution of India.”

(e) In *Re The Kerala Education Bill, 1957 Reference under Article 143(1) of the Constitution of India, reported in AIR 1958 SC 956*, the Seven Judges Bench of the Hon'ble Supreme Court of India made the following observations:

"We have to reconcile between these two conflicting interests and to give effect to both if that is possible and bring about a synthesis between the two. The Directive Principles cannot ignore or override the fundamental rights but must, as we have said, subserve the fundamental rights. We have already observed that Article 30(1) gives two rights to the



minorities, (1) to establish and (2) to administer, educational institutions of their choice. The right to administer cannot obviously include the right to maladminister. **The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars.** It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided.

If the State grants aid to an educational institution, it must have the power to see that the institution is properly and efficiently run, that the education imparted therein is of the right standard, that the teachers possess the requisite qualifications that the funds are duly applied for the purpose of the institution and the like. In other words, the State must have large powers of regulation and of control over State-aided educational institutions. These powers must be liberally construed, and the decision of the legislature as to what they should be is not to be lightly interfered with, as it is presumed to know best the needs of the State the nature and extent of the evils rampant therein and the steps that should be taken to



remedy them. But the power to regulate does not, in general, comprehend the power to prohibit, and the right to control the affairs of an institution cannot be exercised so as to extinguish it."

(f) In the case of ***The Ahmedabad St.Xaviers' College Society and another Vs. State of Gujarat and another***, reported in 1974 1 SCC 717, the Hon'ble Supreme Court of India held as follows:

"It is permissible for the State to prescribe reasonable regulations and make it a condition precedent to the according of recognition or affiliation to a minority institution. It is not, however, permissible to prescribe conditions for recognition or affiliation which have the effect of impairing the right or the minority to. Establish and administer their educational institutions. Affiliation and recognition are not mentioned in Art. 30(1). The position all the same remains that refusal to, recognise or affiliate minority institutions unless the minorities surrender the right to. administer those institutions would have the effect of rendering the right guaranteed by Art. 30 (1) to be wholly illusory and indeed a teasing illusion. An educational institution can hardly serve any purpose or put to any practical utility unless it is affiliated to a University or is otherwise recognised like other educational institutions. The right conferred by [Art. 30](#) is a real and meaningful right. [Article 30\(1\)](#) was intended to have a real significance and it is not permissible



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to' construe it in such a manner as would rob it of that significance.

The argument that unless law is wholly destructive of the right of minorities under Art.30(1) it would not be liable to be struck down is untenable and runs counter to the plain language of Art.13. The law which interferes with the minorities' choice of a governing-body or management council would be violative of the right guaranteed by Art. 30 (1).

Section 33A which provides for a new governing body for the management of the college and also for selection committees as well as the constitution thereof should be quashed so far as the minority educational institutions are concerned because of the contravention of Art. 30(1).

The law which interferes with a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution is void as being violative of Art. 30(1).

(g) In the case of Board of ***Secondary Education Vs. Director of Public Instructions***, reported in 1998 8 SCC 555, the Hon'ble Supreme Court of India held as follows:

" The decisions of this Court make it clear that in the matter of appointment of the Principal, the management of a minority educational institution has a choice. It has been held that one of the incidents of the right to administer a minority educational institution is the selection of the Principal. Any rules



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which take away this right of the management have been held to be interfering with the right guaranteed by Article 30 of the Constitution. In this case, both Julius Prasad selected by the management and the third respondent are qualified and eligible for appointment as Principal according to rules. The question is whether the management is not entitled to select a person of their choice. The decisions of this Court including the decision in State of Kerala v. Very Rev. Mother Provincial, and Ahmedabad St. Xavier's College Society v. State of Gujarat, make it clear that this right of the minority educational institution cannot be taken away by any rules or regulations or by any enactment made by the State. We are, therefore, of the opinion that the High Court was not right in holding otherwise. The State has undoubtedly the power to regulate the affairs of the minority educational institutions also in the interest of discipline and excellence. But in that process, the aforesaid right of the management cannot be taken away, even if the Government is giving hundred per cent grant."

(h) In the case of *T.M.A.Pai Foundation & Ors. Vs. State of Karnataka, reported in 2002 8 SCC 481*, the Hon'ble Supreme Court of India held as follows:

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



*conditions of affiliation to an University or Board have to be complied with, but in the matter of day-to-day Management, like appointment of staff, teaching and non-teaching and administrative control over them, the Management should have the freedom and there should not be any external controlling agency. However, a rational procedure for selection of teaching staff and for taking disciplinary action has to be evolved by the Management itself. For redressing the grievances of such employees who are subjected to punishment or termination from service, a mechanism will have to be evolved and in our opinion, appropriate tribunals could be constituted, and till then, such tribunal could be presided over by a Judicial officer of the rank of District Judge. **The state or other controlling authorities, however, can always prescribe the minimum qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an educational institution.***

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State without interfering with overall administrative control of Management over the staff, Government/University representative can be associated with the selection committee and the guidelines for selection can be laid down. In regard to un-aided minority educational institutions such regulations, which will ensure a check over unfair practices and general welfare, of teachers could be framed.”



39. In the case of ***A.Amal Raj Vs. The State of Tamil Nadu, Rep.by***

its Secretary to Government, School Education Department in

W.P.(MD).No.19491 of 2013 dated 26.08.2019, the Madurai Bench of

Madras High Court held as follows:

"12. If the argument of TET is not applicable to minority institutions is accepted, then there would be clear discrimination arises amongst the teachers. On one hand the teachers in non minority institutions are facing a situation to lose job without TET, on the other hand the teachers in minority institutions are claiming salary, incentive increments and other service benefits without TET. The same is against Article 14 of the Constitution.

13.In view of the facts and circumstances that the writ petitioner has not passed the Teachers Eligibility Test. The order of cancellation of appointment is in accordance with the statutes as well as the regulations and the orders issued by the Government. Thus, there is no infirmity as such and accordingly, the writ petition is devoid of merit and stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

40. In the case of ***D.Kavitha Vs. The Director of Elementary***



Education, this Court passed an order **on 28.04.2022 in W.P.No.19083 of 2019** as follows:

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"11. It is not possible to accept the contention that the requirement to pass the TET could not be made applicable in the State of Tamil Nadu prior to G.O. (Ms) No. 181, School Education (C2) Department 15.11.2011 and G.O. (Ms) No. 90, School Education (Q) Department 28.03.2012 issued by the Government of Tamil Nadu. The said Governmental Orders which have been passed by the Government of Tamil Nadu for the sake of implementing the statutory mandate in Section 23 of the RTE Act along with the notification dated 23.08.2010 issued by the NCTE cannot be viewed in isolation so as to dilute the avowed object of improving the standards of education in larger public interest.

12. The appointment of the Petitioner as teacher in the School of the Fifth Respondent has been made on 25.04.2012 (which is after 23.08.2010) and there is nothing to show that it does not fall under the exempted category of cases where the process of appointment of teachers had been initiated prior to 23.08.2010 as stipulated in clause 5(a) of the notification dated 23.08.2010 issued by the NCTE. It is informed by the Respondents that the Petitioner has not passed the TET till the extended time which lapsed on 31.03.2019. There had been another TET conducted on 08.06.2019 and 09.06.2019 and the Petitioner has not passed the same even then. In such



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circumstances, the Petitioner is not entitled to the relief sought in the Writ Petition and the interim order granted earlier stands vacated with immediate effect.

41. In the case of ***K.Vasudevan Vs. The Principal Secretary to Government, School Education Department***, this Court considered the issues and delivered a judgment ***on 07.04.2022 in W.P.Nos.28284 of 2021 & etc.***, and the same reads as under:

"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.

(iv) It is open to the first respondent to seek appropriate remedy before the fifth respondent, if required."

42. The law laid down by the Hon'ble Supreme Court of India are the binding precedents and the spirit of those judgments are to be followed in the matter of prescription of educational qualifications by the State to maintain uniform standards for appointment of teachers in educational institutions both run by majority and minority. Discrimination in the matter of minimum educational qualifications prescribed at National Level would result in fall of standards in Educational Institutions and the Hon'ble Supreme Court, at no circumstances, held that the right of minority is to be extended, so as to dilute the maintenance of uniformity in educational institutions in the matter of appointment of Teachers. Thus, the different views adopted by the Division Bench and the learned Single Judges of the Madras High Court cannot be followed as a precedent as those line of findings and decisions are directly running counter to the rulings of the Hon'ble Supreme Court of India in many number of judgments, which all are cited in the aforementioned paragraphs.



Therefore, those judgments of the Madras High Court have denuded to loose its status as precedent and for all purposes, in the matter of prescription of minimum educational qualifications, the Government orders must be followed both by the majority and minority educational institutions and in the event of any violation, the State is empowered to initiate all further action under the provisions of the Act and Rules. It is made clear that passing of Teachers Eligibility Test is a mandatory qualification, which is prescribed Nation wide pursuant to the provisions of the RTE Act and based on the Regulations of the National Council for Teachers Education and the Teachers, who do not acquire the qualification of Teachers Eligibility Test, are not entitled for the appointment in educational institutions, whether minority or majority.

43. It is needless to state that any observations or judgments of the High Court running counter to the precedents laid down by the Hon'ble Supreme Court of India have denuded to loose its status as precedent. Thus, the ratio *decidendi* repeatedly reiterated in unequivocal terms by the Apex Court of India are to be followed in the matter of passing of the Teachers Eligibility Test (TET), which is the requisite qualification for appointment of teachers as per the regulations. Requisite qualifications cannot be dispensed with at any circumstances in favour of any Educational Institution, whether



minority or majority. Thus, the educational qualifications prescribed by the State pursuant to the regulations issued by the National Council for Teachers Education (NCTE) is to be scrupulously implemented for the purpose of considering the proposals for approval of appointment by Educational Authorities.

44. Thus, the petitioners are not entitled for the relief and consequently, the writ petitions stand dismissed. No costs. Connected miscellaneous petitions are closed.

29.09.2022

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Index : Yes / No

Speaking order / Non-Speaking order

To

1. The Principal Secretary / The State Project Director
SarvaSikshaAbiyan (SSA), Chennai - 600 006.
2. The Additional Chief Educational Officer (SSA)
Cuddalore, Cuddalore District.
3. The Secretary
Sudha Sanmarga Nilayam
Mazhavandhangal, Cuddalore District.



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W.P.Nos.27830 of 2017 and



S.M.SUBRAMANIAM, J.

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W.P.Nos.27830, 27831, 27832, 27833,
27834 & 27835 of 2017 and
W.M.P.Nos.29823, 29824, 29826, 29827,
29828, 29829, 29830, 29831, 29832, 29833,
29834, 29835, 29836, 29837, 29838,
29839, 29840 & 29825 of 2017

29.09.2022