



W.P. (MD) No.11317/2022

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BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Reserved on	Pronounced on
28.02.2023	29.03.2023

CORAM

**THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR. JUSTICE M.DHANDAPANI**

**W.P. (MD) NO.11317 OF 2022
AND
W.M.P. (MD) NO.8078 OF 2022**

P.Meenatchi

.. Petitioner

- Vs -

1. The State of Tamil Nadu
Rep. by its Principal Secretary
Department of School Education
Fort St. George, Chennai – 09.
2. The Director of Elementary Education
Directorate of Elementary Education
Chennai – 06.
3. The District Elementary Education Officer
Virudhunagar, Virudhunagar District.
4. The Chairman
Teachers Recruitment Board
EVK Sampath Maligai
DPI Compound, College Road
Chennai – 06.

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus forbearing the respondents from compelling the petitioner to acquire a pass in Teacher Eligibility Test (TET) for continuance in the post of Secondary Grade Teacher at Kammavar Ramanujar Middle School, Chinnapuliyampatti, Aruppukkottai, Virudhunagar District 626 101, by taking note of the appointment on 10.11.2010 prior to issuance of G.O. Ms. No.181, School Education, dated 15.11.2011.

For Petitioner : Mr. R.Murugappan

For Respondents : Mr. S.Saji Bino, Spl. GP for RR-1 to 3
Mr. V.R.Shanmuganathan
Std. Counsel for R-4

ORDER

M.DHANDAPANI, J.

G.O. Ms. No.181, School Education dated 15.11.2011, which mandates acquiring of certificate in the Teacher Eligibility Test (for short 'TET') as a mandatory requirement for the purpose of continuance in the post of Secondary Grade Teacher, in consequence of the notification of NCTE dated 23.8.2010 pursuant to the Right of Children to Free and Compulsory Education



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Act, 2009 (for short 'the Act'), the petitioner has filed the present petition for a direction to the respondents not to compel the petitioner to acquire the said certificate as the same cannot be said to be mandatory insofar as teachers, who have been in service prior to the enactment of the Act.

2. When the matter was listed for hearing on 14.9.2022 before one of us, viz., G.R.Swaminathan, J., finding divergence in view with the orders passed by the coordinate Benches of this Court, with regard to the acquiring of certificate in TET for the purpose of appointment/continuance as teacher in elementary school, observed as under :-

"2. When the matter was taken up for hearing, the learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that the writ petition may have to be dismissed in view of the order dated 07.04.2022 made in W.P.No.28284 of 2021 etc., batch. A learned Judge had framed the following issue:-

8. The point for consideration is whether the petitioners/teachers, who did not possess the minimum qualification of pass in TET as per RTE Act, 2009, prior to the date of commencement of RTE Act, 2009, are entitled to annual increments and to continue in service as Teachers?

After discussing the proviso to Section 23(2) of the RTE Act, the learned Judge concluded as follows:-



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“20. The fact remains that despite lapse of many years ie., 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 ie., within 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.”

3. It is true that this Judgment is squarely against the writ petitioner. But the learned counsel appearing for the writ petitioner submitted two contra decisions by two other Hon'ble Judges of this Court supporting his stand. Vide order dated 23.09.2019 in W.P. (MD)Nos.8168 & 8169 of 2017, a learned Judge had held as follows:-

“6. The issue whether a person who was appointed as B.T.Assistant prior to the issuance of G.O.Ms.No.181, can be compelled to acquire a pass in TET Examination, is no longer res integra. The amended notification issued by the NCTE makes it very clear that the qualification of TET is mandatory only from 29.07.2011. The Division Bench of this Court, in a batch of writ petitions, has considered these



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issues and held that the respondents cannot compel the teachers similarly place like petitioners to pass in TET examination.”

Another Hon'ble Judge of this Court vide order dated 08.03.2019 in W.P. (MD) Nos.5626 of 2017 etc., batch had also held that the petitioners who were appointed prior to the cutoff date ie., 27.09.2011 are entitled to seek exemption from acquiring TET qualification. The order made in W.P.Nos.28284 of 2021 etc., batch has been followed in W.P.(MD)No.27119 of 2019, dated 27.04.2022. Another Hon'ble Judge of this Court vide order dated 11.11.2021 in W.P.(MD)No.131 of 2018 had taken the view which supports the writ petitioner's contention.

4. In view of these conflicting decisions, it is only just and proper that the matter is authoritatively decided by a larger Bench. Registry is therefore directed to place the papers before the Hon'ble Administrative Judge to take a call in this regard.”

3. Pursuant to the aforesaid direction, Registry had placed the matter before the Hon'ble Administrative Judge for suitable orders, whereupon, orders were passed by the Hon'ble Administrative Judge to place the matter before the Hon'ble Acting Chief Justice for necessary orders, whereinafter, upon the directions of the Hon'ble Acting Chief Justice the matter is listed before us.



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4. This Court perused the various orders, which had expressed divergent views with regard to the necessity to acquire TET certificate for the purpose of appointment/continuance as teacher of elementary school and heard the submissions advanced by the learned counsel appearing on either side in this regard.

5. Pre-2009, more particularly, prior to the publication of the Act in the Government Gazette on 27.08.2009, acquiring of TET certificate anti-thesis for being appointed to the post of teacher in Classes I to VIII, viz., elementary schools. However, subsequent to the enactment and the Act, which came into force in the State of Tamil Nadu on 01.04.2010 and also NCTE being nominated as the academic authority for the purpose of prescribing minimum qualification of teachers by virtue of Section 23 of the Act and the Rules framed thereunder, G.O. Ms. No.181 came to be issued by the Government prescribing a pass in TET as a condition for being appointed/continuance as teacher in the elementary schools.



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6. The purpose of enactment of the Act was to strengthen the social fabric of democracy through providing of equal opportunities in education to all children, which finds its imprint in the Directive Principles of State Policy, which provides for compulsory education to all children upto the age of fourteen years. In spite of many dropouts of children from disadvantaged and marginalized groups and also the weaker sections of the society, the quality of education imparted also not being entirely satisfactory even in case of children who have completed elementary education, the special enactment sought to bridge the said gap between all sections of society, irrespective of the schools in which the children are imparted education. With the laudable object in mind, as envisaged aforesaid, the Act, a comprehensive one, contains very many provisions, which flaunts at the vision with which the Act has been enacted keeping in mind the interest of the child.

7. Section 3 of the Act prescribes the right of a child to free and compulsory education. Contained therein, in sub-section (1), that every child of age six to fourteen years including children from disadvantaged and weaker sections, as defined u/s 2 (d) and (e) would have the right to free and



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compulsory education in a neighbourhood school till the completion of elementary education.

8. Section 6 of the Act prescribes the duty of the appropriate Government and Local Authority for establishment of a school within the limits of neighbourhood as may be prescribed, where such a school is not so established and *such establishment shall be made within a period of three years from the commencement of this Act.*

9. Section 7 pertains to sharing of financial and other responsibilities between the Central and State Government, which have been clothed with concurrent responsibility for the purpose of providing funds for carrying out the provisions of the Act. Sub-section (6) to Section 7 contains, in specific, the duties of the Central Government and the same is quoted hereunder for ready reference :-

“7. Sharing of financial and other responsibilities :- (1)

.....

(6) The Central Government shall –

(a) develop a framework of national curriculum with the help of academic authority specified under section 29;



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(b) develop and enforce standards for training of teachers;

(c) provide technical support and resources to the State Government for promoting innovations, researches, planning and capacity building.”

(Emphasis Supplied)

10. Section 8 of the Act prescribes the duties of the appropriate Government to provide for free and compulsory elementary education to every child. The term “*compulsory education*” as contained in sub-section (a) means the obligation of the appropriate Government to provide free elementary education to every child of the age of six to fourteen year and also to ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years. Sub-section (g) of Section 8 pertains to the quality of elementary education to be provided which should conform to the standards and norms specified in the Schedule and sub-section (i) to Section 8 speaks of providing training facility for teachers.

11. Likewise, Section 9 prescribes the duties of the local authority, which is *pair materia* provision to Section 8. Sections 10 pertains to the duties



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of parents and guardian, while Section 11 deals with the prescription of provision of pre-school education by the appropriate Government.

12. Chapter IV pertains to the responsibilities of Schools and teachers. While Section 12 relates to the extent of school's responsibility for free and compulsory education, Section 13 pertains to no capitation fee and the screening procedure for the purpose of admission. Section 14 speaks of the proof of age for the purpose of admission and Section 15 mandates that there shall be no denial of admission to a child even beyond the extended period after the commencement of the academic year. Section 16 deals with examination and holding back in certain cases, while Section 17 deals with prohibition relating to physical punishment and mental harassment to a child.

13. Section 18 dealt with the establishment of school, which shall be only upon obtaining the necessary certificate of recognition from the appropriate authority after fulfillment of the conditions of recognition and that there shall be no contravention of the conditions pursuant to recognition in which event the prescribed authority is vested with power to withdraw the



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recognition by an order in writing. Section 19 deals with the fulfillment of norms and standards prescribed u/s 18 and sub-section (2) therein prescribes the time within which the norms and standards specified in the Schedule are to be fulfilled and failure to fulfil the same would result in withdrawal of recognition granted by invoking the power vested under sub-section (3) and sub-section (4) prohibits the school to be run upon withdrawal and sub-section (5) provides the penal consequences which would flow on a school being run without recognition or even after withdrawal of recognition. Section 20 clothes the Central Government with the power to amend the Schedule by adding or omitting the conditions that are to be complied with for the purpose of grant of recognition.

14. Section 23 deals with the qualifications for appointment and terms and conditions of service of teachers. The whole genesis of the present case revolves around the said section and, therefore, for better understanding and appreciation of the issue, the relevant provision is quoted hereunder :-

"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



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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.

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

15. Section 24 of the Act deals with the duties of teachers and redressal of grievances, the said section, in effect, deals more with the duty of the teachers in discharging their duties in relating to imparting education to the children and assessing their capabilities and interacting with the parents and guardians in appraising the state of the child with regard to the education.

Section 25 of the Act deals with Pupil-Teacher ratio, which would be as



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provided for in the Schedule, Section 26 relates to filling up of vacancies of teachers.

16. Chapter V pertains to curriculum and completion of elementary education of which Section 29 deals with the curriculum and evaluation procedure of the child. Chapter VI deals with the protection of right of children while Chapter VII deals with miscellaneous provisions, wherein Section 35 deals with the power of the Central Government to issue guidelines to the appropriate Government and the local authority for the effective implementation of the provisions of the Act. Section 38 deals with the power of the appropriate Government to make rules of which clause (l) and (m) of sub-section (2) of Section 38 relates to the salary and allowances payable to and the terms and conditions of service of teacher prescribed u/s (3) to Section 23 and the duties to be performed by the teacher prescribed under clause (f) of sub-section (3) of Section 24.

17. On a conspectus reading of the aforesaid provision, it clearly transpires that the Legislature, in its wisdom, has taken into consideration



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most of the possible eventualities that would creep in, in the effective implementation of the Act and had formulated broad and sweeping provisions, including power of the appropriate Government to frame rules with regard to determining the terms and conditions of service of teacher and also the salary and allowances payable to the teachers, which has resulted in the framing of Right of Children to Free and Compulsory Education Rules, 2010 (for short 'the Rules').

18. By virtue of powers conferred u/s 38 of the Act, the Right of Children to Free & Compulsory Education Rules, 2010, was enacted, which has come into force on 9.4.2010 upon its publication in the Government Gazette on even date. Part VI deals with 'Teachers' and Rule 17 therein prescribes the minimum qualifications and for better appreciation, the said rule is quoted hereunder :-

***"17. Minimum Qualifications :-** The Central Government shall, within one month of the appointed date, notify an academic authority for laying down the minimum qualifications for a person to be eligible for appointment as a teacher.*

(2) The academic authority notified under sub-rule (1) shall, within three months of such notification, lay down the minimum



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qualifications for persons to be eligible for appointment as a teacher in an elementary school.

(3) The minimum qualifications laid down by the academic authority referred to in sub-rule (1) shall be applicable for every school referred to in clause (n) of Section 2."

19. Rule 18 deals with relaxation of minimum qualifications and the same is quoted hereunder for better appreciation :-

"18. Relaxation of minimum qualifications. —

(1) The State Government and the Union territory shall, within six months from the commencement of the Act, estimate the teacher requirement as per the norms in the Schedule for all schools referred to in clause (n) of section 2.

(2) Where a State Government or a Union territory does not have adequate institutions offering courses or training in teacher education, or persons possessing minimum qualifications as notified in sub-rule (2) of rule 17 are not available in sufficient numbers in relation to the requirement of teachers estimated under sub-rule (1), the State Government or the Union territory shall request within one year of the commencement of the Act, the Central Government for relaxation of the prescribed minimum qualification.

(3) On receipt of the request referred to in sub-rule (2), the Central Government shall examine the request of the State Government or the Union territory and may, by notification, relax the minimum qualifications.



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(4) The notification referred to in sub-rule (3) shall specify the nature of relaxation and the time period, not exceeding three years, but not beyond five years from the commencement of the Act, within which the teachers appointed under the relaxed conditions acquire the minimum qualifications specified by the academic authority notified under sub-section (1) of section 23.

(5) After six months from the commencement of the Act, no appointment of teacher for any school can be made in respect of any person not possessing the minimum qualifications notified in sub-rule (2) of rule 17, without the notification of relaxation referred to in sub-rule (3).

(6) A person appointed as a teacher within six months of the commencement of the Act, must possess at least the academic qualifications not lower than higher secondary school certificate or equivalent."

(Emphasis Supplied)

20. Rule 19 deals with the acquiring of minimum qualification by the teachers so appointed in the schools and the same is quoted hereunder :-

"19. Acquiring minimum qualifications. —

(1) The State Government and the Union territory shall provide adequate teacher education facilities to ensure that all teachers in schools referred to in sub-clause (i), and schools owned and managed by the Central Government or the State Government or Union territory or local authority under sub-clause (iii), of clause (n)



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of section 2, who do not possess the minimum qualifications laid down under sub-rule (2) of rule 17 at the time of commencement of the Act, to acquire such minimum qualifications within a period of five years from the commencement of the Act.

(2) For a teacher, of a school referred to in sub-clauses (ii) and (iv) of clause (n) of section 2, and of a school referred to in sub-clause (iii) of clause (n) of section 2 not owned and managed by the Central Government, State Government or Union Territory or local, who does not possess the minimum qualifications laid down under sub-rule (2) of rule 17 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.”

21. Pursuant to the aforesaid rule, which deals with the minimum qualifications, which is required for the purpose of appointment/continuance as a teacher, in a school, on the National Council for Teacher Education (for short ‘NCTE’) being appointed as the academic authority as per Section 23 of the Act to prescribe the minimum qualification for the purpose of being eligible for appointment as a teacher in Class I to VIII in a school referred to in clause (n) of Section 2 of the Act, Notification dated 23.8.2010 has been issued which prescribed the following minimum qualifications :-



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"1. Minimum Qualifications :-

(i) Classes I – V

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2 year Diploma in Elementary Education (by whatever name known)

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2 year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure) Regulations, 2002

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 year Bachelor of Elementary Education (B.El.Ed)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2 year Diploma in Education (Special Education)

AND

(b) Pass in the Teacher Eligibility Test (TET) to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

(ii) Class VI – VIII

(a) B.A./B.Sc. and 2 year Diploma in Elementary Education (by whatever name known)

OR



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B.A./B.Sc. with at least 50% marks and 1 year Bachelor in Education (B.Ed.)

OR

B.A./B.Sc. with at least 45% marks and 1 year Bachelor in Education (B.Ed.) in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 year Bachelor in Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 year B.A./B.Sc. Ed or B.A./B.Sc. Ed.

OR

B.A./B.Sc. with at least 50% marks and 1 year B.Ed. (Special Education)

AND

(b) Pass in the Teacher Eligibility Test (TET) to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

(iii)



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22. From the above, it is evident that NCTE had, way back on 23.08.2010, fixed the minimum qualifications for the purpose of appointment of teacher or for the continuance of a teacher in the elementary schools. Therefore, what flows from the above notification is that for a teacher to be appointed or for a teacher to continue in the post of B.T. Assistant, it is necessary that the said individual has to fulfill the minimum qualifications as aforesaid, which includes a pass in TET conducted by the appropriate Government.

23. On the heels of the aforesaid prescription of qualification, the Government of Tamil Nadu, vide G.O. Ms. No.181, School Education dated 15.11.2011, while affirming acquiring of TET qualification as a mandatory prescription following the directions of NCTE in its notification dated 23.08.2010, has further appointed the Teachers Recruitment Board as the Nodal Agency for conducting TET and recruitment of teachers and also the process in and by which the selection process has to be conducted. The above prescription of TET as a necessary qualification mandated in the abovesaid



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Government Order has been the outflow from the notification issued by NCTE dated 23.8.2010.

24. The above notification of NCTE dated 23.8.2010 emanates on the basis of Rule 17, which rules were framed by invoking the powers vested on the appropriate Government u/s 38 of the Act. Rule 17 had given sweeping powers to the Government to notify the academic authority, which has resulted in NCTE being appointed as the academic authority for laying down the minimum qualifications for being eligible for appointment as teacher. The minimum qualification of acquiring TET prescribed in the notification of NCTE dated 23.8.2010, which has resulted in the issuance of G.O. Ms. No.181, School Education Department dated 15.11.2011, forms the fulcrum of the Government Order, which seeks to enforce a certificate in TET as minimum qualification for the purpose of appointment/continuance as a teacher in an elementary school.

25. While TET has been held to be a mandatory qualification for the purpose of continuance and appointment as a teacher in the order dated



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7.4.2022 in W.P. No.28284/2021, etc. batch, however, it is in stark contradiction to the earlier orders dated 23.09.2019 in W.P. (MD) Nos.8168 & 8169/2017 and W.P. (MD) Nos.5656 of 2017, etc., batch, wherein TET has been held to be not mandatory qualification in respect of teachers, who were appointed prior to issuance of G.O. Ms. No.181. The said decision holding TET has relied on a decision passed by the Division Bench of this Court in W.A. No. 1126 of 2016, etc., batch, dated 24.01.2017. However, a cursory perusal of the order in W.P. Nos.28284/20121, etc., Batch, has also relied upon the said order to hold TET to be a mandatory qualification.

26. Therefore, it becomes necessary for this Court to consider the relevant provisions of law, viz., Section 23 of the Act and Rules 17 and 18 of the Rules, which have a bearing on the issue for this Court to decide whether qualification of TET is mandatory or not. However, before entering into the said realm, it is necessary for this Court to have a bird's eye view of the manner in which the divergent views have been arrived at by the coordinate Benches.



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Decisions on TET qualification as being mandatory :

I.Vasudevan – Vs – Prl. Secretary to Government & Ors.

(W.P. No.28284/2021, etc. Batch – Order Dated 24.3.2022)

27. The aforesaid petitions were filed for a direction to the respondents to sanction annual increment to the petitioners therein in the post of B.T. Assistants as well as incentive increment for having acquired post-graduation without reference to passing TET. The pivotal issue in the said case related to the appointment of the petitioners therein, who were appointed prior to 2011, which is prior to issuance of G.O. Ms. No.181, School Education Department, dated 15.11.2011. The point that fell for consideration in the aforesaid case was *whether the petitioners/teachers, who did not possess the minimum qualification of pass in TET as per RTE Act, 2009, prior to the date of commencement of RTE Act, 2009, are entitled to annual increments and to continue in service as teachers.*

28. In the said decision, the notification dated 29.7.2011 of NCTE, which amended the earlier notification dated 23.8.2010 was taken into consideration, more especially clause (5) of the said notification. It is only in



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consequence of the aforesaid notification, G.O. Ms. No.181, School Education Department dated 15.11.2011 came to be issued. Further, the decision of the Division Bench in the case of ***State of Tamil Nadu & Ors. – VS – R.Arivazhagan & Anr. – W.A. Nos.1126 of 2015, etc., Batch***) was also taken into consideration, which appeal also related to G.O. Ms. No.181, wherein the Division Bench has given the following direction:-

“42. 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,”

29. The amendment to Section 23 of the Act was also noticed in the aforesaid decision by the Division Bench in and by which the proviso inserted thereto *“provided 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*



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years from the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017'.

30. The main ground on which the Division Bench arrived at its finding was on the ground that between 2013 and 2015, examination for TET was not conducted by the Teachers Recruitment Board, thereby disabling the aspirants to acquire the said qualification of TET. Therefore, as an one-time measure, one opportunity was directed to be given to such of those candidates for the purpose of passing the TET examination to continue in service, failing which it was categorically held that the said candidates have to quit the post.

31. It has also been adverted to in the said decision that the relaxation of further two years sought for by the State Government for completing TET by persons, who are in service, by invoking Rule 18 was rejected by the Central Government citing that it would not be possible to consider any request related to extension of deadline for training of untrained in-service elementary teachers. Falling in line, letter dated 2.5.2019 had been addressed by the Director of School Education to take necessary action relating to teachers, who



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have not acquired the minimum qualification prescribed under Section 23 of the Act. On the basis of the aforesaid materials and reasoning, the writ petitions were dismissed, which in essence is the sum and substance of the decision in W.P. (MD) No.27119 of 2019 dated 27.4.2022, which was delivered after the decision in *Vasudevan's case*.

Decisions on TET qualification as being not mandatory insofar as those who are in employment prior to the issuance of G.O. Ms. No.181 :

M.Maharani – Vs State of Tamil Nadu & Ors.

(W.P. (MD) Nos.5626 of 2017, etc. Batch – Order Dated 08.03.2019)

32. The aforesaid petitions were filed for a direction to forbear the respondents from insisting on the petitioners therein to pass TET as a condition mandatory for continuance in employment.

33. In the said petitions, the petitioners were sought to be divested of their posts, to which they have been appointed earlier in point of time to G.O. Ms. No.181 dated 15.11.2011, on their failing to obtain TET qualification, was assailed on the ground that neither the notification through which the said



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persons were nor while confirming their appointment, any condition was laid down that not obtaining TET qualification would result in the said persons being ousted from service and, therefore, the Government Order issued enforcing a condition, which does not form part of either the appointment notification or the approval of appointment, cannot be insisted by means of a Government Order, post their appointment.

34. In the backdrop of the above facts, in the said decision, it was has laid down as under :-

“9.From the aforesaid Government Orders and the decisions rendered by the Division Bench of this Court, it is manifestly clear that (i)TET shall be conducted by the Teachers Recruitment Board in accordance with the guidelines framed by the National Council for Teacher Education; it has prescribed a set of guidelines for the conduct of TET in the Annexure; it has also specified that the teachers working in unaided private schools are required to pass TET within a period of five years and the Secondary Grade Teachers should also pass TET forthwith, apart from the minimum qualifications; and further, it is mandatory for all the State Governments to recruit Secondary Grade and B.T. Teachers only by conducting a TET. (ii)As per the decision rendered by the Division Bench of this Court dated 24.08.2016, G.O.Ms.No.181 is not applicable to the minority institutions; and (iii)Another Division



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Bench of this Court in W.A.No.1126/2016 etc. batch, vide order dated 24.01.2017, held that the teachers, who have been appointed subsequent to the issuance of the G.O., were granted one opportunity to appear for the TET to be conducted by the Teachers Recruitment Board and in the event of their passing in TET, their appointments shall be approved, else they have no other option but to quit the service/ousted from service.

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 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



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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.”

35. On the aforesaid reasoning, a coordinate Bench held that the petitioners therein were entitled to seek exemption from passing TET as they were appointed prior to the cut-off date and the respondents therein were directed not to insist TET certificate from the petitioners as a condition for their continuance in service as B.T. Assistants. The aforesaid order, in sum and substance, has been adopted by another co-ordinate Bench in W.P. (MD) No. 6168 and 8169/2017 dated 23.9.2019.

36. As aforesaid, the divergence in view aforesaid, relating to the mandatoriness of acquiring a pass in TET as prescribed u/s 23 and Rules 17 and 18 framed thereunder, the present reference has been placed before us for an authoritative pronouncement.



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37. Before proceeding to analyse the various provisions of law which forms the basis of the divergent views, it is to be pointed out that *Arivazhagan's case*, has been taken into consideration in both the decisions, but to arrive at a divergent view, by giving different interpretations. Which of the interpretation would be a more harmonious and carries the legislative intent would be the guiding factor for this Court to come to a conclusion as to the correct interpretation of law that needs to be followed in the matter of acquiring TET certification.

38. In *Arivazhagan's case*, while the Division Bench dissected the various difficulties faced by the teachers in relation to the conduct of the Government not conducting TET exams between 2013 and 2015, as is necessary for continuance in the post, had passed the following directions :-

"43. 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,



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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 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.



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In the result, the writ appeals and the writ petitions are disposed of in the above terms. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed."

39. The above directions, read in continuity with the other portions of the order therein, would reveal that there is no positive direction to the effect that possession of a pass in TET is not a mandatory prescription for continuance in the post of B.T. Assistant. The directions are only to the effect that in respect of the teachers, more specifically therein, who were appointed subsequent to the issuance of the Government Order, one more opportunity was directed to be granted to enable the teachers to appear for the TET examination to be conducted by the Teachers Recruitment Board in view of non-conduct of TET exams between 2013 and 2015. In fact, there is a positive direction that in the event of the said petitioners therein not coming out successful in the exams, they would have no other option but to quit. Therefore, it is evident that in respect of teachers, who were appointed prior to the issuance of G.O. Ms. No.181, there is no direction with regard to their acquiring the requisite minimum qualification of TET, though the Court has made certain observations. However, the observations are passing references



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and that cannot be taken to be ratio laid down by the Court on the basis of the provisions of law.

40. Initially, this Court was a bit skeptical to take up the issue as the coordinate Bench in *Arivazhagan's case* was of equal composition, which had decided the issue, however, after going through the order, this Court, with due reverence, is of the considered view that there would be no embargo for this Court to take up the present case for the reason that the issue as raised in the present petition with regard to the mandatory nature of pass in TET for the purpose of appointment/continuance as a B.T. Assistant has not been the subject matter therein and, therefore, this Court proceeds to analyze the issue.

41. The Act was notified and came into force in the State of Tamil Nadu with effect from 1.4.2010. As already aforesaid, the Act has, in extenso, dealt with various dimensions relating to the education of children in elementary school right from their admission to curriculum to the quality of teachers and their qualifications and the teacher-pupil ratio and the imparting of adequate training to the teachers.



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42. From the provisions, which have been spelt out supra, it is evident that training has been made a continuous process even for teachers, who are already working by prescribing that necessary training should be provided to the teachers so that the slackness of the teachers should not make the students suffer in their academics. Even the participation of the parents have been brought into within the ambit of the Act so that the manner in which the education of the child is progressing is made known to the parents at regular intervals.

43. As per the mandate of the Act, NCTE was notified as the academic authority, on whom authority was cast upon to prescribe the requisite qualifications for the purpose of appointment of teachers and also for the teachers, who are in service.

44. Upon NCTE being notified as the academic authority u/s 23 (1) of the Act, in terms of sub-rule (2) of Rule 17, it was mandated that the said academic authority shall, within three months of the notification, lay down the



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minimum qualifications for the persons to be eligible for appointment as a teacher in an elementary school. Sub-rule (3) of Rule 17 further mandates that the minimum qualifications prescribed by the academic authority under the sub-rule (2) shall be applicable for every school referred to in clause (n) of Section 2 of the Act.

45. The above provision is the result of the mandate found in Section 23 of the Act, more particularly, sub-section (1) of Section 23. There is a clear prescription under Section 23 (1) that only such of those persons who are possessed of the minimum qualifications as laid down by the academic authority notified by the Central Government shall be eligible for appointment as a teacher. The provision u/s 23 (1) relates to prospective appointments, whereby it has been spelt out that only persons with the minimum qualifications as prescribed by the academic authority are entitled to be appointed as teachers.

46. However, the Parliament, in its wisdom, had, in sub-section (2) of Section 23, visualised the difficulty of the State to obtain teachers in



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possession of the said qualifications so prescribed and also taking into consideration the difficulty of the State in having adequate institutions offering courses or training in teacher education or teachers possessing minimum qualifications, had vested power with the Central Government to relax the minimum qualifications required for appointment as a teacher for such period not exceeding five years as may be specified in the notification. This was also with regard to prospective appointments.

47. However, insofar as the teachers, who have already been in service for long on the basis of the qualifications, as were prescribed at the relevant point of time when they were appointed, based on the education system that was prevalent then, the Act having been enacted for the purpose of making the education pattern uniform, so that there would not be inequality in education between the students studying in different types of educational institutions, provision was made to such of those teachers in service, at the commencement of the Act, who were not possessed of the minimum qualifications prescribed by the academic authority, to acquire such qualifications, prescribed u/s 23 (1) within a period of five years from the date



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of commencement of the Act. Therefore, while giving retrospective effect for the purpose of having the requisite qualifications, teachers in service were provided with a period of five years to acquire the requisite qualifications as prescribed by the academic authority. Therefore, not only the wisdom of the Parliament is writ large in the above provision, but the various affirmative and exhaustive provisions that have been painstakingly incorporated under the Act for the purpose of uplifting the education in the matter of students clearly shows that the inequality, which would have otherwise arisen had been sought to be nipped in the bud.

48. Though a time period of five years from the date of notification was provided under the Act for the teachers, who were in service, to acquire TET qualification, the time provided having found to be not adequate in the light of the fact that TET exams could not be conducted for a particular period of time for one reason or the other by various States, including the State of Tamil Nadu, where TET exams were not conducted between 2013 and 2015, the Amendment Act, 2017 was enacted, which came into force whereby the inequality between the teachers in service and the persons to be appointed



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pursuant to the Act was bridged with provision being made that in respect of every teacher appointed or in position as on 31st March, 2015, further period of four years was given from the date of commencement of the Amendment Act for the said persons to acquire the minimum qualifications. The said bridge was only for the purpose of creating equality between two sets of teachers so that the quality of education imparted to the students across the various schools is not hampered. Further, the Amendment Act had extended the period by another four years for those teachers, who were either appointed or in position as on 31st March, 2015, to acquire the minimum qualifications, keeping in mind the paucity of teacher training institutes or for that matter the non-conduct of exams by the Nodal Agency due to shortage of institutes to impart the teacher training education.

49. The avowed object with which the Act was enacted, notification was issued by NCTE prescribing the minimum qualifications for appointment/continuance of teachers in elementary schools, the Government Order in G.O. Ms. No.181 had come to be issued to give effect to the said notification.



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50. When the Act itself has taken care of the prospective candidates aspiring to become teachers by not only prescribing the minimum qualifications, but also mandating the State Government to take steps for creating adequate institutions for offering courses or training in teacher training education so as to enable the individuals to obtain TET qualification and further has equally taken due care with respect of the teachers, who are in service or appointed between the date of enactment of the Act and the notification issued by NCTE and also the Government Order in and by which the notification of NCTE was put in operation and also in respect of teachers appointed or in position as on 31st March, 2015, by giving them further period of four years from the date of the Amendment Act, 2017 to obtain the prescribed qualification, there cannot be said to be any infraction of equality between two sets of persons, viz., who are serving and who stand to be appointed pursuant to the enactment of the Act.

51. The issue now crops up for consideration, on the basis of the divergent view, expressed by co-ordinate Benches of equal strength is whether



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the prescription of TET is mandatory insofar as teachers, who have been appointed prior to the issuance of notification by NCTE or for that matter, the proposal for appointment having been started prior to the notification issued by NCTE dated 23.8.2010.

52. The Act came into force in the State of Tamil Nadu with effect from 1.4.2010 and it was published in the Gazette on 9.4.2010. As per the mandate under Rule 17, the academic authority so notified by the Central Government, within a period of one month from the appointed date, viz., 9.4.2010, for the purpose of laying down the minimum qualifications for a person to be eligible for appointment, shall, within a period of three months of such notification, lay down the minimum qualifications for persons to be eligible for appointment as a teacher in an elementary school. The notification of minimum qualification was issued on 23.8.2010 and there is no dispute with regard to the period within which the notification has been issued by the academic authority, viz., NCTE.



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53. Sub-section (2) of Section 23 of the Act, visualized a contingent situation, where the State is not possessed of adequate institutions to offer the courses or training in teacher education so as to make teachers possess the minimum qualifications, the Parliament, if deems fit, is empowered to relax the minimum qualification for a period not exceeding five years. The said scenario also visualizes persons, who are aspiring to become teachers to equip themselves to a pass in TET so as to fulfil the minimum qualification criteria. Further, the Parliament, in foresight, has also visualized the difficulties of persons, who have been functioning as teachers, at the time of commencement of the Act and who does not possess the minimum qualifications prescribed by NCTE, to acquire such minimum qualifications within a period of five years and to that effect a proviso clause has been appended to sub-section (2) of Section 23.

54. From a careful perusal of Section 23, it is implicitly clear that the acquiring of minimum qualification, including a pass in TET, is a condition mandatory for the aspirants, who want to become teachers and the teachers, who are already working, such of the persons have been given a period of five



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years to add to their armoury to acquire the qualification of TET so as to enable them to continue in the said post. In fact, considering the plight of the State Governments in not able to make the infrastructure available in the matter of creation of adequate institutions to offer the courses and train the persons in teacher education, the Amendment Act, 2017 came to be enacted, which provided that every teacher appointed or in position as on 31st March, 2015, who are not in possession of the minimum qualification, viz., a pass in TET, were granted further period of four years from the date of enactment of the Amendment Act to acquire the said qualification. The said Amendment Act came into effect through the Gazette notification dated 17.10.2017. Therefore, effectively, a period of nine years have been given to the persons, who have been working as teachers or who have been appointed as teachers prior to the notification prescribing the minimum qualification to acquire the requisite qualification so as to continue in service.

55. Be that as it may. The notification dated 23.8.2010 of NCTE prescribing the minimum qualification for appointment as teacher in elementary school, which is based on the provisions of the Act, mandates the



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academic qualification and in addition thereto, prescribes a pass in TET.

However, the main plank on which the said condition of a pass in TET is sought to be attacked is on the basis of clause (5) of the notification, wherein, it has been provided that where an appropriate Government or local authority or a school has issued an advertisement to initiate the process of appointment of teachers prior to the date of the notification, viz., 23.8.2010, such appointments may be made in accordance with the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (for short 'NCTE Regulations, 2001'). Therefore, it is the stand that teachers, who have been appointed prior to the notification or where process for appointment of teachers have been notified, it shall be in accordance with NCTE Regulations, 2001 and the prescription as found in Section 23 of the Act and Rule 17 frame thereunder would not be applicable to such of those appointments.

56. The interpretation that is sought to be given to a particular provision in consonance the legislative intent with which the said provision has been enacted should be the literary construction has been laid down by the



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Apex Court in **Hiralal Ratanlal & Ors. – Vs – State of UP & Ors. (1973 (1) SCC**

216). In the said context, the Apex Court held as under :-

“In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear. Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the so called proviso has substantially altered the main section. In Commissioner of Income-tax, Bombay City, Bombay v. Bipinchandra Maganlal & Co. Ltd., Bombay, . this Court held that by the fiction in Section 10(2) (vii) second proviso read with Section 2 (6C) of the Indian Income-tax Act, 1922 what is really not income is, for the purpose of computation of assessable income, made taxable income.

23. In *State of Rajasthan v. Leela Jain .*, this Court observed :

“The primary purpose of the proviso now under consideration is, it is apparent, to provide a substitute or an alternative remedy to that which is prohibited by the main part of Section 4(1). There is, therefore, no question of the proviso carving out any portion out of the area covered by the main part and leaving the other part unaffected. What.



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we have stated earlier should suffice to establish that the proviso now before us is really not a proviso in the accepted sense but an independent legislative provision by which to a remedy which is prohibited by the main part of the section, an alternative is provided. It is further obvious to us that the proviso is not coextensive with but covers a field wider than the main part of Section 4(1)."

24. In *Bihta Co-operative Development Cane Marketing Union Ltd. and Anr. v. Bank of Bihar and Ors.* . this Court was called upon to consider the Explanation to Section 48(1) of the Bihar and Orissa Co-operative Societies Act, 1935. Therein this Court observed :

"The question then arises whether the first Explanation to the section widens the scope of Sub-section (1) of Section 48 so as to include claims by registered societies against non-members even if the same are not covered by Clause (c)."

25. On the basis of the language of the Explanation this Court held that it did not widen the scope of Clause (c). But from what has been said in the case, it is clear that if on a true reading of an Explanation it appears that it has widened the scope of the main section, effect must be given to the legislative intent notwithstanding the fact that the legislature named that provision as an Explanation. In all these matters the courts have to find out the true intention of the legislature."

(Emphasis Supplied)



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57. From the above ratio it is clear that while construing a statutory provision, the rule of construction is to be a literary construction and so long as the provision is unambiguous and the legislative intent is clear from the said provision, no other aid is required to be taken to render any other construction and the Courts shall not widen the scope of the intent of the Legislature.

58. Rule 17 has been framed taking source from Section 23 of the Act, by be prescription of minimum qualification by the academic authority for a person to eligible for appointment/continuance as a teacher. Proviso to sub-section (2) of Section 23 has also taken into consideration the eventuality of a teacher in service, who does not satisfy the minimum qualifications mandated by the academic authority and to safeguard their interests, the Parliament, in its wisdom, had provided a period of five years for the persons to acquire pass in TET, which is the issue in the present case. When the Parliament, conscious of the fact that teachers in service, who would not be possessed of the minimum qualification prescribed by the academic authority upon enactment of a law, which should not result in their being thrown out of their services,



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had thought it fit to give breathing time of five years for such persons to obtain the said qualification, which period of five years stood further extended by another four years by Amendment Act, 2017, giving a finding that the said prescription u/r 17 would not stand attracted to the teachers, who are in service, irrespective of the proviso to Section 23 (2), which is clear and unambiguous, any other construction given to the said provision would be nothing but an overreach of the judiciary into the law making domain, which is not vested with the Judiciary by the Constitution.

59. A careful consideration of clause (5) of Notification of NCTE dated 23.8.2010, which prescribes that where process of appointment of teachers has been initiated prior to the notification, such appointments may be made in accordance with the NCTE Regulations, 2001, would only be construed to mean that while appointments can be made by the Government/Local Authority/the School in line with NCTE Regulations, 2001, however, it is only insofar as making of appointment on the relevant date. But of necessity, it does not mean that further NCTE prescriptions would not be applicable for such appointments. The relaxation by NCTE to follow NCTE Regulations, 2001,



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is only for the purpose of aiding the smooth functioning of the school so that the education of the children should not be affected for want of teachers pending the formulation of minimum qualification by the academic authority. It does not mean that the mandate u/s Section 23 of the Act and the Rules made thereunder need not be enforced for such appointments. If a construction, as given in the decision in *Maharani's case* is accepted, it would be nothing but this Court making Section 23 and Rule 17 made in consequence thereof otiose.

60. In ***Directorate of Film Festivals & Ors. – Vs - Gaurav Ashwin Jain & Ors. (MANU/SC/1778/2007)***, the Apex Court has dealt with the extent and power of the Courts to enter into the domain of the executive in relation to matters, which are policy decisions and in the said context, it was held as under :-

“14. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy. Nor are courts Advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the government is to check whether it violates the fundamental rights of the citizens or is



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opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review.

* * * * *

*20. When a grievance of discrimination is made, the High Court cannot just examine whether someone similarly situated has been granted a relief or benefit and then automatically direct grant of such relief or benefit to the person aggrieved. The High Court has to first examine whether the petitioner who has approached the court has established a right, entitling him to the relief sought on the facts and circumstances of the case. In the context of such examination, the fact that some others, who are similarly situated, have been granted relief which the petitioner is seeking, may be of some relevance. But where in law, a writ petitioner has not established a right or is not entitled to relief, the fact that a similarly situated person has been illegally granted relief, is not a ground to direct similar relief to him. That would be enforcing a negative equality by perpetuation of an illegality which is impermissible in law. The principle has been stated by this Court in **Chandigarh Administration v. Jagjit Singh (MANU/SC/0136/1995 : 1995 (1) SCR 126)** thus:*

“Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of



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discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law - indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law - but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it



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can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course - barring exceptional situations - would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a similar action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles."

In *Gursharan Singh v. New Delhi Municipal Committee* (MANU/SC/0313/1996 : 1996 (1) SCR 1154) , this Court observed:

"There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. To put it in other



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words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State I... so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuated an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in the process there has been a discrimination."

61. There has been no qualm from any quarter that there has been discrimination which squarely attracts Article 14 of the Constitution. As already aforesaid, the enactment has taken care of the prospective, the



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continuing as well as the retrospective cases and has catered to the need of all the segments. When the enactment, without discrimination has taken into account all the segments and given them the necessary time to equip themselves so as to fulfill the qualifications prescribed by creating a policy, merely because that policy is difficult for one segment of persons cannot be a ground to say that the said policy cannot be enforced on such persons, who were not guided by the said policy at the relevant point of time when they were appointed.

62. When the intent of the Parliament is very clear in giving a breathing space for the teachers in service to acquire the minimum qualification of a pass in TET and also the Amendment Act, 2017 giving yet another four years for the teachers appointed or in position as on 31st March, 2015, to acquire the minimum qualification, giving a finding that NCTE Regulations, 2001 in and by which the persons were appointed as teachers, the stand that no new prescription for their continuance in service could be mandated by NCTE by its Notification dated 23.08.2010 would be nothing but the Court trying to perpetuate an illegality by making an exemption from the rule insofar as the



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persons, who were in service prior to the enactment of the Act, when such exemption is not provided to the persons by the Act. Such a course adopted in the decision in *Maharani's case* is not only incorrect, but is against the statutory provision and this Court, as an arbiter, cannot add or subtract anything to the provision so long as there is no ambiguity in the said provision.

63. Further, the reason for insertion of clause (5) in the Notification of NCTE dated 23.8.2010 could be only inferred as a decision by NCTE not to stall the appointment process, in and by which teachers were to be recruited for the benefit of the students for want of the minimum qualifications as prescribed under the aforesaid notification, as the Act had provided the teachers in service a period of five years to acquire the qualification of a pass in TET. Therefore, the notification dated 23.8.2010, read in continuity with the Act and Rules would reveal a clear picture that where the process of appointment has started before the notification, the said process could be completed by following NCTE Regulations, 2001, but, thereafter, the persons so appointed, would fall under sub-section (2) to Section 23 and, therefore, necessarily the said persons should arm themselves with a pass in TET. In such



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a backdrop, the decision in *Maharani's case* cannot be termed to be the correct law laid down.

64. To arrive at the aforesaid decision in *Maharani's case*, recourse was taken to the decision of the Division Bench in *Arivazhagan's case*. A perusal of the said decision reveals that the Division Bench had spelt out the plight of the teachers, who were already working prior to the issuance of G.O. Ms. No.181, which is pursuant to the notification of NCTE dated 23.8.2010. However, in the said decision, the Division Bench had not touched the grey area of whether the condition imposed u/s 23 of the Act is mandatory or not. The order of the Division Bench only proceeds on the line that the non-conduct of TET exams even after the notification of NCTE dated 23.8.2010 liquidates the time, thereby disabling the teachers, who are in service on the date of the notification to acquire the said qualification. In fact, vide the said order, the mind of the Division Bench is clear, as it had held that insofar as the persons appointed subsequent to the issuance of G.O. Ms. No.181, direction was given to the Government to grant one more opportunity to the said persons to pass the TET exams failing which they would have to quit, which clearly falls in line

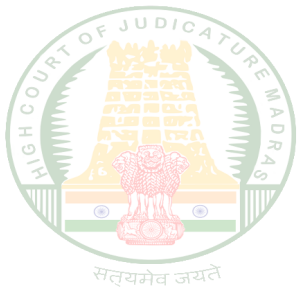


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with the mandate u/s 23 of the Act, circumscribing the view that TET is mandatory. Only a note of caution was given to the Government to conduct the TET exams regularly, else the persons, who were in service, would be greatly jeopardized. Thus, the Division Bench has clearly accepted the mandate that acquiring TET qualification is a mandatory qualification for the purpose of appointment/continuance as an elementary school teacher. Therefore, when even the decision of the Division Bench in *Arivazhagan's case* has clearly held that TET is mandatory, the erroneous interpretation of the said decision in *Maharani's case* cannot liquidate the mandate u/s 23 of the Act. This Court is of the firm and affirmative view that no exemption could be granted by the Government insofar as teachers, who were appointed prior to the notification of NCTE dated 23.8.2010, when the prescription of qualification is clear and specific and all the segments of teachers have been taken into account while enforcing the said qualification.

65. The import of the decision in *Arivazhagan's case* is that the Division Bench has held that TET exams were not conducted between 2013 and 2015 for more than three years, which cannot be put against the petitioners therein,



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had, by exercising its extraordinary jurisdiction, to avert any wrong being committed, had given one last chance to the petitioners therein to acquire TET qualification by directing the Government to give then one last chance to appear in the TET exams and come out successful and in the event of their failure, it was made clear that they would have to quit/ousted from service. The above direction of the Division Bench itself is clear that TET is a mandatory prescription and no exemption or relaxation is permissible.

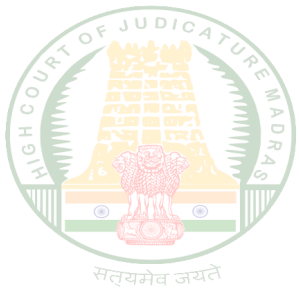
66. When the intent of the Parliament is clear that any teacher, irrespective of the person being in-service on the date of commencement of the Act or to be appointed at a later point of time, the individuals adorning the said post should be possessed of the minimum qualification notified by the academic authority and when the same has not been challenged insofar as non-minority schools is concerned, be it aided or unaided, the exemption sought for from acquiring a pass in TET being not within the domain of the State Government nor the Central Government could grant relaxation to any individual request, but only a relaxation insofar as claim is made by the State and that too, after 2019, the said door having been closed by the Central



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Government citing that no further extension could be granted, to claim that TET is not mandatory and that teachers, who were appointed on the basis of NCTE Regulations, 2001, should be allowed to continue and TET cannot be enforced on such of those persons as a minimum qualification for the purpose of continuance in the said post is wholly an erroneous interpretation of Section 23 and Rule 17 and such an erroneous interpretation would strike at the roots of the statutory provision, which cannot be permitted, more so, when a policy decision has been taken by the Government to have a uniform minimum qualification for teachers functioning in the elementary schools for the welfare of the children, the same cannot be whittled out by holding that exemption ought to be granted to the teachers, who were functioning prior to the coming into force of the Act and in the absence of any challenge being made to Section 23 and Rule 17, the claim of the persons holding the post of teachers seeking exemption would be nothing but an attempt in futility and would be against the policy formulated by the Government for the purpose of its future generation.



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67. Further, one other aspect which also requires to be pointed out is that Rule 18 relates to relaxation of minimum qualifications. A careful perusal of Rule 18 reveals that relaxation can be sought for only by the State Government, in the absence of adequate institutions offering courses or training in teacher education or persons possessing minimum qualifications as notified under sub-rule (2) of Rule 17 are not available. No person, in his individual capacity, can seek for relaxation from acquiring TET qualification citing his appointment being anterior in point of time to the notification of NCTE dated 23.8.2010. Further, the Central Government is the appropriate authority to relax the minimum qualifications, that too, only upon a request of the State Government as provided for under sub-rule (3) of Rule 18 and sub-rule (4) provides the nature of relaxation and the time period, which shall not exceed three years but in any case not beyond five years. In effect, Rule 18 (4) runs in tandem with Section 23 in providing the time within which the requisite qualification should be acquired by all individuals, who are working as teachers. Further, the persons, who aspire to become teachers should possess the qualification of a pass in TET for being considered for appointment to the post of elementary school teacher in addition to the other qualifications

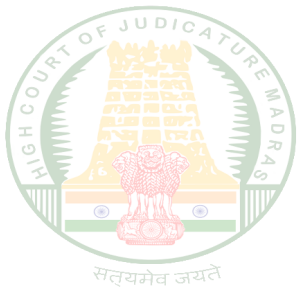


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mandated in the notification of NCTE dated 23.8.2010. Only in such a backdrop, G.O. Ms. No.181 has come to be issued by the Government.

68. A careful perusal of the decision in *Vasudevan's case* reflects that not only G.O. Ms. No.181 has been taken into consideration, but the provisions of law as also the various notifications of NCTE in and by which TET qualification was mandated was also taken into consideration and the learned Judge has rendered an affirmative finding holding that TET is a mandatory qualification, which cannot be relaxed at the instance of the individuals. It was further held in the aid decision, that any person to be appointed as a teacher, should fulfil the qualification of a pass in TET and in respect of teachers, who are in service prior to the enactment of the Act, they were provided with sufficient time to acquire TET qualification. The corollary that follows from the above is that such of those teachers, who have not acquired TET qualification within the time provided, would not be entitled to continue in service. The above is the view of the Division Bench in *Arivazhagan's case*, wherein, the Division Bench, while giving one last chance to the teachers, who have been appointed subsequent to the issuance of the Government Order, has



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categorically held that in the absence of the teachers coming out successful, they have no other option but to quit the service.

69. It is further to be pointed out that it is not as if the Government had not taken any steps for seeking further extension. Vide communication dated 30.01.2019 further extension of two years was sought for, for completing TET, which has also been considered in *Vasudevan's case*. However, the Central Government had rejected the said request vide its communication dated 27.2.2019, informing that it is not possible to consider the request for extension, thereby, the State Government had invoked Section 18, which has been rejected by the Central Government citing Rules 18 (3) and (4). The above rejection of the Central Government is after grant of more than nine years of time from the date of coming into force of the Act. When the State Government had exhausted the provision u/r 18 seeking necessary relaxation, there is no other option for the teachers but to acquire the TET qualification within the time frame prescribed, failing which they would stand ousted from the post. The above clearly shows that the acquirement of TET is mandatory and not exemption could be sought for by the teachers.

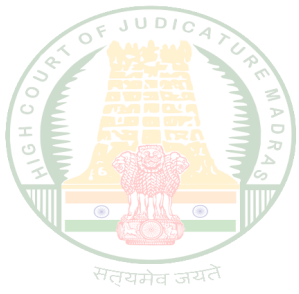


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70. Further, it should not be lost sight of that almost a decade has been granted for the teachers, who are in service, to acquire the qualification of TET, which was brought in as a minimum qualification by NCTE vide notification dated 23.8.2010. However, even after a lapse of more than a decade, the teachers have not complied with the statutory prescription, by not fulfilling the minimum qualification criteria. Such being the case, TET being a mandatory prescription, not possessing the minimum qualification prescribed under Rule 17 would act in detriment to the teachers, who are in service and they cannot seek any exemption nor pray for any sympathy from this Court. In such circumstances, the claim of the teachers, who are in service, claiming exemption from acquiring TET qualification, would wholly defeat the purpose of the Act, which has been enacted for standardizing the education and also ensuring that the quality of education imparted would in no way be unequal.

71. A careful consideration of Section 23 of the Act read along with Rules 17 and 18 of the Rules clearly articulate that a pass in TET for appointment/continuance in the post of teacher of elementary school is a



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mandatory prescription, which cannot diluted by any judicial order, as it would be against the spirit of the statutory provision and the intention of the law makers. ***Therefore, this Court holds that a pass in TET as a qualification for being appointed as elementary school teacher is mandatory and no exemption whatever can be claimed by any individual and to that extent the decision in Vasudevan's case has laid down the correct law.*** The reference is answered accordingly.

72. Though normally upon the reference being answered, this Court has to send the matter back to the learned Judge, who had referred the matter for an authoritative decision, however, in view of the fact that the reference has been made by one of us, viz., G.R.Swaminathan, J., this Court would deal with the writ petition to give a quietus to the issue raised by the petitioner.

73. The case of the petitioner is that she was appointed as Secondary Grade Teacher on 10.11.2010 for which the process was initiated in the month of January, 2010, which is much prior to the issuance of G.O. Ms. No.181, School Education Department, dated 15.11.2011. It is the further case of the



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petitioner that she had fulfilled the prescription relating to qualification as was existing on the date when she was appointed and no fetters having been imposed in the appointment order with regard to acquiring a pass in TET, the respondents cannot, at a later point of time, through the aforesaid Government Order, imposed the onerous condition of a pass in TET.

74. True it is that the appointment process has been initiated for the appointment of the petitioner prior to the issuance of G.O. Ms. No.181, but the appointment of the petitioner was only after the notification of NCTE prescribing minimum qualification based on which the aforesaid Government Order has been passed.

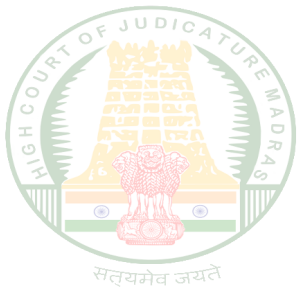
75. This Court, in extenso, has dealt with the provisions of law and has held that the acquiring of TET qualification for the purpose of continuance in service is mandatory and that the teachers, who were in service, were granted more than nine years to acquire TET qualification. The petitioner having been appointed on 10.11.2010 by which time the academic authority, viz., NCTE, has prescribed the minimum qualification for persons to be acquired for



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continuing in the post of elementary school teacher, it is incumbent on the petitioner to have adhered to the prescription and acquired the qualification of TET. Between the time of appointment of the petitioner and till now, almost twelve years have passed. Nine years relaxation was granted by the Government itself for acquiring TET and further three years also having passed, the petitioner has not qualified herself in TET, but has come before this Court now to claim exemption from acquiring TET. However, the petitioner has neither challenged Section 23 nor rule 17, which have prescribed the minimum qualification and in the absence of any challenge being made to the provisions, the mandatory prescription of TET cannot be diluted by granting any exemption to the petitioner, which is already foreclosed by the statutory prescription. In such view of the matter, the case of the petitioner squarely falls within the four corners of the reference holding that TET is mandatory and, therefore, no exemption could be granted to the petitioner and necessarily this writ petition deserves to be rejected.



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76. For the reasons aforesaid, the reference is answered as under :-

(i) The minimum qualification of a pass in TET for being appointed as elementary school teacher is mandatory and no exemption whatever can be claimed by any individual and to that extent the decision in Vasudevan's case has laid down the correct law.

(ii) In view of the aforesaid decision, this writ petition fails and, accordingly, the same is dismissed.

(iii) Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

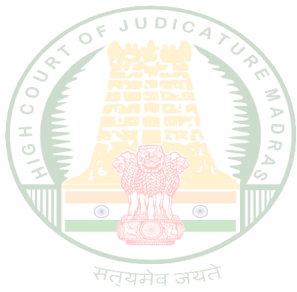
(G.R.S., J.) (M.D.I., J.)

29.03.2023

Index : Yes

Neutral Citation : Yes

GLN



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WEB COPY **G.R.SWAMINATHAN, J.**

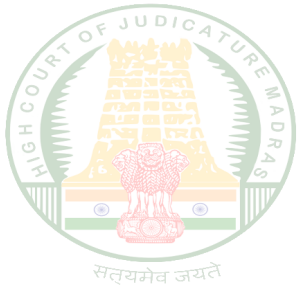
I had the benefit of going through the elaborate and erudite judgment authored by my learned brother. I agree that the writ petition has to be dismissed.

2.The issue that gave rise to the reference was whether a candidate appointed prior to the cut-off date ie., 27.09.2011 is entitled to seek exemption from acquiring TET qualification. The question is not with regard to the teachers appointed prior to the coming into force of RTE Act, 2009. I, therefore, refrain from making any pronouncement on the fate of the teachers appointed prior to the coming into force of RTE Act, 2009. This is for the only reason that the case facts do not call for such an exercise.

3.Subject to this clarification, I agree with the answers given by my esteemed brother to the reference.

29.03.2023

SKM

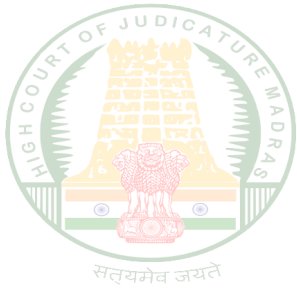


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To

1. The Principal Secretary
Department of School Education
Government of Tamil Nadu
Fort St. George, Chennai – 09.
2. The Director of Elementary Education
Directorate of Elementary Education
Chennai – 06.
3. The District Elementary Education Officer
Virudhunagar, Virudhunagar District.
4. The Chairman
Teachers Recruitment Board
EVK Sampath Maligai
DPI Compound, College Road
Chennai – 06.



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G.R.SWAMINATHAN, J.
AND
M.DHANDAPANI, J.

GLN/SKM

**PRE-DELIVERY ORDER IN
W.P. (MD) NO.11317 OF 2022**

**Pronounced on
29.03.2023**