



W.P.No.13345 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2024

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No. 13345 of 2023

and

W.M.P.No.13047 of 2023

1. R.Thenmozhi
 2. N.R.John Christopher Nathaniel
 3. R.Naveen Narendhiran
 4. A.Dhanasekar
 5. K.S.Umadevi
 6. K.Jayabal
 7. N.Thandavamoorthy
 8. R.Raja
 9. B.Shyamala
 10. N.Rajeswari
- Petitioners

Vs

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Fort St.George, Chennai – 600 009.

2. The Teachers Recruitment Board,
Rep. by its Member Secretary,
4th Floor, EVK Sampath Maaligai,
DPI Compound, College Road,
Chennai – 600 006.



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3. The Director of School Education,
Directorate of School Education,
DPI Campus, College Road,
Chennai – 600 006.

4. Director of Elementary Education,
Directorate of School Education,
DPI Campus, College Road,
Chennai – 600 006.

.... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus, directing the respondents to fill up all vacancies in the posts of Secondary Grade Teachers and Graduate Assistants in the School Education Department which arose prior to G.O.Ms.No.149, School Education (Aa.The.Va) Department dated 20.07.2018 as per the guidelines in G.O.Ms.No.71, School Education (TRB) Department dated 30.05.2014 and G.O.Ms.No.25, School Education (TRB) Department dated 06.02.2014 and fill up vacancies in the posts of Secondary Grade Teachers and Graduate Teachers which arose after the passing of G.O.Ms.NO.149 School Education (Aa.The.Va) Department dated 20.07.2018 in terms of the said G.O. and consequently direct the third and fourth respondents to call the petitioners who have passed Teacher Eligibility Test (TET) for counselling and issue appointment orders to the 1st to 4th petitioners as Secondary Grade Teachers and 5th to 10th petitioners as Graduate Assistants.

For Petitioner : Mrs. Nalini Chidambaram
Senior Counsel
for Mrs.C.Uma

For R1, R3 & R4 : Mrs.S.Mythreye Chandru
Special Government Pleader



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For R2 : Mr.C.Kathiravan
Standing Counsel

ORDER

This Writ Petition has been filed for a direction, directing the respondents to fill up all vacancies in the posts of Secondary Grade Teachers and Graduate Assistants in the School Education Department which arose prior to G.O.Ms.No.149, School Education (Aa.The.Va) Department dated 20.07.2018 as per the guidelines in G.O.Ms.No.71, School Education (TRB) Department dated 30.05.2014 and G.O.Ms.No.25, School Education (TRB) Department dated 06.02.2014 and fill up vacancies in the posts of Secondary Grade Teachers and Graduate Teachers which arose after the passing of G.O.Ms.NO.149 School Education (Aa.The.Va) Department dated 20.072018 in terms of the said G.O. and consequently direct the third and fourth respondents to call the petitioners who have passed Teacher Eligibility Test (TET) for counselling and issue appointment orders to the 1st to 4th petitioners as Secondary Grade Teachers and 5th to 10th petitioners as Graduate Assistants.



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2. Heard the learned counsel appearing for the petitioner, learned Special Government Pleader appearing for the respondents 1, 3 & 4 and learned Standing Counsel appearing for the second respondent.

3. This Court had already dealt with a similar issue in a batch of writ petitions in W.P.Nos.26084 of 2023 etc batch, dated 10.07.2024. The relevant portion of the order is extracted hereunder :-

“3. For the purpose of effective adjudication, the averments made in the writ petitions are elucidated hereunder:-

(i) The writ petitioners are the candidates, who have passed TET conducted by the TRB during the years 2013 and 2017. After they passed the TET examination, they were called for certificate verification in the years 2014 and 2017 as the case may be, by the TRB. However, even after several years of completion of certificate verification, the writ petitioners were not issued appointment orders. They were eagerly waiting to get their orders of appointment on the basis of their pass in TET examination, however, they were not forthcoming. The writ petitioners also state that for the past several years, those who have passed TET, have not been given orders of appointment and they were made to wait endlessly for the same. In this context, the writ petitioners referred to the judgment dated 02.06.2013 passed by the very same Bench in W.A.No.313 of 2022 etc., wherein it was observed that teachers have not been appointed for the last ten years though several candidates have passed the mandatory TET. Therefore, the State Government was directed to conduct TET periodically and to make direct recruitment of teachers and promotions from among the qualified teachers at the earliest. Referring to the above



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decision, it was submitted that the writ petitioners have been waiting for appointment for years together but the orders of appointment are not forthcoming in their favour. While the writ petitioners are anticipating to get appointment orders, one P. Jayabharathi and others filed Writ Petition in WP No.5590 of 2014 before this Court challenging G.O.Ms.No.252, School Education Department dated 05.10.2012, by which certain criteria for selection of candidates for the post of Graduate Assistants/ Secondary Grade Teachers were prescribed. The said Writ Petition was taken up for hearing, along with various other cases. By order dated 29.04.2014, this Court dismissed the writ petitions challenging G.O. Ms. No.25, School Education (TRB) Department dated 06.02.2014. Similarly, the prayer made to direct that the benefits conferred under G.O.Ms.No.25, School Education Department dated 06.02.2014 will come into operation retrospectively, was also dismissed. A direction was also issued to the Government to ensure that the selection process is completed and vacancies are filled up atleast at the beginning of the next academic year.

(ii) Pursuant to such order, the Government issued G.O. Ms. No.71, School Education Department dated 30.05.2014, whereby it cancelled G.O.Ms. No.252, School Education Department dated 05.10.2012 as well as G.O.Ms. No.29, School Education (TRB) Department dated 14.02.2014. The Government thereafter issued revised orders for fixing the weightage and for distributing the weightage marks fixed in the light of the order passed by this Court for selection and appointment to the post of Secondary Grade Teachers and Graduate Assistants in Government Schools from among those who have cleared TET.

(iii) According to the writ petitioners, before the order dated 29.04.2014 was passed and issuance of G.O. Ms. No.71, School Education Department dated 30.05.2014, 3,347 candidates were appointed as



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Teachers. The petitioners were floundered and keeping their fingers crossed as to how and what method of selection was followed for their appointments.

(iv) In the meantime, the order dated 29.04.2014 passed in WP No.5590 of 2014 etc., batch was challenged before a Division Bench of this Court by filing writ appeals, which were ultimately dismissed. A further appeal was preferred by some other candidates in SLP (C) No.33240 of 2014 renumbered as Civil Appeal No. 10737 of 2016. The Civil Appeal was also dismissed on 09.11.2016 whereby G.O. Ms. No.71, School Education (TRB) Department dated 30.05.2014 was upheld by the Honourable Supreme Court.

(v) The grievance of the petitioners is that in spite of dismissal of the Civil Appeal by the Honourable Supreme Court, the Government has not taken any steps to select and appoint them to the post of Secondary Grade Teachers/Graduate Assistants. At the time when the writ petitioners appeared for TET examination the methodology adopted was to ensure that those candidates who passed TET will be appointed after their educational testimonials are verified. Even before this Court as well as the Honourable Supreme Court, it was admitted that the methodology devised in G.O.Ms.No.71 dated 30.05.2014 is vitiated and it is arbitrary. While the facts are so, now, the State Government has issued G.O. Ms. No.149, School Education (TRB) Department dated 20.07.2018 dispensing with the methodology adopted in the earlier Government Orders. As per G.O. Ms.No.149, passing a competitive examination is necessary. As far as the writ petitioners are concerned, they have already passed the TET and therefore, they need not appear again for the competitive examination conducted as per G.O. Ms. No.149 dated 20.07.2018. In other words, in the earlier Government Orders, which were struck off by this Court and confirmed by the Honourable Supreme Court, the awarding of weightage marks for qualifying



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examination by distributing the marks acquired or the actual percentage of marks in each qualifying examination was the criterion adopted. Such a criterion was found to be in violation of Articles 14 and 16 of the Constitution of India inasmuch as the Government Order treats the unequals as equals considering the fact that curriculum, syllabus, course content, method of examination and awarding of marks with reference to academic qualification have been changed from time to time and will differ from one University to another. Thus, the weightage marks based on actual marks secured in the qualifying examination cannot be the basis for assessment of comparative merit in the level playing field.

(vi) The writ petitioners further stated that now, the Government had abandoned its own stand and introduced a new method i.e., competitive examination without giving preference to them, who have already passed such competitive examination. The Government has failed to take note of the fact that those, who have already passed the competitive examination, must not be directed to undergo the very same examination again. Instead, the writ petitioners must be given orders of appointment on the basis of the pass in the TET examination during the years 2013 and 2017 and also as per the certificate verification conducted earlier. Such an action of the Government, without giving preference to those TET passed candidates like the writ petitioners is directly hit by the principle of promissory estoppel and is violative of the legitimate expectation. The petitioners would also state that they were made to run from pillar to post from 2014 endlessly waiting for employment. In this process, some of the writ petitioners have crossed the requisite age for being appointed as Teachers in Government or Government Aided Schools. While so, if some of the petitioners, who are already aged, are made to take the competitive examination again, it will



frustrate them. In any event, when the writ petitioners have already passed the TET examination conducted by the nodal agency, relegating them to appear for the very same examination once again without appointing them as Teachers, is not proper. The government issuing G.O.Ms.No.149, seeking to introduce competitive examination without specifying a cut off date for application, is arbitrary. The Government failed to take note of the fact that tens of thousands of persons like the writ petitioners, who have qualified TET, are waiting for more than a decade without employment. While so, by virtue of G.O. Ms. No.149, the Government introduced a special rule by statutory amendment seeking to insist TET as an eligibility criterion for direct recruitment for the post of Graduate Teacher (BT Assistant) contrary to the NCTE notifications. By virtue of such action, on the one hand, the number of unqualified teachers increases and on the other hand, it frustrates the persons like the writ petitioners who have already cleared the TET examinations during the years 2013 and 2017. Thus, two disparate groups of teachers have been created who were made to indirectly seek to defeat the idea of uniformity and upgradation of the standards of teaching. Thus, it is pleaded by the writ petitioners that G.O. Ms. No.149, School Education (TRB) Department dated 20.07.2018 cannot be made applicable to them.

(vii) It is also submitted by the writ petitioners that by virtue of G.O. Ms. No. 149 dated 20.07.2018, the Government has announced that the selection to the teaching posts will be made only among the eligible candidates on the basis of a competitive examination to be conducted. Thus, the Government has now abandoned its own stand and introduced a new method i.e., conducting competitive examination. As per G.O. Ms. No.149, the Government seeks to introduce a competitive examination without specifying a cut off date for application. The State Government has introduced a



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Special Rule by statutory amendment seeking to insist on TET as eligibility criterion for direct recruitment for the post of Graduate Teacher (B.T. Assistant), contrary to NCTE notifications and Para 6.2 of the Judgment of this Court in W.A. No. 707 of 2014 dated 22.09.2014 (P.Sushila vs. State of Tamil Nadu and others), wherein this Court has held that TET is both a qualifying as well as a competitive examination and therefore, introduction of a competitive examination over and above TET will be prejudicial to the interest of those who have qualified for TET as early as in the year 2013.

(viii) According to the petitioners, G.O. Ms. No.149 is vitiated by arbitrariness inasmuch as it does not provide a level playing field to all the candidates on account of the fact that the State Government did not make direct recruitment for ten years on any of the methods devised by them. However, by virtue of G.O. Ms. No.149, the Government now seeks to introduce competitive examination as a compulsory one for selection, thereby dispensing with the selection of the candidates like the writ petitioners, who have graduated more than a decade ago and also completed TET. The writ petitioners, who have graduated a decade ago and also passed TET and become qualified are now made to compete with unequals who have passed graduation recently and those who have not passed TET. Thus, the Government, by virtue of G.O. Ms. No.149 is attempting to treat the unequals with equals, which is in violation of Article 14 of The Constitution of India. The writ petitioners, who have passed TET and have also completed the certificate verification, cannot be treated on par with those who have graduated in recent years and who have not passed TET at all. If G.O. Ms. No.149 is made applicable to the writ petitioners, they will be in a disadvantageous position in securing employment by competing with those who have recently graduated. In such a situation, the chance of the writ petitioners to get



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appointed to the post will be taken away and their fundamental right to equality of opportunity in public employment, as envisaged under Article 16 of the Constitution of India, would be defeated. The writ petitioners form a separate class and they should be given priority in appointment to the post of Secondary Grade Teacher/B.T. Assistant on the basis of their passing TET and also completing the certificate verification.

(ix) The writ petitioners also state that based on G.O. Ms. No.149 dated 20.07.2018, the Government has conducted TET examination from 03.02.2023 to 12.02.2023 and based on the same, selection is likely to be made to the post of Secondary Grade Teachers and Graduate Assistants. However, the writ petitioners who have passed TET during 2013 and 2017 and completed certificate verification during 2014 and 2018 have been grossly ignored from the purview of selection and appointment to the post of Secondary Grade Teacher/Graduate Assistant. Thus, the action of the Government is clearly arbitrary and in the absence of any reason for not selecting the writ petitioners to the post of Secondary Grade Teacher/Graduate Assistant, the present attempt to recruit the candidates on the basis of the conduct of TET during the year 2023 cannot be allowed to be proceeded with. The Government must ensure that the writ petitioners, who have passed TET several years before, are given priority in the matter of appointment to the post of Secondary Grade Teacher/Graduate Assistant. However, by ignoring the claim of the writ petitioners, on the basis of G.O. Ms. No.149 dated 20.07.2018, attempt is now being made to recruit candidates. Therefore, the writ petitioners are before this Court with these writ petitions for a Writ of Declaration as well as a Writ of Mandamus to direct the respondents to select and appoint them to the post of



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Secondary Grade Teacher/Graduate Assistant as the case may be, based on the TET marks and TET passed year.

4. *The submissions of the learned counsel appearing for the writ petitioners in all the writ petitions are summarised as follows:*

(i) (a) *Mrs. Kavitha Rameshwar, learned counsel appearing for the writ petitioners in W.P.No.26084 of 2023 etc. cases would vehemently contend that the writ petitioners have passed the mandatory TET exam even during the year 2014 as well 2017. At the time when they passed TET, there was neither any specific notification pursuant to which, eligible candidates could apply nor were the exact number of vacancies announced. All eligible candidates were called for certificate verification and such certificate verification was, in effect, the first as well as the last stage of selection. Thereafter, the process of selection commenced as laid down under G.O.Ms.No.71 dated 30.05.2014, which has been in vogue since 30.05.2014. As per G.O. Ms. No.71 dated 30.05.2014, the State Government has assessed the certificates and comparative merit of the candidates by applying the weightage method during 2014 and 2017. Immediately after participation in the certificate verification, the weightage awarded to each candidate and the marks obtained by them was declared whereby the candidates came to know whether they are in the zone of consideration for appointment to the post of teachers (Secondary Grade Teachers or BT Assistants) depending upon the available vacancies. By applying GO Ms. No.71, 10,817 candidates were subjected to the process of certificate verification in the year 2014. The writ petitioners, who were called for certificate verification, also became eligible to be considered for the post of teachers depending upon their merit and available vacancies. However, appointment order are not forthcoming in their favour.*



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(b) Adding further, the learned counsel submitted that the process of selection commenced in 2017 was abandoned midway by the State in an unreasonable, arbitrary, whimsical and capricious manner, and the selection could not be taken to its logical end. From the year 2017, no appointment was made for the post of Secondary Grade Teachers or BT Assistants. However, by virtue of G.O. Ms. No. 149, School Education (TRB) Department dated 20.07.2018, selection is sought to be made. Even though the said G.O. Ms. No.149 dated 20.07.2018 contemplates a competitive examination, there was no clarity in the conduct of such examination. In any event, the selection process that began in the year 2017 need not be abandoned at the cost of the persons like the writ petitioners and it violates the doctrine of legitimate expectation. The Government cannot dispense with the selection already made by conducting a competitive examination by resorting to another such examination. Even if such a decision to conduct another competitive examination is a policy decision, it lacks clarity and reasons for disregarding the selection already made. The Government did not take steps to accommodate the writ petitioners first, especially when they have undergone the due selection process resorted to by the Government and thereby made them wait for years together to get their appointment orders. The legitimate expectation of the petitioners to get selected and appointed to the post of Secondary Grade Teachers or BT Assistants is defeated by virtue of the impugned Government Order.

(c) The learned counsel for the writ petitioners further submitted that the decision to conduct another competitive examination is arbitrary and unreasonable. It is well settled that changing the rules of the game after the players enter into the arena or midway is legally impermissible and it is opposed to the principles of fairness. Applying the above principles to this case, the



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writ petitioners have written the competitive examination and were declared pass and while so, requiring them to undergo similar examination along with those who had recently graduated and did not pass TET, is unreasonable and arbitrary.

(d) The learned counsel for the writ petitioners also invited the attention of this Court to para 9 (b) of the NCTE notification dated 11.02.2011, wherein it is stated that weightage is to be given to the TET marks in the selection and appointment of teachers. These guidelines have been specifically adopted by the State Government in GO Ms. No. 181, School Education (C2) Department dated 15.11.2011. As such, any change in the method of selection will definitely amount to change in the rules of the game. As far as the petitioners are concerned, their process of selection commenced in 2017, but remains unconcluded. Therefore, subjecting the petitioners to a fresh selection process with an enlarged group of persons in the zone of consideration would be treating unequals with equals which is impermissible under Article 14 of the Constitution. It is the vehement contention of the learned counsel for the petitioners that seeking a remedy in personam, by forming a separate class of persons, the petitioners have participated in the process of selection in 2017 and subjected themselves to the method of selection then adopted by the State Government. They have been waiting for employment since then, however, the State Government did not conclude the process of selection and abandoned it midway much to their chagrin. In fact, the Government has not resorted to any recruitment till date. However, there is a hope that the Board will conduct recruitment. Hence, it is the plea of the learned counsel for the petitioners that while the petitioners herein are similarly placed to the tens and thousands of candidates, who have participated in the process of selection started by the State Government in 2017, what differentiates them from others is the fact that



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they had approached this Court in time to assert their rights and the relief granted to them would certainly enure to the writ petitioners alone.

(e) It is further reiterated by the learned counsel for the petitioners that all the petitioners form one homogeneous group, the common binding factor being that they approached this Court well in time. The fact that some of the petitioners had gone upto the Supreme Court and some others had been approaching this Court at different points of time, cannot be a dividing factor among them. Further, the petitioners have not laid any challenge to the policy decision taken by the Government in passing GO Ms. No. 149 School Education (TRB) Department dated 20.07.2018 and they only question the rationale in conducting the competitive examination requiring the writ petitioners to once again participate in the same. The focus of these writ petitions is not an attack on the policy decision of the Government, but the manner in which it is being applied to the petitioners in respect of whom an early method of selection was applied and abruptly dropped.

(f) The learned counsel for the petitioners, in support of her contentions, placed reliance on the observations of the Hon'ble Supreme Court as well the High Court in the following decisions:

*(i) **Shankarsan Dash vs. Union of India (UOI), [1991 (3) SCC 47]:***

" 7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no



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legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.....”

(ii) Food Corporation of India vs. Kamdhenu Cattle Feed Industries, [1993 (1) SCC 71]:

"8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bonafide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.

9. In Council of Civil Service Unions and Ors. v. Minister for the Civil Service, 1985 A.C.374 (H.L)



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*the House of Lords indicated the extent to which the legitimate expectation interfaces with exercise of discretionary power. The impugned action was upheld as reasonable, made on due consideration of all relevant factors including the legitimate expectation of the applicant, wherein the considerations of national security were found to outweigh that which otherwise would have been the reasonable expectation of the applicant. Lord Scarman pointed out that the controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject - matter'. Again in *In re Preston*, 1985 A.C. 835 (H.L) it was stated by Lord Scarman that 'the principle of fairness has an important place in the law of judicial review' and 'unfairness in the purported exercise of a power can be such that it is an abuse of excess of power'. These decisions of the House of Lords give a similar indication of the significance of the doctrine of legitimate expectation. *Shri A.K. Sen referred to Shanti Vijay & Co. etc. v. Princess Fatima Fouzia and Ors. etc.* [1980] 1 S.C.R. 459, which holds that court should interfere where discretionary power is not exercised reasonably and in good faith."*

(iii) Union of India (UOI) and others vs. Hindustan Development Corporation and others [1993 (3) SCC 499]:

"20. In the aforesaid facts, the Group Housing Societies were entitled to 'legitimate expectation' of following consistent past practice in the matter of allotment, even though they may not have any legal right in private law to receive such treatment. The existence of 'legitimate expectation' may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the 'legitimate expectation' without some overriding reason of public



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policy to justify its doing so. In a case of 'legitimate expectation' if the authority proposes to defeat a person's 'legitimate expectation' it should afford him an opportunity to make representation in the matter..... In this connection reference may be made to the discussions on 'legitimate expectation' at page 151 of Volume 1 (1) of Halsbury's Laws of England - Fourth Edition (Re-issue). We may also refer to a decision of the House of Lords in Council of Civil Service Union and Ors. v. Minister for Civil Service reported in 1985 (3) AER 935. It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons.

.....It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation. Within the conspectus of fair dealing in case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in. We, have not been shown any compelling reasons taken into consideration by the Central Government to make a departure from the existing policy of allotment with reference to Seniority in Registration by introducing a new guideline.

(iv) Asha Kaul and others vs. State of Jammu and Kashmir and others, [1993 (2) SCC 573]:

"8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment state of Haryana v. Subhash Chandra Marwaha MANU/SC/0400/1973 :



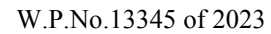
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(1973) IILLJ266SC ; IMS. Jain v. State of Haryana MANU/SC/0540/1976 : [1977] 2SCR361 State of Kerala v. A. Lakshmikutty MANU/SC/0126/1986 : [1987] 1 SCR 136 but that is only one aspect of the matter. The other aspect is the obligation of the government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition / request to the commission to select a particular number of candidates for a particular category, in pursuance of which the commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the government - the government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any government can adopt such a stand with any justification today. This aspect has been dealt with by a Constitution Bench of this Court in Shankarsan Dash v. Union of India MANU/SC/0373/1991 : (1992) IILLJ 18 SC when the earlier decisions of this Court are also noted. The following observations of the Court are apposite:

It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies or any of them are filled up, the State



(v) R.S.Mittal vs. Union of India (UOI) [1995 Supp (2) SCC 230]:

(vi) *A.P. Aggarwal vs. Government of N.C.T. of Delhi and Others*, [2000 (1) SCC 600]:

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coupled with a duty to shun arbitrariness in its exercise and to promote the object for which the power is conferred which undoubtedly is public interest and not individual or private gain, whim or caprice of any individual. Even if it is to be said that the instructions contained in the office memorandum dated 14-5-1987 are discretionary and not mandatory, such discretion is coupled with the duty to act in a manner which will promote the object for which the power is conferred and also satisfy the mandatory requirement of the statute. It is not therefore open to the Government to ignore the panel which was already approved and accepted by it and resort to a fresh selection process without giving any proper reason for resorting to the same. It is not the case of the Government at any state that the appellant is not fit to occupy the post. No attempt was made before the Tribunal or before this Court to place any valid reason for ignoring the appellant and launching a fresh process of selection.

12. It is well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us (vide Shrilekha Vidyarthi v. State of U.P. MANU / SC / 0504 / 1991 : AIR 1991SC537. 14. In R.S.Mittal v. union of India MANU/SC/1009/1995 : 1995 (2) SCALE 433 the question arose with regard to selection of candidates to the post of Judicial member, income – tax Appellate Tribunal. The Selection was made by a Selection Board consisting of a sitting Judge of this Court. The Selection Board prepared a panel of selected candidates which included the name of the appellant before this Court and sent its recommendations. The candidates who were at numbers 1 and 2 in the panel did not accept the appointment. The Bench observed that though a person on the select panel has no vested right to be appointed to the post for which he has been selected,



he has a right to be considered for appointment and at the same time the appointing authority cannot ignore the select panel or decline to make an appointment on its whims....."

(vii) Chanchal Goyal vs. State of Rajasthan [2003 (3) SCC 485]:

14. What remains to be considered is the plea of legitimate expectation. The principle of 'legitimate expectation' is still at a stage of evolution as pointed out in De Smith Administrative Law (5th Edn. Para 8.038). the principle is at the root of the rule of law and requires regularity, predictability and certainty in governments' dealings with the public.....

16. The basic principles in this branch relating to 'legitimate expectation' were enunciated by Lord Diplock in Council of Civil Service Unions and Ors. v. Minister for the Civil Service (1985 AC 374 (408-409) (Commonly known as CCSU case). It was observed in that case that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. The substantive part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit that it will be continued and not be



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substantially varied, then the same could be enforced.....

17. The principle of a substantive legitimate expectation, that is, expectation of a favourable decision of one kind or another, has been accepted as part of the English law in several cases. (De Smith : Administrative Law, 5th Edn., (para 13.030). (See also Wade, Administrative Law, 7th Ed.) (pp. 418-419). According to Wade, the doctrine of substantive legitimate expectation has been "rejected" by the High Court of Australia in Attorney General for N.S.W. v. Quin [(1990) 93 All E.R 1] (But see Teon's case referred to later) and that the principle was also rejected in Canada in Reference Re Canada Assistance Plan (1991) 83 DLR 297], but favoured in Ireland in Canon v. Minister for the Marine 1991 (1) I.R. 82. The European Court goes further and permits the Court to apply proportionality and go into the balancing of legitimate expectation and the public interest....."

(viii) Sethi Auto Service Station and others vs. Delhi Development Authority and others, [2009 (1) SCC 180]:

"18. We may, now, consider the plea relating to the legitimate expectation of the appellants in terms of DDA's policy dated 14-10-1999 and the impact of change of the policy, in June, 2003, thereon. 19. The protection of legitimate expectations, as pointed out in De Smith's Judicial Review (6th Edn.), (Para 12-001), is at the root of the constitutional principle of the rule of law, which requires regularity, predictability and certainty in the Government's dealings with the public. The doctrine of legitimate expectation and its impact in the administrative law has been considered by this Court in a catena of decisions but for the sake of brevity we do not propose to refer to all these cases. Nevertheless, in order to appreciate the concept, we shall refer to a few decisions. At this juncture, we deem it necessary to refer to a decision by the House of Lords in Council of Civil



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Service Unions and others v. Minister for the Civil Service [1984] 3 All ER 935, a locus classicus on the subject, wherein for the first time an attempt was made to give a comprehensive definition to the principle of legitimate expectation. Enunciating the basic principles relating to legitimate expectation, Lord Diplock observed that for a legitimate expectation to arise, the decision of the administrative authority must affect such person either (a) by altering rights or obligations of that person which are enforceable by or against him in private law, or (b) by depriving him of some benefit or advantage which either: (i) he has in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until some rational ground for withdrawing it has been communicated to him and he has been given an opportunity to comment thereon, or (ii) he has received assurance from the decision-maker that they will not be withdrawn without first giving him an opportunity of advancing reasons for contending that they should be withdrawn.

.....
22. The concept of legitimate expectation again came up for consideration in *Union of India and others vs. Hindustan Development Corporation and Ors.* MANU/SC/0219/1994 : AIR 1994 SC 988. Referring to a large number of foreign and Indian decisions, including in *Council of Civil Service Unions and Kamdhenu Cattle Feed Industries (supra)* and elaborately explaining the concept of legitimate expectation, it was observed as under:

“If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, 8 (1993) 3 SCC 499 20 gross abuse of power or violation of principles of natural justice, the same can be questioned on the well known



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grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is “not the key which unlocks the treasury of natural justice and it ought not unlock the gate which shuts the court out of review on the merits”, particularly when the element of speculation and uncertainty is inherent in that very concept.”

25. This Court in Punjab Communications Ltd. Vs. Union of India & Ors. MANU/SC/0326/1999 : [1999] 2SCR1033, referring to a large number of authorities on the question, observed that a change in policy can defeat a substantive legitimate expectation if it can be justified on “Wednesbury” reasonableness. The decision maker has the choice in the balancing of the pros and cons relevant to the change in policy. Therefore, the choice of the policy is for the decision maker and not for the Court. The legitimate substantive expectation merely permits the Court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person



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could have made. (Also see: Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer & Ors. MANU/SC/0994/2004 : (2004) 192 CTR (SC) 492)

27. An Examination of the afore-noted few decisions shows that the golden thread running through all these decisions is that a case for applicability of the doctrine of legitimate expectation, now accepted in the subjective sense as part of our legal jurisprudence, arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfill unless some overriding public interest comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in the public interest unless the action taken amounts to an abuse of power. The court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. Therefore, a



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legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. [Vide Hindustan Development Corporation (supra)] "

(ix) *The State of West Bengal and others vs. Gitashree Dutta (Dey)*, [2022 INSC 452]:

"9. The respondent has contended that she has legitimate expectation to be treated fairly even if she may not have a vested right in getting the appointment. It is the duty and the obligation of the State to act fairly and not arbitrarily. A decision not to fill up the vacancies must be bonafide and for justifiable and appropriate reasons.

10. The doctrine of "legitimate expectation" has been developed in the context of principles of natural justice. 'Legitimate expectation' is a public law right whereas 'promissory estoppel' is a private law right. The doctrine of legitimate expectation in public law is based on the principle of fairness and non arbitrariness in governmental actions.

11. However, the doctrine of legitimate expectation ordinarily would not have any application when the legislature has enacted the statute. Further, the legitimate expectation cannot prevail over a policy introduced by the Government, which does not suffer from any perversity, unfairness or unreasonableness or which does not violate any fundamental or other enforceable rights vested in the respondent. When the decision of public body is in conformity with law or is in public interest, the plea of legitimate expectation cannot be sustained. In Punjab Communications Ltd. v. Union of India and Ors.¹ this Court held that policy decision creating the legitimate expectation which is normally binding on the decision maker, can be changed by the decision maker in overriding public interest. It was held as under:



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“37. The above survey of cases shows that the doctrine of legitimate expectation in the substantive sense has been accepted as part of our law and that the decision maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way.....”

(x) *K.Manjushree vs. State of UP and another, (Civil Appeal No.1313 of 2008):*

“30. It was submitted that Administrative Committee and Interview Committee were only delegates of the Full Court and the Full Court has the absolute power to determine or regulate the process of selection and it has also the power and authority to modify the decisions of the Administrative Committee. There can be no doubt about the proposition. The Administrative Committee being only a delegate of the Full Court, all decisions and resolutions of Administrative Committee are placed before the Full Court for its approval and the Full Court may approve, modify or reverse any decision of the Administrative Committee. For example when the resolution dated 30.11.2004 was passed it was open to the Full Court, before the process of selection began, to either specifically introduce a provision that there should be minimum marks for interviews, or prescribe a different ratio of marks instead of 75 for written examination and 25 for interview, or even delete the entire requirement of minimum marks even for the written examination. But that was not done. The Full Court allowed the Administrative Committee to determine the method and manner of selection and also allowed it to conduct the examination and interviews with reference to the method and manner determined by the Administrative Committee. Once the selection process was completed with reference to the criteria adopted by the Administrative Committee



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and the results were placed before it, the Full Court did not find fault with the criteria decided by the Administrative Committee (as per resolution dated 30.11.2004) or the process of examinations and interviews conducted by the Administrative Committee and Interview Committee. If the Full Court had found that the procedure adopted in the examinations or interviews was contrary to the procedure prescribed, the Full Court could have set aside the entire process of selection and directed the Administrative Committee to conduct a fresh selection. The resolution dated 30.11.2004 was approved. It did not find any irregularity in the examination conducted by the Administrative Committee or the interviews held by the Selection Committee. The assessment of performance in the written test by the candidates was not disturbed. The assessment of performance in the interview by the Selection Committee was not disturbed. The Full Court however, introduced a new requirement as to minimum marks in the interview by an interpretative process which is not warranted and which is at variance with the interpretation adopted while implementing the current selection process and the earlier selections. As the Full Court approved the resolution dated 30.11.2004 of the Administrative Committee and also decided to retain the entire process of selection consisting of written examination and interviews it could not have introduced a new requirement of minimum marks in interviews, which had the effect of eliminating candidates, who would otherwise be eligible and suitable for selection. Therefore, we hold that the action of Full Court in revising the merit list by adopting a minimum percentage of marks for interviews was impermissible.

32. We therefore, find that the judgment of the Division Bench of the High Court has to be set aside with a direction to the AP High Court to redraw the merit list without applying any minimum marks for interview. The



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merit list will have to be prepared in regard to 83 candidates by adding the marks secured in written examination and the marks secured in the interview. Thereafter, separate lists have to be prepared for each reservation category and then the final selection of 10 candidates will have to be made. The scaling down of the written examination marks with reference to 75 instead of 100 is however, proper."

(xi) The State of Tripura and others vs. Sri Arunabha Saha and another in W.A.No.196 of 2019 dated 25.08.2020:

5. We may record that in case of Samudra Debbarma (supra) similar issues were examined by the Single Judge. In the said case what was under challenge was the cancellation of the ongoing selection process by the TPSC for TCS and TPS Grade- II Group-A Gazetted services. In the said case also the selection process had reached at an advanced stage when relying on the same Government notifications, TPSC cancelled the selection process in view of the Government adopting new recruitment policy. The cancellation of the selection was challenged by the petitioner and others. The learned Single Judge held that the cancellation was wholly impermissible and allowed the writ petition. This decision of the learned Single Judge was challenged by the State Government in Writ Appeal No.142 of 2019. It was, therefore, that when this writ appeal was taken up for hearing previously, on 19.11.2019 the Division Bench of this Court Page 7 of 10 while admitting the appeal had provided that the same be tagged along with Writ Appeal No.142 of 2019. Subsequently, the said Writ Appeal No.142 of 2019 was disposed of by the Division Bench by a judgment dated 03.12.2019. Due to oversight though this appeal was to be heard along with the said writ appeal the same got separated.....

(xii) Ramjit Singh Kardam and others vs. Sanjeev Kumar and others [2020 (7) SCR 1096]:



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“45. The above sequence of events indicates that in accordance with the “special instruction” extracted above the Commission decided the criteria for calling the candidates for the selection as holding of written examination of 200 marks and interview for 25 marks which was the perfect criteria looking to the number of the candidates i.e. 20836 who had applied in pursuance of the advertisement for the post of PTI. The criteria was implemented by holding a written test on 21.07.2007 which was cancelled due to some complaints. The written test was again notified for 20.07.2008 which was withdrawn by notice published on 30.06.2008, the earlier criterion was given a go bye by another notification dated 11.07.2008. The above indicates that the standard on which candidates are to be screened for selection was downgraded by Chairman of his own. When the number of candidates who applied against certain posts are enormously large, short-listing has always been treated as an accepted mode to correctly value the work and merit of the candidate.....

.....
54. As noted above the decision of Chairman of the Commission dated 30.06.2008 not to hold the written examination was claimed to have been taken due to “administrative reasons”, but what were “administrative reasons” have never been disclosed or brought on record by the Commission. The decision to change the selection process as notified on 28.06.2006 was a major decision not only affecting the applicants who had to participate in the selection on the basis of criteria as notified on 28.12.2006 but had adverse effect on merit selection as devised for 1983 posts of PTI.”

(xiii) Devesh Sharma vs. Union of India and others [2023 (11) SCR 167]:

“36. The introduction of B.Ed as a qualification by NCTE on the directions of the Central Government is a policy of the Government, as has been submitted before



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this Court, and is also evident from the sequence of events, the minutes of the various meeting and the order passed in this regard. Section 29 of NCTE Act which mandates that NCTE must follow the directions of the Central Government in discharging of its functions. It is a policy decision which binds NCTE. We have absolutely no doubt in our mind that policy decisions of the Government should normally not be interfered with, by a constitutional Court in exercise of its powers of judicial review. At the same time if the policy decision itself is contrary to the law and is arbitrary and irrational, powers of judicial review must be exercised. A policy decision which is totally arbitrary; contrary to the law, or a decision which has been taken without proper application of mind, or in total disregard of relevant factors is liable to be interfered with, as that also is the mandate of law and the Constitution. This aspect has been reiterated by this Court time and again. Judicial review becomes necessary where there is an illegality, irrationality or procedural impropriety. These principles were highlighted by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service (commonly known as CCSU case). The above decision has been referred by this Court in State of NCT of Delhi v. Sanjeev. This view was reiterated again by this Court in State of M.P. & Ors. v. Mala Banerjee:-

“6. We also find ourselves unable to agree with the appellants' submission that this is a policy mater and, therefore, should not be interfered with by the courts. In Federation of Railway Officers Assn. v. Union of India [(2003) 4 SCC 289] , this Court has already considered the scope of judicial review and has enumerated that where a policy is contrary to law or is in violation of the provisions of the Constitution or is arbitrary or irrational, the courts must perform their constitutional duties by striking it down...”



(xiv) **Chairman/Managing Director UP Power Corporation Ltd & others vs. Ram Gopal [2020 (3) SCR 514]:**

"16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizen sought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In SS Balu v. State of Kerala, this Court observed thus:

"17. It is also well-settled principle of law that "delay defeats equity". ...It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment."

(xv) **The Assam Public Service Commission and others vs. Pranjal Kumar Sarma and others [2019 (14) SCR 1072]:**

"9.2 The appellant's counsel then argues that alteration of the selection norms by the APSC through the 2019 Procedure which has prospective application, should have no bearing on the ongoing process, on account of the savings clause incorporated in the 2019 Procedure.



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13. *The law with regard to applicability of the Rules which are brought anew during the selection process have been crystalized by this Court. It has been held that the norms existing on the date when the process of selection begins, will control the selection and the alteration to the norms would not affect the ongoing process unless the new Rules are to be given retrospective effect. (See State of Bihar and Others vs. Mithilesh Kumar). Similarly in N.T. Devin Katti and Others vs. Karnataka Public Service Commission and Others, this Court held that a candidate has a limited right of being considered for selection in accordance with the Rules as they existed on the date of advertisement and he cannot be deprived of that limited right by amendment of the Rules during the pendency of the selection, unless the Rules are to be applied retrospectively.*

14. *If we proceed with the above enunciation of the law in Mithilesh Kumar (supra) and N.T.Devin Katti (supra), the conclusion is inevitable that for the current recruitment process for which advertisement was issued on 21.12.2018, the 2019 Procedure (which came into effect from 01.04.2019) can have no application, particularly when the first phase of the selection i.e. the screening test was conducted under the 2010 Rules.*

16. *In the present case, if the contention advanced by the respondents is accepted and the next segment of the process of selection is carried out under the 2019 Procedure, it will give rise to an anomalous situation inasmuch as the screening test which was conducted without negative marking, under the 2010 Rules, without provisions for negative markings, will have a major bearing in the final outcome of selection. This would definitely prejudice the candidates who have undertaken exams under 2010 Rules. The consistent law on the issue also makes it clear that recruitment process pursuant to the advertisement issued by the APSC on 21st December,*



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2018 must necessarily be conducted under the selection norms as applicable on the date of the advertisement. Moreover, having regard Rule 29 and Rule 30 of the 2010 Rules, it must also be said that merit of the candidates would definitely be assessed in the selection exercise, undertaken by the APSC. The APSC is also capable of conducting a fair selection and we believe that they will keep in mind, the lawful expectation and the constitutional mandate."

(xvi) Sivanandam CT & Others vs. High Court of Kerala and others in WP (c) No.229 of 2017 dated 12.07.2023:

"22. The doctrine of legitimate expectation was crystallized in common law jurisprudence by Lord Diplock in the locus classicus, Council of Civil Service Unions v. Minister for the Civil Service." Lord Diplock held that courts can exercise the power of judicial review of administrative decisions in situations where such decision deprives a person of some benefit or advantage which:

(i) they had in the past been permitted by the decision-maker to enjoy and which they can legitimately expect to be permitted to continue until there has been communicated to them some rational grounds for withdrawing it on which they have been given an opportunity to comment; or

(ii) they have received assurance from the decision-maker that the advantage or benefit will not be withdrawn without giving them an opportunity of advancing reasons for contending that the advantage or benefits should not be withdrawn."

(xvii) Brij Mohan Lal vs. Union of India (UOI) and others [2012 (6) SCC 502]:

"70.It is a settled principle of law that matters relating to framing and implementation of policy primarily fall in the domain of the Government. It is an established requirement of good governance that the



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Government should frame policies which are fair and beneficial to the public at large. The Government enjoys freedom in relation to framing of policies. it is for the Government to adopt any particular policy as it may deem fit and proper and the law gives it liberty and freedom in framing the same. Normally, the Courts would decline to exercise the power of judicial review in relation to such matter. But this general rule is not free from exceptions. The Courts have repeatedly taken the view that they would not refuse to adjudicate upon policy matters if the policy decisions are arbitrary, capricious or malafide in bringing out the distinction between policy matters amenable to judicial review and those where the Courts would decline to exercise their jurisdiction, this Court..... “

(g) By relying on the above decisions, the learned counsel for the petitioners submitted that the impugned Government Order has arbitrarily declined the prospects of appointments to the writ petitioners. The legitimate expectation on the part of the writ petitioners, after subjecting themselves to the written examination, certificate verification and declaration of TET passed, to conduct a written examination afresh, the writ petitioners cannot be cannot be ignored by the respondents. In the guise of taking a policy decision compelled to take such examination once again and the writ petitioners must be given preference in the matter of appointment to the post of Secondary Grade Teacher/B.T. Assistants on the basis of their TET passed rank and year, failing which they will be highly prejudiced. The counsel for the writ petitioners therefore prayed for allowing the writ petitions as prayed for by declaring the eligibility of the writ petitioners to get orders of appointments for the post of Secondary Grade Teachers/B.T. Assistants without compelling them to undergo any other competitive examination on the basis of the impugned Government Order.



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4. (ii) According to Mr.Sankarasubbu, learned counsel appearing for the petitioner in WP Nos. 32218 of 2023 and 35350 of 2023, the petitioners passed TET even during the year 2013 and also participated in the certificate verification. They were eagerly waiting for the orders of appointment from the year 2013. However, the respondents have repeatedly changed the eligibility criteria by introducing various modalities of the examination. In any event, when the writ petitioners have already passed TET in the year 2013, they cannot be compelled to write the competitive examinations along with the candidates who are yet to pass the TET examination. The failure on the part of the respondents to take note of the fact that the petitioners have already passed TET and are eligible to get appointed to the post of Graduate Teacher is nothing short of discrimination. Therefore, the learned counsel for the petitioners prayed this Court to issue a Mandamus directing the respondents to appoint the petitioners as Graduate Teacher as per the TET marks secured by them within a time frame. 4.

(iii) Mr.C.Munusamy, learned counsel for the petitioner in WP No. 32698 of 2023 submitted that the writ petitioner passed the mandatory TET exam during the year 2013 and from then on, she has been waiting for getting an order of appointment to the post of Secondary Grade Teacher or B.T. Assistant. The petitioner, at the time of writing the TET examination in the year 2013 was 28 years and now she has crossed the age of 38 years. Had the respondents appointed the writ petitioner in the year 2013 based on the declaration declaring that she has passed the TET examination, she would have now completed ten years of service. On the other hand, the petitioner is made to grope in the dark without knowing the consequences that may befall her in the matter of securing appointment order for the post. Further, the issuance of G.O. Ms. No.149, School Education Department dated 20.07.2018 has jolted her inasmuch as



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the respondents have indirectly denied the writ petitioner of her appointment ignoring that she has already passed. Therefore, at this stage, based on G.O. Ms. No.149 dated 20.07.2018, if the writ petitioner is compelled to write the competitive examination along with the newly graduated candidates, she will be highly prejudiced. The fact that the respondents failed to take note of the fact that the petitioner has already passed TET is nothing short of discrimination. Therefore, the learned counsel for the petitioner submitted that the petitioner has to be declared that she is entitled to be appointed as B.T. Assistant based on the TET marks secured by her during August 2013 without compelling to undertake a competitive examination as per G.O. Ms. No.149 dated 20.07.2018.

.....

11. Having accepted that the writ petitioners had a cause of action for filing these writ petitions seeking a positive relief in August 2023, and that they are not hit by laches, we proceed to consider the matter on merits. The lynchpin of the case would be whether the petitioners have a right that is rooted in law on account of the process of selection being adopted and abandoned midway and whether in the circumstances, it deserves interference from this Court pursuant to the principles of reasonableness, non-arbitrariness, proportionality, and the doctrines of promissory estoppel and legitimate expectation.

B. Had the selection process commenced in 2017 with the certificate verification, and completed with application of the weightage method?

12. In order to answer this, the primary issue that would have to be decided is whether in the facts and circumstances of the case, the selection process had commenced in the year 2017, and the State Government had consciously adopted a particular method of selection. In order to understand and analyse this issue for rendering a finding on it, narration of the factual



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background is not only necessary but also of immense significance here.

.....

36. In view of the above discussion and findings, we are of the considered opinion that the writ petitioners are entitled to the reliefs sought herein. However, as stated earlier, this order is only restricted to these petitioners alone.

37. The petition in WMP No. 7353 of 2024 in W.P. No. 26133 of 2023, has been filed to implead the petitioners therein in the writ petition mentioned hereinabove, without stating in what capacity they seek to be impleaded, while making stray averments that they are similarly placed as the petitioners. Also, the said petition has been filed after the arguments were completed in the writ petitions and the counsel for the impleading petitioners was not able to answer any of the queries raised by this Court. Therefore, we are of the view that the impleading petition is thoroughly misconceived in law and the same deserves to be dismissed with exemplary costs. However, we refrain from imposing any costs. As such, this miscellaneous petition is dismissed.

38. In the result, all the writ petitions are allowed with a direction to the State Government to continue the process of appointment left midway in 2017, insofar as the petitioners are concerned and appoint them as Secondary Grade Teachers, or Graduate Assistants as the case may be, as expeditiously as possible, without causing any further delay, if they are otherwise eligible for appointment as per the eligibility criteria laid down by the NCTE, and to appoint them as teachers depending on their respective merit/ranking as per the weightage method and their TET scores, applying the rule of reservation accordingly. As these writ petitions were filed well before the recruitment notification dated 25.10.2023, number of vacancies already advertised in the said recruitment notification or the present number of



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vacancies shall not be cited as a reason for not giving effect to the direction stated above.”

4. In view of the above direction issued by the Hon'ble Division Bench of this Court in W.P.Nos.26084 of 2023 etc batch, dated 10.07.2024, this writ petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

29.07.2024

Internet : Yes
Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes/No
Lpp

To

1. The Principal Secretary to Government,
School Education Department,
Fort St.George, Chennai – 600 009.

2. The Teachers Recruitment Board,
Rep. by its Member Secretary,
4th Floor, EVK Sampath Maaligai,
DPI Compound, College Road,
Chennai – 600 006.

3. The Director of School Education,
Directorate of School Education,
DPI Campus, College Road,
Chennai – 600 006.



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G.K.ILANTHIRAIYAN, J.

Lpp

4. Director of Elementary Education,
Directorate of School Education,
DPI Campus, College Road,
Chennai – 600 006.

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29.07.2024