



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	19.03.2024
Pronounced On	043024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**W.A.Nos.2842, 2176, 2214, 2557, 2848, 2040 of 2018
&768, 873 of 2019 and 125 of 2021
and W.P.Nos.10371 to 10374 of 2014 & 12940 to 12942 of 2015
& 21850 to 21854 of 2015 & 22129 & 22130 of 2015 and 27170 to 27173
& 21062 of 2015
and W.M.P.Nos.1822 to 1824 of 2016 & 32250 to 32253 of 2017
and C.M.P.Nos.16876, 16877, 16087, 17378, 19006, 20628, 20909, 23692,
23693, 16086, 23640, 23638 of 2018 and 6060, 6062, 6718, 6720 of 2019
and 701 & 702 of 2021**

W.A.No.2842 of 2018

G.Jansi Helen Mary

... Appellant

Vs

- 1.The Union Territory of Puducherry,
by its Secretary,
Department of Education
Secretariat, Puducherry – 605 001.
- 2.The Director of School Education,
Government of Puducherry,
Directorate of School Education,
Puducherry – 605 005.
- 3.The Senior Accounts Officer,



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Government of Puducherry,
Directorate of School Education,
Puducherry – 605 005.

4.The Joint – Director of School Education,
Government of Puducherry,
Directorate of School Education,
Puducherry – 605 005.

5.The Correspondent/ Manager,
Immaculate Heart of Mary Higher Secondary School,
275, Mission Street,
Puducherry – 605 001.

... Respondents

PRAYER:-Writ Appeals have been filed under Clause 15 of Letter Patent
against the order dated 13.12.2018 made in W.P.Nos.21117 of 2015.

**W.A.Nos.2842, 2176, 2557, 2848 & 2040 of 2018 and 768, 873 of 2019
and 125 of 2021 and for R2 in W.A.No.2214 of 2018 and in all Writ
Petitions**

For Appellants : Dr.Father Xavier Arul Raj
Senior Counsel
for M/s.Father Xavier Associate

For R1 in
W.A.No.2214 of 2018 : Mr.G.Sankaran
Senior Counsel
for Mr.S.Nedunchezhiyan

W.A.Nos.2842, 2176, 2557, 2848 & 2040 of 2018 and 768, 873 of 2019



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and 125 of 2021 for respondents 1 to 4 and for appellant in
W.A.No.2214 of 2018 and in all Writ Petitions

For Respondents : Mr.AR.L.Sundaresan
Additional Solicitor General
for Mr.R.Syed Mustafa
Special Government Pleader (Pondy)

**For fifth respondent in all W.As and W.Ps except in W.A.No.2214 of
2018**

For R5 : Mr.V.John Kennedy

COMMON JUDGMENT

K.KUMARESH BABU, J.

The *lis* that is involved in these batch of cases is as to the grant of approval of appointments made by the private aided minority institutions. These appointed Teachers by the respective minority institutions had approached this Court seeking for a Mandamus to direct the Department of School Education to accord approval for their appointments. In one Writ Appeal the respondent had approached this Court challenging the order of the Department, wherein, it was informed to the Institution that her case could be considered only after the Recruitment Rules are framed and approved by the Director.

2. It is pertinent to note that in none of the cases, the Management of



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the minority institutions had initiated any proceedings on the proposals that have been submitted in respect of the appointments made. Only the appointed Teachers had approached this Court.

3. The learned Single Judge of this Court, by his orders, dated 13.12.2017 and 26.06.2018 in the Writ Petitions that had been listed before him had passed orders directing the respective Managements to submit a fresh proposal to the Department for its consideration for grant of approval of appointments. However, *inter alia*, he had also discussed various issues relating to the qualifications and age limit. Even though, he had held that the authority under the Recruitment Rules can provide relaxations of the age limit by considering the facts placed before it, he had held that such relaxation ought to have been granted in a way that it does not derogate the Recruitment Rules. Further, the learned Single Judge had also held that Teachers' Eligibility Test (hereinafter referred to as 'TET') is a necessary qualification which cannot be relaxed even invoking the powers of relaxation under the Recruitment Rules. Against the said findings, these Writ Appeals have been preferred by the respective Writ Petitioners.

4. These Writ Petitions on board before us had all been tagged



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together with these batch of Writ Appeals as the relief sought for in those Writ Petitions was for a Mandamus to the respective authority to grant approval of the appointments of the respective Writ Petitioners.

5. As regards to the Writ Appeal No.2214 of 2018 , a proposal had been sent by the Management seeking approval of the appointment of the first respondent. The Directorate of School Education in its proceedings dated 18.07.2012 had indicated that the resulted vacancy in which the first respondent had been appointed, could be filled up only after the Recruitment Rules are framed and approved by the Director. The said communication which was under challenge was set aside by the learned Single Judge with a direction to grant approval to the appointment of the respondent from the date of initial appointment.

6. It is pertinent to note that under Rule 43 (1) of the Pondicherry School Education Rules 1996, a Teacher could be appointed in accordance with the Recruitment Rules framed by the Management, as approved by the Director. It is also brought to our notice that the said Rules had been the



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subject matter of a Writ Petition in W.P.No.35996 of 2007, which is still pending consideration of this Court.

7. Heard Dr.Father Xavier Arul Raj, learned Senior Counsel appearing for appellants/Teachers, Mr.G.Sankaran learned Senior Counsel for Mr.S.Nedunchezhiyan, learned counsel appearing for the first respondent in W.A.No. 2214 of 2018 and Mr.A.R.L.Sundaresan learned Additional Solicitor General for Mr.R.Syed Mustafa learned Special Government Pleader appearing for the Union Territory of Puducherry.

8. The broad arguments of the respective counsels appearing for the respective appointees and the School Managements are that;

(a) The Management is an aided minority school.

(b) TET had been prescribed as an essential qualification under the Rules framed by the National Council for Teacher Education (hereinafter referred to as 'NCTE') in exercise of the authority vested with it by the Central Government under Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to



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as Act 2009)

(c) The said Rules cannot be applied to the minority institutions, as the same had been framed under the Act, 2009 which had been held to be abrogate the rights of the minorities and would not be applicable to the minority schools both aided and unaided.

(d) Alternatively, an argument had also been advanced that in the event this Court holds that the said Rules are applicable even to the minority aided/ unaided institutions. The prescription of TET cannot be sought to be applied to the appointments made prior to 2010 that is when such Rules requiring the TET was notified.

(e) When the power of relaxation had been vested with the Authority, the Authority ought to have given such power to exercise such relaxation in its own wisdom and the order of the learned Single Judge indicating that the parameters of relaxation would weigh the mind of the Authority and therefore, such findings given by the learned Single Judge ought to be set aside.

9. In support of their contention various judgments had also been



relied upon which are as follows;

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(a) 2014 (8) SCC 1 – *Pramati's case*.

(b) 2016 (7) MLJ 155 – *Jayalakshmi's case*.

(c) 2013 (5) LW 514 – *Ravichandran's case*

(d) *Order made in W.A.No.313 of 2002 – M.Velayudam's case.*

10. Even though, various other judgments were also cited before us, since, those cases were made by the learned Single Judges of this Court, we do not wish to look into the same, as they could only be relied upon to persuade this Court.

11. On the side of Government of Puducherry, the following submissions have been made.

(a) The Hon'ble Apex Court's judgment in *Pramati's case* could not be extended to the facts of this case, as the issue involved is predominantly on the qualifications of a teacher that is to be recruited and not the establishment or administration of the school concerned.

(b) The Rules, even though framed under the Act, 2009 when the qualifications have been prescribed for



the appointment of Teachers in any school, then such qualifications are necessary qualifications.

(c) When the qualifications have been prescribed, it is for the respective schools to adhere to the said qualifications, since the qualifications of Teachers fixed cannot be restricted only to a non-minority institution. The qualification fixed are to achieve higher standards of imparting education and therefore, to contend that it would not apply to a minority institution and would affect the children who are the future of India.

(d) The power of relaxation cannot be extended to relax the essential qualifications required for appointment of a Teacher. If such relaxation is given to the qualification, then it would only displace the merits or the teaching capability of a teacher which would directly affect the interest of the students. Therefore, the findings of the learned Single Judge, according to them need not have to be set aside.

(e) However, the issue relating to the age relaxation, it had been fairly submitted that it could be referred to the authority for him to take an independent decision without being influenced by the observations made by the learned



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Single Judge.

(f) Relying upon the judgment of the Hon'ble Apex Court in the case of *Sk.Mohd. Rafique vs. Managing Committee, Contai Rahamania High Madrasah & Ors.*, reported in **2020 (6) SCC 689** which had been affirmed in a judgment in the case of *Christian Medical College Vellore Association vs. UOI & Ors.* reported in **2020 (8) SCC 705**, the learned Additional Solicitor General had contended that when a qualification or a process of selection has been envisaged, the same could not be considered to infringe the power of the minority as regards to the establishment and administration of its institution. It was further contended that, such Rules or Regulations would not affect the rights of the minority institutions vested with it under Article 30(1) of the Constitution of India. The Rules that is in force on the date of consideration alone would be applicable and not the Rules that was previously available.

(g) It was further contended that a Division Bench of this Court in Writ Appeal (MD).No.43 of 2023 had held that the Rules made by the NCTE requiring TET qualification would also cover the Teachers who were appointed prior to 2010. The subsequent judgment of this Court relied upon by



the other side was made subsequent to the Division Bench judgment of the Madurai Bench earlier and the same was not placed before the subsequent Division Bench which had taken a contradictory view. It was also pointed out to this Court that a Division Bench of this Court noting down the contradictory view expressed by the two Division Bench judgments of this Court had referred the matter before the Hon'ble Chief Justice to resolve the controversy to refer the *lis* to a Larger Bench.

12. We have heard the rival submissions made by the learned counsels appearing for their respective parties and perused the materials available on record before this Court.

13. According to us, to decide the controversy in the *lis* before us, the following questions would arise for consideration:-

(a) Whether the Rules 2010 of NCTE framed under the Act 2009 would apply to a minority institution both aided and unaided?

(b) If the Rules are applicable to aided minority institution, whether the 2010 Rules would be applicable to the teachers appointed prior to its notification?



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(c) Whether the authority under the Recruitment

Rules would have power to relax the age and qualification?

14. The learned Single Judge in the orders impugned before us had held that the law laid down by the Hon'ble Apex Court in *Pramati's case* cannot be extended to the present facts on hand, as the present issue relates to the qualification of a teacher to be appointed, which no way interferes with the rights of the minority to establish and administer the education institution. The learned Single Judge had placed reliance upon the judgment of the Hon'ble Apex Court to come to a conclusion that the norms fixing the qualification or a procedure of appointment cannot be set aside infringing the rights of minority institutions both aided and unaided under Article 30(1) of Constitution of India.

15. In that context, it would be useful to analyse the judgment of the Hon'ble Supreme Court in the *Pramati's case* referred supra. For better appreciation, the relevant paragraphs of the aforesaid judgment is extracted



hereunder:-

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“54. Under Article 30(1) of the Constitution, all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. Religious and linguistic minorities, therefore, have a special constitutional right to establish and administer educational schools of their choice and this Court has repeatedly held that the State has no power to interfere with the administration of minority institutions and can make only regulatory measures and has no power to force admission of students from amongst non-minority communities, particularly in minority schools, so as to affect the minority character of the institutions. Moreover, in Kesavananda Bharati v. State of Kerala [(1973) 4 SCC 225] Sikri, C.J., has even gone to the extent of saying that Parliament cannot in exercise of its amending power abrogate the rights of minorities. To quote the observations of Sikri, C.J. In Kesavananda Bharati v. State of Kerala [(1973) 4 SCC 225] : (SCC p. 339, para 178)

“178. The above brief summary of the work of the Advisory Committee and the Minorities Sub-Committee shows that no one ever contemplated that fundamental rights appertaining to the minorities would be liable to be abrogated by an amendment of the Constitution. The same is



true about the proceedings in the Constituent Assembly. There is no hint anywhere that abrogation of minorities' rights was ever in the contemplation of the important members of the Constituent Assembly. It seems to me that in the context of the British plan, the setting up of Minorities Sub-Committee, the Advisory Committee and the proceedings of these Committees, as well as the proceedings in the Constituent Assembly mentioned above, it is impossible to read the expression 'Amendment of the Constitution' as empowering Parliament to abrogate the rights of minorities."

Thus, the power under Article 21-A of the Constitution vesting in the State cannot extend to making any law which will abrogate the right of the minorities to establish and administer schools of their choice.

55. When we look at the 2009 Act, we find that Section 12(1)(b) read with Section 2(n)(ii) provides that an aided school receiving aid and grants, whole or part, of its expenses from the appropriate Government or the local authority has to provide free and compulsory education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per



cent. Thus, a minority aided school is put under a legal obligation to provide free and compulsory elementary education to children who need not be children of members of the minority community which has established the school. We also find that under Section 12(1)(c) read with Section 2(n)(iv), an unaided school has to admit into twenty-five per cent of the strength of Class I children belonging to weaker sections and disadvantaged groups in the neighbourhood. Hence, unaided minority schools will have a legal obligation to admit children belonging to weaker sections and disadvantaged groups in the neighbourhood who need not be children of the members of the minority community which has established the school. While discussing the validity of clause (5) of Article 15 of the Constitution, we have held that members of communities other than the minority community which has established the school cannot be forced upon a minority institution because that may destroy the minority character of the school. In our view, if the 2009 Act is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Therefore, the 2009 Act insofar it is made applicable to minority schools referred in clause (1) of Article 30 of the Constitution is ultra vires the Constitution. We are thus of the view that the majority



judgment of this Court in Society for Unaided Private Schools of Rajasthan v. Union of India [(2012) 6 SCC 1] insofar as it holds that the 2009 Act is applicable to aided minority schools is not correct.

56. In the result, we hold that the Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution and the Constitution (Eighty-sixth Amendment) Act, 2002 inserting Article 21-A of the Constitution do not alter the basic structure or framework of the Constitution and are constitutionally valid. We also hold that the 2009 Act is not ultra vires Article 19(1)(g) of the Constitution. We, however, hold that the 2009 Act insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution. Accordingly, Writ Petition (C) No. 1081 of 2013 filed on behalf of Muslim Minority Schools Managers' Association is allowed and Writ Petitions (C) Nos. 416 of 2012, 152 of 2013, 60, 95, 106, 128, 144-45, 160 and 136 of 2014 filed on behalf of non-minority private unaided educational institutions are dismissed. All IAs stand disposed of. The parties, however, shall bear their own costs.”



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16. The Hon'ble Apex Court had in clear terms held that the rights of a minority available under Article 30(1) of Constitution of India cannot be abrogated in any manner.

17. The Act, 2009 was introduced with an avowed object of providing compulsory free education to all children upto the age of 14 years, as it was found that children from disadvantage groups and weaker sections dropped out of school before completing elementary education. Section 1 of the Act 2009 reads as thus:-

“ 1. This Act may be called The Right of Children to Free and Compulsory Education Act, 2009.

(2) It shall extend to the whole of India

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(4) Subject to the provisions of articles 29 and 30 of the Constitution of, the provisions of this Act shall apply to conferment of rights on children to free and compulsory education.

(5) Nothing contained in this Act shall apply to Madrasas, Vedic Pathshalas and educational institutions



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primarily imparting religious instruction.”

18. It is pertinent to note that Sub Section (4) and (5) were brought in by way of amendment Act 30 of 2012. The said provisions had been inserted under the said amendment. It was mandated that the provisions of the Act were to apply subject to Articles 29 and 30 of the Constitution of India. Section 23 of the Enactment envisages the qualification for appointment and terms and conditions of services of a Teacher. The said provision reads as follows:-

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

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

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the



minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

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

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

19. Section 23 envisages that such minimum qualifications can be laid down by an Academic Authority which is authorised by the Central Government. The Central Government by its notification, dated 31.03.2010 published in the Gazette on 05.04.2010, in exercise of its power under Section 23 of the Act, 2009 had authorised the NCTE as the Academic



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Authority to lay down the minimum qualifications for the person to be eligible for appointment as a Teacher. Pursuant to the said notification, the NCTE issued its notification prescribing the minimum qualification on 23.08.2010 which had been amended by subsequent notifications. As per the said notification, TET had been prescribed as an essential qualification for appointment of the Teachers.

20. It is very shocking that none of the parties to the *lis* had placed before us the subsequent notification, dated 12.11.2014, issued by the NCTE in exercise of its power conferred under Clause (dd) of Sub Section (2) of Section 32 read with Section 12A of the National Council for Teacher Education Act, 1993. The said notification was issued in super-session of the National Council for Teacher Education (Determination of Minimum Qualification for Recruitment of Teachers in Schools) Regulation, 2001. The said Rules of the year 2014 was titled as “National Council for Teacher Education (Determination of Minimum Qualification of persons to be Recruited as Education Teachers and Physical Education Teachers in Pre-Primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulation, 2014”. The said Regulations



were to come into force on the date of its publication in the official Gazette.

The said notification had also been published by the Government in its Gazette dated 16.12.2014. The Regulation 2 deals with 'the applicability of the Regulation. The Regulations were to be applicable for recruitment of Teachers and Physical Education Teachers in a recognised school imparting pre-primary, primary, upper primary, secondary, senior secondary or intermediate schools or colleges imparting senior secondary education, explanation of the school for the purpose of the regulation has also been appended to the said Rules which includes every school. There is no distinction of minority and non-minority institutions. The Regulation 4 deals with 'the qualifications for recruitment'. The Schedule of the Regulations particularly the Schedule-I deals with the minimum qualification in respect of education Teachers.

21. From a reading of the Schedule-I, it could be seen that there are five categories, which are as follows:-

(a) Pre-school/ Nursery (for the children in the age group of 4 to 6 years)

(b) Pre-school/ Nursery followed by the first two years in formal



school.

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(c) Primary and upper primary for classes I to VII

(d) Secondary/ High School for classes IX and X

(e) Senior Secondary/ Intermediate for classes XI and XII

22. From the minimum academic and professional qualification that had been prescribed, except for Clause 3, there is no prescription for TET qualification. For the 3rd category, the minimum qualification as prescribed under Regulation of the year 2010 framed under Act, 2009 was adopted. The said Regulation, 2010 mandates a TET qualification for a Teacher to be appointed to a primary and upper-primary classes is classes I to VIII. Since, these Regulations have not at all been addressed to us and now that these Regulations have been notified by the NCTE under the provisions of NCTE Act, we are of the view that the contentions raised by the respective counsels as to the applicability of TET, which had been mandated under the Regulations 2010, whether would be applicable to the minority institutions or not, need not be addressed at all, in view of Regulation, 2014.



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23. The aforesaid Regulations of the year 2014 of NCTE had been made in exercise of their powers vested with it under the National Council for Teacher Education Act, 1993. Section 12 envisages the functions of the Council. Section 12(d) empowers the Council to lay down guidelines in respect of minimum qualifications for a person to be employed as a Teacher in recognised institutions.

24. It is to be noted that the said Clause had underwent an amendment in the year 2012, wherein, the words “in schools” have been omitted from the aforesaid provision. Therefore, prior to the said amendment, the said Clause would have to be read as empowering the Council to lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher even in schools .

25. It is to be noted that pursuant to the said power, the Council had in fact promulgated the National Council for Teacher Education (Determination of Minimum Qualification for Recruitment of Teachers in School) Regulations, 2001. Under the amendment of the year 2012, Section 12A was also inserted. Section 12A reads as under:-



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[12A. Power of Council to determine minimum standards of education of school teachers.-- For the purpose of maintaining standards of education in schools, the Council may, by regulations, determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college, by whatever name called, established, run, aided or recognised by the Central Government or a State Government or a local or other authority:

Provided that nothing in this section shall adversely affect the continuance of any person recruited in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate schools or colleges, under any rule, regulation or order made by the Central Government, a State Government, a local or other authority, immediately before the commencement of the National Council for Teacher Education (Amendment) Act, 2011 (18 of 2011) solely on the ground of non-fulfilment of such qualifications as may be specified by the Council:

Provided further that the minimum qualifications of a teacher referred to in the first proviso shall be acquired within the period specified in this Act or under the Right of Children



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to Free and Compulsory Education Act, 2009 (35 of 2009).]

26. The said provision is with the object of maintaining standard of Education in schools by determining the qualification of persons for being recruited as Teachers in various schools. The term “School” had been defined under Sub Section (ka) to Section 2 of the NCTE Act, which reads as under:-

“ Section 2:-.....

.....

(ka) [“School” means any recognised school imparting pre-primary, primary, upper primary, secondary or senior secondary education or senior secondary education, or a college imparting senior secondary education, and includes- (Inserted by Act 18 of 2011, Section4).]

27. It is to be noted that prior to the aforesaid amendment, the NCTE had in fact framed Regulations in the year 2001 viz., National Council for Teacher Education (Determination of Minimum qualifications for Recruitment of Teachers in School), Regulations 2001, the qualification for



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recruitment of a Teacher for teaching subjects have been prescribed in the Schedule-I. Further, Regulation 4, mandated modification of Recruitment Rules to be in conformity with the qualifications prescribed in the Schedule. It had also mandated that Teachers who are appointed as per the existing recruitment qualifications, have to acquire the required qualifications as per the Schedule. The Schedule had prescribed various qualifications in respect of various categories of school Teachers.

28. A reading of the same would indicate that the categories of Teachers have been made based on the classes which they are required to teach. A note appended to the Schedule also indicates that the appointment of Teachers for primary classes, the basic Teachers Training Programme of two years duration is required and that the B.Ed degree cannot be a substitute for basic teachers training. The aforesaid Regulations had been superseded by the Regulations 2014, which was notified by the NCTE on 12.11.2014 and the same had been published in the Gazette on 16.12.2014, which we had already discussed supra.

29. The next question that would arise as to whether these Regulations



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would apply to the minority institutions. We had posed this question, since it has been a categorical case for the minority institutions that no Regulations can be made whatsoever which would make inroad into the establishment and administration of the institution by them as being protected under Article 30(1) of the Constitution of India, including appointment of Teachers.

30. The object of these Regulations framed under the NCTE Act is to ensure the standard of excellence of institutions and also to maintain the standard of education in schools. The Hon'ble Apex Court in various judgments had held that the Regulations seeking to ensure the standard of excellence of institutions would be permitted and that the right of the minority to establish or administer the institution will not be whittled down by such Regulations.

31. Even though, we may venture upon to place on record the various judgments of the Hon'ble Apex Court in this regard, for brevity we refrain to do so and we only place reliance to the order of the Hon'ble Apex Court in the case of ***Sk.Mohd. Rafique vs. Managing Committee, Contai***



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Rahamania High Madrasah & Ors., reported in **2020 (6) SCC 689**. In the said judgment, the Hon'ble Apex Court had analysed the various judgments in that regard while upholding the provisions of the West Bengal Madrasah Service Commission Act, 2008. The said Enactment which was the subject matter of the aforesaid reported decision dealt with the appointment of Teachers also. Having analysed the right of minority Institution under Article 30(1) of the Constitution of India, on the basis of various judgments of the Hon'ble Apex Court including the Larger Bench decision in the case of ***T.M.A. Pai's Foundation case*** reported in **2002 (8) SCC 481**, had held that the selection of Teachers for their nomination by their Commission would satisfy the national interest as well as the interest of the minority educational institutions and that the said provisions are not violative of the rights of the minority as enshrined under Article 30(1) of the Constitution of India. It is also noted that the aforesaid judgment had also been affirmed by a subsequent judgment which had also been reported in **2002 (8) SCC 705**.

32. In the light of the pronunciation of law by the Hon'ble Apex Court in the aforesaid judgments, the minority educational institutions both aided



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and unaided are bound to follow the Regulations framed by the NCTE under its enactment prescribing qualification of the Teachers.

Question No.2

33. Since, the NCTE Regulations of the year 2001 and 2014 would be applicable to recruitment of Teachers even in the minority schools, the next question that we framed would have to be recasted as to whether the said Rules would be prospective or retrospective?

34. Firstly, Section 12A under the first Proviso had provided that nothing in Section 12A would adversely affect the continuance of any person who had been recruited as a Teacher before the commencement of the Act, 2011 by which Section 12A came to be inserted. However, under the second Proviso, the minimum qualification of a Teacher referred to in first Proviso should be acquired, within a period as specified in the Act or under the Act, 2009. The Regulations of the year 2001, which was originally notified, had mandated that the Teachers who are appointed as per the existing recruitment qualification, subsequent to the issue of these Regulations would have to acquire such qualifications as prescribed in the



Schedule. However, there is no prescription of acquiring qualifications prescribed in the Schedule under the Regulations 2014. For better appreciation, the relevant Section 12A is extracted hereunder:-

"12A. For the purpose of maintaining standards of education in schools, the Council may, by regulations, determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college, by whatever name called, established, run, aided or recognized by the Central Government or a State Government or a local other authority:

Provided that nothing in this section shall adversely affect the continuance of any person recruited in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate schools or colleges, under any rule, regulation or order made by the Central Government, a State Government, a local or other authority, immediately before the commencement of the National Council for Teacher Education (Amendment) Act, 2011 solely on the ground of non-fulfilment of such qualifications as may be specified by the Council;

Provided further that the minimum qualifications of a teacher referred to in the first proviso shall be acquired



within the period specified in this Act or under the Right of Children to Free and Compulsory Education Act, 2009."

35. From a reading of the first Proviso, it could be seen that the introduction of Section 12A should not adversely affect the continuance of any person recruited in the schools as Teachers. Even though, the second Proviso provided that such Teacher referred to in first Proviso shall acquire the minimum qualification, within a period specified under the Act, the NCTE either under the Enactment or under the subsequent Regulations had fixed any time limit for the existing Teachers to fulfill the minimum qualifications. It is not known that on what wisdom such time limit had not been prescribed by the statutory authority either under the Enactment or under Regulations.

36. Be that as it may, a Division Bench of this Court (G.R.S.J and M.D.I.J) by its judgment in ***W.P.(MD).No.11317 of 2022, dated 29.03.2023***, which arose out of a reference in view of the contradictory decisions of the learned Single Judges of this Court after dealing with the provisions of the Regulations, 2010 made under Act 2009 and the



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subsequent amendments to the said Regulations 2010, had held that the

Teachers who are in service on the date of commencement of the Act 2009, would have to qualify them in TET. For better appreciation, the relevant paragraphs are extracted hereunder:-

“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 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



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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.”

37. A subsequent judgment of a further Division Bench of this Court made in ***W.A.No.313 of 2022 and etc., batch, dated 02.06.2023*** was also placed before us. A perusal of the aforesaid judgment would show that a diametric conflicting decision has been rendered by a subsequent Division Bench, wherein, it had held that the Act, 2009, the Regulations framed thereunder in the year 2010 could only be prospectively held to be applicable and would not apply to Teachers who had been appointed prior to the commencement of the Act, 2009. But, however the Hon'ble Division Bench had also held that the persons who are appointed prior to the Act,



2009 without having TET qualification cannot seek further promotion. For

better appreciation, the conclusion that had been arrived at by the Hon'ble

Division Bench is extracted hereunder:-

“CONCLUSION

74. For the sake of clarity and ease of reference, the upshot of the above discussion is as under:

(a) Any teacher appointed as Secondary Grade Teacher or Graduate Teacher/BT Assistant prior to 29.07.2011 shall continue in service and also receive increments and incentives, even if they do not possess/acquire a pass in TET. At the same time, for future promotional prospects like promotion from secondary grade teacher to B.T. Assistant as well as for promotion to Headmasters, etc., irrespective of their dates of original appointment, they must necessarily possess TET, failing which they will not be eligible for promotion.

(b) Any appointment made to the post of Secondary Grade Teacher after 29.07.2011 must necessarily possess TET.

(c) Any appointment made to Graduate Teacher/BT Assistant, after 29.07.2011, whether by direct recruitment or promotion from the post of Secondary Grade



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Teacher, or transfer, must necessarily possess TET.

(d) The Special Rules for the Tamil Nadu School Educational Subordinate Service issued in GO (Ms.) No.13 School Education (S.E3(1)) Department dated 30.01.2020 insofar as it prescribes “a pass in Teacher Eligibility Test (TET)” only for direct recruitment for the post of BT Assistant and not for promotion thereto in Annexure-I (referred to in Rule 6) is struck down, thereby meaning that TET is mandatory/essential eligibility criterion for appointment to the post of BT Assistant even by promotion from Secondary Grade Teachers.

(e) The language employed in G.O. (Ms) No. 181 dated 15.11.2011 is to be read and understood to the effect that for continuance in service without promotional prospects, TET is not mandatory”

38. From the analysis of the aforesaid two judgments, it is categorically clear that for any appointment that had been made subsequent to the Act, 2009 and the Regulations 2010, the Teachers who had been appointed should necessarily qualify themselves with TET. The only contradiction was that as to whether a Teacher who had already been appointed as a Teacher prior to the Act, 2009 would require TET.



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39. Since, the contradiction was noted by another Hon'ble Division Bench of this Court in ***W.A.(MD).No.432 of 2023***, by order dated 08.06.2023, had directed the Registry to place the issue before the Hon'ble Chief Justice for constituting a Larger Bench to resolve the conflict.

40. Firstly, it is very unfortunate that the earlier Division Bench judgments of this Court had not been placed before the Hon'ble Division Bench who had subsequently dealt with the issue. From the cause title in respective cases, it could be seen that the State of Tamil Nadu, was represented by its Principal Secretary to Government, School Education Department in both the Writ Petitions and similarly, the Director of Elementary Education, Chennai, the Chairman, Teachers Recruitment Board, were also parties in both the batch of cases. It is not known as to why they or their Officers had not instructed their Law Officers to place the earlier judgment of the Division Bench before the subsequent Division Bench. This conduct of not placing the aforesaid judgment had led to this contradiction.



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41. Be that as it may, since, we have already held that the Regulations prescribing qualifications for recruitment of Teachers under the NCTE Act is binding on all schools including the minority schools, we shall analyse the said provisions of the said Regulations which have not been placed before the earlier Hon'ble Division Benches.

42. Even though, a reading of Section 12A indicates that there was no bar for continuance of a Teacher who had been appointed prior to the amendment under the first Proviso, the second Proviso indicates that the Teachers referred to in the first Proviso would have to qualify themselves as per the Regulations within a time frame. There has been no notification issued by the statutory body prescribing any time limit as indicated in the second Proviso to Section 12A. The Regulation 4 of Regulations 2001 envisages that Teachers who are appointed under any of the existing Recruitment Rules after the Regulations were notified, such Teachers would have to qualify themselves as per the qualifications prescribed in the



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Schedule to the said Regulations. There was no mandate that the Teachers who were appointed prior to notifying of Regulation, 2001 should also acquire the qualifications in the Schedule to the Regulation, 2001. This Regulation has been superseded in the year 2014. Regulations, 2014 mandates that as regards to the primary Teachers, the qualification prescribed to the Teachers under Regulations 2010, framed under the Act, 2009, will have to be followed. The Regulations framed under Act, 2009 envisages mandatory qualification of TET. Therefore, for a recruitment of a Teacher in a primary school or upper primary school that is for the classes I to VII, TET is a mandatory qualification. The Regulation does not envisage any condition that the Teachers appointed prior to the introduction of these Regulation should acquire the TET qualification within a said period.

43. It is well established principle of law that any law or Regulations which come into force except when specifically applied with retrospective effect would only have effect prospectively. Neither the application of Regulation, 2014 had been made with retrospective effect nor does it mandate the Teachers appointed prior to notification of Regulation, 2014



were required to acquire the qualification of TET.

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44. In such an event, we are of the considered view that the Teachers who are recruited only after the year 2014 in any school including the minority (aided and unaided) should have to fulfill the essential qualification of TET. It is also made clear that the Teachers appointed prior to 2014 would have to necessarily satisfy the qualifications prescribed by the NCTE under its Regulation, 2001. If the Teachers do not possess the qualification as prescribed under the Regulation, 2001 their appointment cannot be a valid one.

Question No.3:-

45. When the minimum qualifications are prescribed by a Statutory Authority under the provisions of an Enactment and such minimum qualifications had been made in national interest for betterment of education to maintain the standards of education, relaxation of such mandate cannot be granted by any other Authority. It is pertinent to note that under Regulation 5 of Regulations, 2014, the power to relax the qualification has been vested



with the NCTE. The Proviso to the said Regulation clearly excludes the grant of relaxation in respect of minimum qualification of appointment of Teacher to classes I to VIII. For better appreciation, the relevant provision is extracted hereunder:-

“Power to relax:

Where the Council is satisfied on receipt of reference from the concerned State Government that special circumstances exist warranting relaxations of some of the provisions of the Regulations, it may grant relaxation of that provision to such extent, for such time period and subject to such conditions and limitations as it may consider necessary, in a just and equitable manner;

Provided, that no relaxation, shall be granted under these Regulations with regard to the minimum qualifications for appointment of teachers for Level 3 (Class I to VII) as specified in the First Schedule.”

46. Hence, the relaxation that is claimed under Rule 6 of the Recruitment Rules cannot be exercised for grant of relaxation of the minimum qualification.



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47. However, as regard to the relaxation of age, it is always open to the Authority under the Recruitment Rules to grant relaxation of age. But, the same should be made in conformity with Rule 6 of the Recruitment Rules by carving out a class of people who would be entitled for such relaxation.

48. During the earlier hearing, it had been brought to the notice of this Court that a Special committee had been constituted to examine the credentials of the claims made by the respective Teachers and the School Management have been invited to attend a meeting on 25.09.2023, for the purpose of taking a decision based on the credentials of Teachers. In view of the said statement, a direction was issued by us to place the Report of the meeting of the Committee. The said Report of the Committee was also placed before us. The Special Committee in its Report dated 16.10.2023, the following were observed:-

“...The Special committee, on scrutinizing the particulars submitted by the school management observed the following:



(i)The candidates listed in Sl.No.2,7,11 have already retired and Sl.no.13,20,27 have resigned from service and Sl.No.30,31 are not in service at present.

(ii)The Candidates listed in Sl.No.2,3,5,7,8,9,10,11,12,13,14,16,19,21,27 were over aged at the time of the alleged engagement on consolidated basis by the School Management.

(iii)The Candidates listed in Sl.No.2,3,6,21,23,26 have not completed minimum qualifying service (i.e. 5 years of experience as PST) for promotion but they have been promoted as TGT.

(iv)It is noted that none of the teachers have qualified TET/CTET which is mandatory qualification as per NCTE guidelines. Hence none of the below teachers except candidates mentioned in Sl.No.12 and 22 (Music Teacher and Physical Education Teacher for whom TET is not applicable) are found to be eligible.

(v)The committee has also observed that some documents produced by the schools are not reliable since many teachers have produced appointment order in the post of TGT during 2006 but the post of School Asst. Gr-II was re-designated as TGT during the year 2008. Hence from the above observations the committee reports that the Government Aided schools have engaged the teachers



without prescribed eligibility criteria which is a clear violation of Recruitment Rules...”

49. A table showing the respective candidates along with the details have also been placed on record. The Special Committee had also placed its suggestion in its Report. For better appreciation, the relevant portion of the Report is extracted hereunder:-

“...Suggestion of the Special Committee:

(i) The Student strength of all the schools except Immaculate High School, Mission Street, Puducherry has gradually reduced and hence ratification may be done and the posts in the Grant-in-aid school may be reduced according to the student strength of the school.

(ii)The School Managements may be advised to recruit teacher in a fair and transparent manner so as to appoint well qualified teacher with prior approval of the Director of School Education.

(iii)The candidates listed in Sl.No.12 and 22 (Music Teacher and Physical Education Teacher for whom TET is not applicable) may be consideration for appointment. However the appointment is subject to the policy decision of the Government on verification of certificates of the candidate, examination of Medical fitness, obtaining of vigilance clearance certificate.



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(iv)The appointment and relaxation of age/TET qualification may be operated with the policy Decision of the Government since it involves appointment of Group-B Staff which need approval from the Government...”

50. In view that the respective Teachers who are before us, a table had been prepared and given to us, we are of the view that it would be relevant if the said table also forms a part of this order. From the Report, it could be seen that the candidates in Sl.No.2, 7, & 11 have already retired and that the candidates in Sl.No.13, 20 & 27 had voluntarily retired from services and the candidates in Sl.No.30 & 31 are not in service on the date given against them. Similarly, in Clauses 2, it has been noted that various persons were over aged and in Clause 3 certain number of candidates according to the Committee did not have minimum qualifying service of 5 years experience, as a primary school Teacher for appointment as a Trained Graduate Teacher.

51.It is to be noted that two (2) of the candidates in Sl.No. 12 & 22 do not acquire any TET. But, however, the candidate in Sl.No.12, according to the Special committee is over aged. In respect of the candidates who are



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over aged, the Authority under the Recruitment Rules can consider their cases and grant appropriate age relaxation.

52. Since, the direction had been issued by the learned Single Judge to consider the cases of the petitioners therein by directing the Managements concerned to submit a fresh proposal and since, the said exercise is yet to be carried out, we deem it fit that the Government of Puducherry shall consider all the pending applications for grant of approval for the respective Management, within a period of three (3) months from the date of receipt of a copy of this order.

53. We are conscious that there will be huge financial implications, if the applications for grant of approval is positively considered. Hence, such grant of approvals shall relate back to the date on which the concerned Teacher had been appointed, but, such grant shall be a notional grant and the monetary benefits that is to be paid to the Teachers will be made from the date of this order. Since, we have held that the Teachers will be entitled to the monetary benefits only from the date of this order, we are of the



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considered view that the Teachers who had retired, resigned and left the services of the Management would not be entitled to be considered for grant of approval as such consideration would not entitle them any benefits whatsoever. As it has been suggested by the Special Committee that the candidates in Sl.No.12 & 22 can be considered for appointment as the TET is not applicable, relaxation of the relevant Rules which otherwise stand in their way can be positively exercised and appointments be granted. It is made clear that even in their respect they would be entitled to monetary benefits only from the date of this order.

54. In W.A.No.2214 of 2018, the learned Single Judge had in fact issued a positive direction to grant approval of the teacher concerned. A perusal of the said judgment does not indicate that the learned Single Judge was satisfied with the qualifications that the teacher had possessed for entitlement for grant of approval. Even if it so, we are of the view that the learned Single Judge ought to have remitted the matter back to the Authorities for fresh consideration. Further, there was no rejection of approval by the Department. It had only indicated that such approval could



be considered if the Regulation as approved by the Director is in place. For the said reasons, we are inclined to interfere with the positive direction issued by the learned Single Judge to grant approval. The Department shall also consider the case of the respondent therein on the basis of the directions and findings given above.

55. In view of the aforesaid discussions, we dispose of these batch of cases in W.A.Nos.2842, 2176, 2557, 2848, 2040 of 2018 & 768, 873 of 2019 and 125 of 2021 and W.P.Nos.10371 to 10374 of 2014 & 12940 to 12942 of 2015 & 21850 to 21854 of 2015 & 22129 & 22130 of 2015 and 27170 to 27173 & 21062 of 2015 with the following directions:-

(a) The Authority is directed to consider the application for grant of approval submitted by the respective Managements and pass appropriate orders within a period of three (3) months from the date of receipt of a copy of this order.

(b) While carrying out such exercises, the cases in which the appointed Teachers have either resigned or superannuated need not be considered for grant of approval.



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(c) While considering the approval of teachers who are appointed after 2001 but before 16.12.2014 they shall necessarily fulfill the qualifications prescribed under the Schedule to Regulations, 2001.

(d) As regards to the applications for grant of approval for Teachers who have been appointed either through direct recruitment or by way of promotion after 16.12.2014 will have to fulfill the minimum qualifications prescribed under the Regulations, 2014.

56.The Writ Appeal in W.A.No.2214 of 2018, for the reasons stated supra is allowed. A further direction is issued to the Authority to consider the case of the first respondent for grant of approval submitted by the Management School, within a period of three (3) months from the date of receipt of a copy of this order. In considering so, the Clauses (b), (c) and (d) of the earlier paragraph would also apply to the case of the first respondent also.

57. It is also made clear that if any grant of approval is made, then such approval shall be notionally granted to the respective Teachers from



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the date of appointment. They will be entitled to monetary benefits only from the date of this order.

58. From the narration of facts, we have found that there is no co-ordination between the Officers of the Government in respect of the disposal of the cases, that is a decision made by the Co-ordinate Bench of this Court are not being placed before another Co-ordinate Bench, be that in the Principal Seat at Madras or the Bench at Madurai. The Chief Secretary of the State of Tamil Nadu is hereby directed to issue necessary circular to both its Officers and also the Law Officers to circulate the judgments made by the High Court when such cases involve a State wide ratification.

59. Registry is also directed to mark a copy of this order to the Chief Secretary of Tamil Nadu.

60. With the aforesaid directions, these Writ Petitions are disposed of. However, there shall be no order as to costs. Consequently, connected



miscellaneous petitions are also closed.

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60. During the course of the arguments, it was pointed out that two Writ Petitions in W.P.No.19445 of 1998 & W.P.No.35996 of 2007, challenging the provisions of the Pondicherry School Education Act, 1984 and Rules 1996 are pending consideration of this Court. We are shocked to see that the first Writ Petition had been filed in the year 1998 and the second Writ Petition had been filed in the year 2007. It is also noted that certain provisions of the Enactment have been injuncted to be applied in the case of minority institutions. In that aspect, we direct the Registry to place these Writ Petitions immediately before the appropriate Bench dealing with the roster, after obtaining necessary permission from His Lordship The Chief Justice.

(R.S.K.,J.) (K.B., J.)
30.04.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
Gba

50/52



To
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1. The Union Territory of Puducherry,
by its Secretary,
Department of Education
Secretariat, Puducherry – 605 001.
2. The Director of School Education,
Government of Puducherry,
Directorate of School Education,
Puducherry – 605 005.
3. The Senior Accounts Officer,
Government of Puducherry,
Directorate of School Education,
Puducherry – 605 005.
4. The Joint – Director of School Education,
Government of Puducherry,
Directorate of School Education,
Puducherry – 605 005.



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R.SURESH KUMAR, J.
and
K.KUMARESH BABU, J.

Gba

A Pre-delivery Common Judgment made in
W.A.Nos.2842, 2176, 2214, 2557, 2848, 2040 of 2018
&768, 873 of 2019 and 125 of 2021
and W.P.Nos.10371 to 10374 of 2014 & 12940 to 12942 of 2015
& 21850 to 21854 of 2015 & 22129 & 22130 of 2015 and 27170 to 27173
& 21062 of 2015

30.04.2024