IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2023

CORAM :

**THE HONOURABLE MR. JUSTICE R. MAHADEVAN**
and
**THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

Writ Appeal Nos. 313, 833, 1891, 2050, 2082, 2617, 2795 of 2022
&
Writ Appeal Nos. 19, 31, 32, 36 of 2023
&
Writ Petition Nos. 3364 and 3368 of 2023
and
CMP. Nos. 22724, 22726 and 5628 of 2022, 335 and 6349 of 2023, 15716, 20772, 13862, 2384 of 2022, 330, 342, 6060 of 2023, 15447 of 2022, 268 of 2023 and WMP. Nos. 3434 and 3436 of 2023
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WA No. 313 of 2022

1. The Director of School Education
   D.P.I. Campus, College Road
   Chennai - 600 006

2. The Chief Educational Officer
   Kancheepuram District
   Kancheepuram

3. The District Educational Officer
   Chengalpattu Education District
   Kancheepuram District .. Appellants

Versus

1. M. Velayutham
   Son of V. Murugesan
   B.T. Assistant (English)
   Jaigopal Garodia National Higher Secondary School

East Tambaram, Chennai - 600 059
2. The Secretary
Jaigopal Garodia National Higher Secondary School
East Tambaram, Chennai - 600 059 .. Respondents

WA No. 833 of 2022

1. The Director of School Education
D.P.I. Campus, College Road
Chennai - 600 006

2. The Chief Educational Officer
Presidency Girls Higher Secondary School Campus
Gangureddy Road, Egmore
Chennai - 600 008

3. The District Educational Officer
Chennai East
Chennai - 600 094 .. Appellants

Versus

1. A. Choodamani
Wife of M. Govindan
B.T. Assistant (Science)
K. Ramaiah Chetty ARC Girls Hr. Sec. School
New No.26 (Old No.38) Saivamuthu Street
Chennai - 600 001

2. The Secretary
K. Ramaiah Chetty ARC Girls Hr. Sec. School
New No.26 (Old No.38) Saivamuthu Street
Chennai - 600 001 .. Respondents

WA No. 1891 of 2022

1.State of Tamil Nadu
represented by its Principal Secretary to Government
School Education Department
Fort St. George, Secretariat
Chennai - 600 009

2. The Commissioner of School Education
   D.P.I. Campus, College Road
   Chennai - 600 006

3. The Chief Educational Officer
   Salem, Salem District

4. The District Educational Officer
   Salem Educational District
   Salem .. Appellants

Versus

1. K.A. Karpagam
   D/o. K.S. Anbalagan
   B.T. Assistant (Science)
   Sri Sarada Vidyalaya Higher Secondary School for Girls
   Fairlands, Salem - 636 016

2. The Correspondent/Secretary
   Sri Sarada Vidyalaya Higher Secondary School for Girls
   Fairlands, Salem - 636 016 .. Respondents

WA No. 2050 of 2022

1. State of Tamil Nadu
   represented by its Principal Secretary to Government
   School Education Department
   Fort St. George, Secretariat
   Chennai - 600 009

2. The Director of School Education
   D.P.I. Campus, College Road
   Chennai - 600 006

3. The Chief Educational Officer
   Chengalpet
   Chengalpet District

4. The District Educational Officer
   Chromepet Educational District
   Chromepet - 600 044
   Chengalpet District .. Appellants

Versus

1. R. Varun
   B.T. Assistant (Maths)
   A.J.S. Nidhi Higher Secondary School
   Alandur, Chennai - 600 016

2. The Secretary
   A.J.S. Nidhi Higher Secondary School
   Alandur, Chennai - 600 016 .. Respondents

WA No. 2082 of 2022

1. State of Tamil Nadu
   represented by its Principal Secretary to Government
   School Education Department
   Fort St. George, Secretariat
   Chennai - 600 009

2. The Commissioner of School Education
   D.P.I. Campus, College Road
   Chennai - 600 006

3. The Chief Educational Officer
   Chengalpet
   Chengalpet District

4. The District Educational Officer
   Chromepet Educational District
   Chromepet - 600 044
   Chengalpet District .. Appellants

Versus

1. P. Sureshkumar
   Son of T. Palanivelu
   B.T. Assistant (Maths)
   A.J.S. Nidhi Higher Secondary School
   Alandur, Chennai - 600 016

2. The Secretary
   A.J.S. Nidhi Higher Secondary School
   Alandur, Chennai - 600 016 .. Respondents

W.A. No. 2617 of 2022

1. G.S. Senthilkumar
   Son of G. Subbaiyan
   B.T. Assistant (Science)
   Sri Krishna Middle School
   Thappalampuliyur
   Thiruvarur District - 610 016

2. T. Vanniyarajathi
   Wife of Rajaiah
   B.T. Assistant (Science)
   Sri Krishna Middle School
   Thappalampuliyur
   Thiruvarur District - 610 016

3. S. Karthikeyan
   Son of Subramanian
   Secondary Grade Teacher
   Sri Krishna Middle School
   Thappalampuliyur
   Thiruvarur District - 610 016 .. Appellants

Versus

1. The Director of School Education
   DPI Campus, College Road
   Chennai - 600 006

2. The Chief Educational Officer
   Thiruvarur District, Thiruvarur

3. The District Educational Officer
   Thiruvarur Educational District
   Thiruvarur

4. The Block Development Officer
   Thiruvarur Education Block
   Thiruvarur District

5. The Correspondent
   Sri Krishna Middle School
   Thappalampuliyur
   Thiruvarur District - 610 016

6. Teachers Recruitment Board
   rep. by its Chairman
   College Road, Nungambakkam
   Chennai - 600 006

7. Union of India
   rep. by its Secretary to Government
   Department of School Educational and Literacy
   Ministry of Human Resource Department
   217-C, Shastri Bhawan
   New Delhi - 110 001

8. National Council for Teacher Education (NCTE)
   rep. by its Member Secretary
   G-7, Sector-10, Dwarka
   New Delhi - 110 075 .. Respondents

W.A. No. 2795 of 2022

1. V. Vanaja
2. K. Prabhu
3. P. Prabhakar

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

Versus

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

2. The Commissioner of School Education
   Directorate of School Education
   DPI Campus, College Road
   Chennai - 600 006

3. The Joint Director of School Education (Personnel)
   DPI Campus, College Road
   Chennai - 600 006

4. The Director of Elementary Education
   Directorate of School Education (Personnel Department)
   DPI Campus, College Road, Chennai - 600 006\

5. R. Sakthivel

6. TET Passed Candidates Welfare Association
   rep. by its Secretary K. Shanmuga Priya
   having office at No.389/2, Rose Valley
   Opposite to Bismillah Nagar
   Hosur - 635 109

7. Muthamizh Selvan
   Son of Saminathan
   Secondary Grade Teacher
   Panchayat Union Middle School
   Kaduvettankurichi
   T. Palur Block, Ariyalur District

(RR5 to 7 were impleaded as party
respondents as per order dated 10.02.2023
in CMP.Nos.2403, 2404 and 2596 of 2022) .. Respondents

WA No. 19 of 2023

1. The Government of Tamil Nadu
   represented by its Secretary
   Department of School Education
   Fort St. George
   Chennai - 600 009

2. The Director of School Education
   College Road, Chennai - 600 006

3. The Chief Educational Officer
   Chief Educational Office
   Government Girls Hr. Secondary School Campus
   Chengalpet District - 603 001

4. The District Educational Officer
   District Educational Office
   St. Thomas Mount
   Government Boys Hr. Sec. School Campus
   Chromepet, Chennai - 600 044
   Kanchipuram .. Appellants

Versus

The Headmistress & Correspondent
St. Joseph's Higher Secondary School
Vettuvankeni
Chennai - 600 115 .. Respondent

WA No. 31 of 2023

1. The Government of Tamil Nadu
   represented by its Secretary
   Department of School Education
   Fort St. George, Chennai - 600 009

2. The Director of School Education
   College Road, Chennai - 600 006

3. The Chief Educational Officer
   Chief Educational Office
   Government Girls Hr. Secondary School Campus
   Chengalpet District - 603 001

4. The District Educational Officer
   District Educational Office
   St. Thomas Mount
   Government Boys Hr. Sec. School Campus
   Chromepet, Chennai - 600 044
   Kanchipuram .. Appellants

Versus

The Headmistress & Correspondent
St. Joseph's Higher Secondary School
Vettuvankeni
Chennai - 600 115 .. Respondent

WA No. 32 of 2023

1. The Government of Tamil Nadu
   represented by its Secretary
   Department of School Education
   Fort St. George, Chennai - 600 009

2. The Director of School Education
   College Road, Chennai - 600 006

3. The Chief Educational Officer
   Chief Educational Office
   Government Girls Hr. Secondary School Campus
   Chengalpet District - 603 001

4. The District Educational Officer
   District Educational Office
   St. Thomas Mount
   Government Boys Hr. Sec. School Campus
   Chromepet, Chennai - 600 044
   Kanchipuram .. Appellants

Versus

The Headmistress & Correspondent
St. Joseph's Higher Secondary School
Vettuvankeni
Chennai - 600 115 .. Respondent

WA No. 36 of 2023

1. The Government of Tamil Nadu
   represented by its Secretary
   Department of School Education
   Fort St. George, Chennai - 600 009

2. The Director of School Education
   College Road, Chennai - 600 006

3. The Chief Educational Officer
   Chief Educational Office
   Government Girls Hr. Secondary School Campus
   Chengalpet District - 603 001

4. The District Educational Officer
   District Educational Office
   St. Thomas Mount
   Government Boys Hr. Sec. School Campus
   Chromepet, Chennai - 600 044
   Kanchipuram .. Appellants

Versus

The Headmistress & Correspondent
St. Joseph's Higher Secondary School
Vettuvankeni
Chennai - 600 115 .. Respondent

<u>Writ Petition No. 3364 of 2023</u>

TET Passed Candidates Welfare Association
rep. by its Secretary K. Shanmuga Priya
having office at No.389/2, Rose Valley
Opposite to Bismillah Nagar
Hosur - 635 109 .. Petitioner

Versus

1. Union of India
   Through its Secretary to Government
   Ministry of Human Resource and Development
   (Department of School Education)
   New Delhi

2. National Council for Teacher Education
   G-7, Sector-10, Dwarka
   New Delhi - 110 075

3. The State of Tamil Nadu
   rep. by its Principal Secretary to Government
   School Education Department
   Fort St. George, Chennai - 600 009

4. The Commissioner of School Education
   Directorate of School Education
   DPI Campus, College Road
   Chennai - 600 006

5. The Joint Director of School Education (Personnel)
   DPI Campus, College Road
   Chennai - 600 006

6. The Director of School Education
   Directorate of School Education
   DPI Campus, College Road
   Chennai - 600 006 .. Respondents

WA No. 313 of 2022:- Writ Appeal filed Clause 15 of Letters Patent against the order dated 29.07.2021 passed in WP No. 23999 of 2019 on the file of this Court.

WA No. 833 of 2022:- Writ Appeal filed Clause 15 of Letters Patent against the order dated 29.07.2021 passed in WP No. 24003 of 2019 on the file of this Court.

WA No. 1891 of 2022:- Writ Appeal filed Clause 15 of Letters Patent against the order dated 22.10.2021 passed in WP No. 22221 of 2021 on the file of this Court.

WA No. 2050 of 2022:- Writ Appeal filed Clause 15 of Letters Patent against the order dated 29.09.2021 passed in WP No. 20911 of 2021 on the file of this Court.

WA No. 2082 of 2022:- Writ Appeal filed Clause 15 of Letters Patent against the order dated 29.09.2021 passed in WP No. 20913 of 2021 on the file of this Court.

WA No. 2617 of 2022:- Writ Appeal filed Clause 15 of Letters Patent against the order dated 28.04.2022 passed in WP No. 35487 of 2022 on the file of this Court.

WA No. 2795 of 2022:- Writ Appeal filed Clause 15 of Letters Patent against the order dated 20.10.2022 passed in WP No. 19587 of 2019 on the file of this Court.

WA No. 19 of 2023:- Writ Appeal filed Clause 15 of Letters Patent against the order dated 22.10.2021 passed in WP No. 22545 of 2021 on the file of this Court.

WA No. 31 of 2023:- Writ Appeal filed Clause 15 of Letters Patent against the order dated 22.10.2021 passed in WP No. 22550 of 2021 on the file of this Court.

WA No. 32 of 2023:- Writ Appeal filed Clause 15 of Letters Patent against the order dated 22.10.2021 passed in WP No. 22554 of 2021 on the file of this Court.

WA No. 36 of 2023:- Writ Appeal filed Clause 15 of Letters Patent against the order dated 22.10.2021 passed in WP No. 22556 of 2021 on the file of this Court.

Writ Petition No. 3364 of 2023:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring that the Special Rules for the Tamil Nadu School Educational Subordinate Service issued in G.O. 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 B.T. Assistant and not for promotion thereto in Annexure-1 (referred to in Rule 6) is illegal

being *ultravires the* Right of Children to Free and Compulsory Education Act, 2009 and the Rules framed thereunder and the NCTE notification dated 23.08.2010 and 29.07.2011.

Writ Petition No. 3368 of 2023:- Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration declaring that the Special Rules for the Tamil Nadu School Educational Subordinate Service issued in G.O. 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 B.T. Assistant and not for promotion thereto in Annexure-1 (referred to in Rule 6) is illegal being *ultravires the* Right of Children to Free and Compulsory Education Act, 2009 and the Rules framed thereunder and the NCTE notification dated 23.08.2010 and 29.07.2011.

W.A. No. 313 of 2022

For Appellant (s) : Mr. S. Silambannan
Additional Advocate General
assisted by Mr. G. Nanmaran
Special Government Pleader &
Mr. Babu Barveez
Government Advocate

For Respondent (s) : Mr. G. Sankaran, Senior Advocate
for Mr. S. Nedunchezhiyan for R1

Mr. N. Ganesh for R2

W.A. No. 833 of 2022

For Appellant (s) : Mr. S. Silambannan
Additional Advocate General
assisted by Mr. G. Nanmaran
Special Government Pleader &
Mr. Babu Barveez
Government Advocate

W.A. No. 1891 of 2022

For Appellant (s) : Mr. S. Silambannan
Additional Advocate General
assisted by Mr. G. Nanmaran
Special Government Pleader &
Mr. Babu Barveez
Government Advocate

For Respondent (s) : Mr. G. Sankaran, Senior Advocate
for Mr. S. Nedunchezhiyan for R1

W.A. No. 2050 of 2022

For Appellant (s) : Mr. S. Silambannan
Additional Advocate General
assisted by Mr. G. Nanmaran
Special Government Pleader &
Mr. Babu Barveez
Government Advocate

For Respondent (s) : Mr. G. Sankaran, Senior Advocate
for Mr. S. Nedunchezhiyan for R1

No representation for R2

W.A. No. 2082 of 2022:-

For Appellant (s) : Mr. S. Silambannan
Additional Advocate General
assisted by Mr. G. Nanmaran
Special Government Pleader &
Mr. Babu Barveez
Government Advocate

For Respondent (s) : Mr. G. Sankaran, Senior Advocate
for Mr. S. Nedunchezhiyan for R1

W.A. No. 2617 of 2022

For Appellant (s) : Mr. G. Sankaran, Senior Advocate
for Mr. S. Nedunchezhiyan

For Respondent (s) : Mr. S. Silambannan
Additional Advocate General
assisted by Mr. G. Nanmaran
Special Government Pleader &
Mr. Babu Barveez
Government Advocate for RR1 to 4
Mr. Su. Sreenivasan for R7
Mr. V.Ashok Kumar, CGSC for R8
Mr. K.Sathish for R6 (No appearance)

W.A. No. 2795 of 2022:-

For Appellant (s) : Mrs. Nalini Chidambaram, Senior Advocate
for Mrs. C. Uma

For Respondents : Mr. S. Silambannan
Additional Advocate General
assisted by Mr. G. Nanmaran
Special Government Pleader &
Mr. Babu Barveez
Government Advocate for RR1 to 4

Mr. E. Viswanathan for R5

Mrs. Kavitha Rameshwar for RR6 & 7

Mr. Karthikeyan for Implead Petitioners in
CMP Nos. 6349 & 6050 of 2023

W.A. Nos. 19, 31, 32 & 36 of 2023

For Appellants : Mr. S. Silambannan
Additional Advocate General
assisted by Mr. G. Nanmaran
Special Government Pleader &
Mr. Babu Barveez
Government Advocate

WP No. 3364 of 2023

For Petitioner (s) : Ms. N. Kavitha Rameshwar

For Respondents : Mr. V. Ashokkumar
Central Government Standing Counsel for R2

Mr. Su. Srinivasan
Standing Counsel for R1

Mr. S. Silambannan
Additional Advocate General
assisted by Mr. G. Nanmaran
Special Government Pleader &
Mr. Babu Barveez
Government Advocate for RR3 to 6

WP No. 3368 of 2023

For Petitioner (s) : Ms. N. Kavitha Rameshwar

For Respondents : Mr. V. Ashokkumar
Central Government Standing Counsel for R1

Mr. Su. Srinivasan
Standing Counsel for R2

Mr. S. Silambannan
Additional Advocate General
assisted by Mr. G. Nanmaran
Special Government Pleader &
Mr. Babu Barveez
Government Advocate for R3 to R6

**COMMON JUDGMENT**

**R. MAHADEVAN, J**

I. INTRODUCTION, FACTUAL BACKGROUND AND PLEADINGS

1. The key issues that arise for determination in these batch of writ appeals and writ petitions are:

(i) whether passing of the Teacher Eligibility Test (TET) is mandatory for promotion to the post of B.T. Assistant/Graduate Teacher, from the cadre of Secondary Grade Teacher (already in service).

(ii) whether non-possession/non-acquisition of a pass in TET by a teacher appointed prior to 29.07.2011 would affect his/her continuance in service and drawal of increment, without seeking for further promotion to the post of BT Assistant/Graduate Teacher.

2. By a notification dated 23.08.2010 issued in exercise of powers conferred under sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009) (in short, "RTE Act") and in pursuance of Notification No. S.O. 750 (E) dated 31.03.2010 issued by the Department of School Education and Literacy, Ministry of Human Resources Development, Government of India, the National Council for

Teacher Education (in short, "the NCTE") laid down certain minimum qualifications for a person to be eligible for appointment as a Teacher in Classes I to VIII in a school. Subsequently, by notification dated 29.07.2011, the NCTE made certain amendments to the said principal notification. The relevant clauses of the amended notification read thus:

> *1. Minimum Qualifications:~*
> *(i) Classes I to V*
> *(a) Senior Secondary (or its equivalent) with at least 50% marks and 2 - year Diploma in Elementary Education (by whatever name known)*
>
> *OR*
>
> *Senior Secondary (or its equivalent) with at least 45% marks and 2-year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure) Regulations, 2002.*
>
> *OR*
>
> *Senior Secondary (or its equivalent) with at least 50% marks and 4 - year Bachelor in Elementary Education (B.El.Ed.)*
>
> *OR*
>
> *Senior Secondary (or its equivalent) with at least 50% marks and 2 - year Diploma in Education (Special Education)*
>
> *OR*
>
> *Graduation and two year Diploma in Elementary Education (by whatever name known)*
>
> *AND*
>
> *(b)Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.*
>
> *(ii) Classes VI-VIII*
> *(a)Graduation and 2 - year Diploma in Elementary Education (by whatever name known)*
>
> *OR*
>
> *Graduation with atleast 50% marks and 1 - year Bachelor in Education (B.Ed.)*
>
> *OR*
>
> *Graduation with at least 45% marks and 1 - year Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard*
>
> *OR*
>
> *Senior Secondary (or its equivalent) with at least 50% marks and 4 - year Bachelor in Elementary Education (B.El.Ed.)*

*OR*

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

*OR*

*Graduation with at least 50% marks and 1 - year B.Ed. (Special Education)*

*AND*

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

*4.Teacher appointed before the date of this Notification:- The following categories of teachers appointed for Classes I to VIII prior to date of this Notification need not acquire the minimum qualifications specified in Para (1) above:*

*(a)A teacher appointed on or after the 3rd September, 2001 i.e. the date on which the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time) came into force, in accordance with that Regulation.*

*Provided that a teacher of class I to V possessing B.Ed qualification, or a teacher possessing B.Ed (Special Education) or D.Ed (Special Education) qualification shall undergo an NCTE recognized 6 - month special programme on elementary education.*

*(b)A teacher of class I to V with B.Ed qualification who has completed a 6-month Special Basic Teacher Course (Special BTC) approved by the NCTE;*

*(c)A teacher appointed before the 3rd September, 2001, in accordance with the prevalent Recruitment Rules.*

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

*(b)The minimum qualification norms referred to in this Notification shall apply to teachers of Languages, Social Studies, Mathematics, Science, etc. In respect of teachers for Physical Education, the minimum qualification norms for Physical Education teachers referred to in NCTE Regulation dated 3rd November, 2001 (as amended from time to time) shall be applicable. For teachers of Art Education, Craft Education, Home Science, Work Education, etc. the existing eligibility norms prescribed by the State Governments and other school managements shall be applicable till such time the NCTE lays down the minimum qualification in respect of such teachers."*

3. Pursuant to the aforesaid notification, the Government of Tamil Nadu issued G.O. (Ms) No. 181, School Education (C2) Department 15.11.2011, in which the Teachers Recruitment Board (in short, “the TRB”) was designated as the Nodal Agency for conducting the Teachers Eligibility Test (TET) in the State of Tamil Nadu. Subsquently, another G.O., viz., G.O. (Ms) No. 90, School Education (Q) Department 28.03.2012, came to be passed, to the following effect:

> *"....In the G.O. (Ms) No. 181, School Education (C2) Department, dated 15.11.2011, the Government has changed the recruitment policy for recruitment of Secondary Grade Teachers and Graduate Assistants. Henceforth, the recruitment will be based on written examination, namely, Teacher Eligibility Test in accordance with the guidelines issued by the National Council for Teacher Education. The qualifying candidates of the Teacher Eligibility Test will be recruited based on marks, communal rotation and certificate verification.*
>
> *2.However, with respect to the recruitment of Secondary Grade Teachers, the state-wide seniority in employment exchange registration will continue till the disposal of the Special Leave Petition filed in the Supreme Court."*

Subsequently, in GO. Ms. No. 244 School Education [EE(3)2] Department dated 30.11.2013, it was clarified that the Government has examined the matter and directed the Teachers Recruitment Board to follow the procedure for selection of Secondary Grade Teachers also on the basis of the marks obtained in TET.

4. Thus, as per the G.Os. referred to above, possessing TET qualification has become essential and mandatory for the teaching faculties

from 23.08.2010 (subsequently extended by NCTE notification to 29.07.2011) in the State.

5. The Nodal Agency (TRB) in the State of Tamil Nadu, has conducted TET examination for the first time on 12.07.2012 from which it could be inferred that no person, who had passed the TET, would have been available to be appointed during the period from 23.08.2010 to 12.07.2012 as a teacher. It is in that backdrop that the first and second proviso to clause (2) of Section 23 of the RTE Act enable those teachers, who were appointed during that period, to pass the TET by 31.03.2019 for their continuance in the post.

6. Though there is a requirement in the Notification No.76-4/2010 /NCTE/Acad dated 11.02.2011 published by the NCTE that the TET should be conducted atleast once in every year and there will be no restriction on the number of attempts a person can take for acquiring a TET Certificate and a person who has qualified the TET may also appear again for improving his/her score, it has been brought to notice that the TET has not been conducted annually in the State of Tamil Nadu except on 14.10.2012, 17.08.2013, 18.08.2013, 29.04.2017, 30.04.2017, 08.06.2019 and 09.06.2019. Thus, taking this situation that TET had not been conducted in the years 2014, 2015, 2016 and 2018, the persons appointed during the period from 23.08.2010 to 12.07.2012 have claimed exemption from passing TET, particularly when it is

not in dispute that the TET has been conducted during the years 2012, 2013 and 2017 and they have had sufficient opportunity to prepare and appear for the TET during the said period. In this context, the Division Bench of this Court in ***State of Tamil Nadu v. R.Arivazhagan*** **(Order dated 24.01.2017 in W.A. No. 1126 of 2016 etc., batch)** had taken note of those aspects of the matter and held as follows:

> *"42.Accordingly, to meet the ends of justice, the writ appeals and the writ petitions are disposed with the following directions:*
>
> *(i)The Teachers herein, who have been appointed subsequent to the issuance of the Government Order, are granted one opportunity to appear for the Teacher Eligibility Test to be conducted by the Teachers Recruitment Board and in the event of their passing in the Teacher Eligibility Test, their appointments shall be approved else, they have no other option but to quit the service/ousted from service;*
>
> *(ii)Till the results are published, the Government shall pay the salary to the Teachers, who are in service of the aided institutions, for the service rendered by them and in the cases where salary was not paid the same shall be paid along with arrears, if any, forthwith;*
>
> *(iii)Learned Advocate General submitted that salary has been paid to most of the Teachers and only a few were not paid, for want of particulars. In such a case, the Teachers whose salary have not been paid for want of particulars, they shall furnish the requisite particulars immediately, so as to enable the Government pay the salary immediately.*
>
> *(iv)Insofar as W.P. No. 7953 of 2015 is concerned, though the writ petitioner has qualified with a pass in Teacher Eligibility Test during 2013, she has not been paid the difference of salary from the date of appointment, till the date of passing of the Teacher Eligibility Test. In view of the discussions aforesaid, the Government is directed to pay the difference of salary within a period of four weeks from the date of receipt of a copy of this order; and*
>
> *(v)The Teachers Recruitment Board is directed to take note of the above observations and to issue notification for conducting Teacher Eligibility Test on or before the end of February 2017, indicating the date of exam to be either in the last week of March 2017 or in the first week of April 2017."*

7. With this introductory background, the averments raised in the appeals as well as the writ petitions are required to be dealt with, independently. The pleadings have been arranged for narration on the basis of the issues that arise for consideration as referred to at the first instance, Issue No. (i) being covered by W.A.No. 2795/2022, W.P. Nos.3364 & 3368 of 2023, and Issue No. (ii) being covered by W.A.Nos.313, 833, 1891, 2050, 2082, 2617 of 2022 & WA.Nos.19, 31, 32 & 36 of 2023.

8. <u>W.A. No. 2795 of 2022</u>

8.1. The appellants are aggrieved by the order dated 20.10.2012 passed by the learned Judge in WP No. 19587 of 2022 filed by them.

8.2. The appellants have filed WP No. 19587 of 2022 praying to quash the order dated 11.07.2022 of the second respondent insofar as it relates to postponing of the promotion counselling scheduled to be held on 14.07.2022 and 15.07.2022 for the post of B.T. Assistant from among the Secondary Grade Teachers and after quashing the said order dated 11.07.2022, sought for a consequential direction to the second respondent to instruct all the Chief Educational Officers to conduct the promotion counselling for the post of B.T. Assistant in High Schools and Higher Secondary Schools from the post of Secondary Grade Teachers, within a time frame.

8.3. Even though the learned Judge allowed the writ petition and quashed the order dated 11.07.2022 of the second respondent with a further direction to conduct promotion counselling, the appellants are aggrieved by the observation made by the learned Judge to the effect that teachers without TET are not entitled to continue in service in the schools/educational institutions and are not entitled for promotion to BT Assistants from the cadre of secondary grade teachers unless they qualify for TET.

8.4. According to the appellants, the learned Judge went beyond the scope of the writ petition and issued such directions which had adversely affected their right to continue in service. The appellants have filed the writ petition only against the postponement of the promotion counselling inasmuch as they are continuing in the post of Secondary Grade Teachers without being promoted to the post of B.T. Assistant by citing the non-possession of TET. When the appellants sought for a direction to the respondents to expeditiously conduct the promotion counselling, the learned Judge overstepped and held that those who did not possess TET are not entitled to promotion and continue in service. Such finding will have a cascading effect in their continuing in service. The appellants further stated that they were appointed from 1991 to 2011 on various dates and they are continuing in service without promotion. On the other hand, those who were appointed after the appellants have climbed

the promotion ladder and are holding higher posts. It is also stated by the appellants that they are not required to pass TET at all inasmuch as they were appointed much prior to the issuance of G.O. Ms. No.181 dated 15.11.2011 as well as the conduct of TET for the first time in the State; and that, this Honourable Court had passed several orders holding that pass in TET is compulsory only for direct recruitment to the post of B.T. Assistants and not for those who are seeking promotion to the said post. The appellants further stated that there was no condition imposed in their order of appointment. However, by virtue of the notification dated 23.08.2010, they are required to pass TET as a condition precedent for promoting them to higher post. Such a condition is conspicuously absent in the order of appointment issued to the appellants and therefore, they cannot be directed to complete TET as a condition precedent for conferment of promotion or for the purpose of continuing in service. In any event, when there are several orders cited on behalf of the appellants and the learned Judge did not agree with the decisions rendered by this Court in the earlier orders, judicial discipline demands that the matter ought to have been referred to a Division Bench. Instead, the learned Judge observed that those who did not possess TET has to be shown the exit door and they are not having any right to remain in service. Such an observation made by the learned Judge is legally not sustainable. Further, the

Government issued G.O. (Ms.) No. 13, School Education [S.E 3(1)] Department dated 30.01.2020 whereby the Special Rules for the Tamil Nadu School Educational Subordinate Service, was published. Even in the said Government Order, it was only stated that TET is necessary for appointment of a graduate teacher, however, it cannot be insisted in the case of promotion to the post of B.T. Assistant. The said Government Order in G.O. (Ms.) No.13, School Education Department dated 30.01.2020 was not challenged and therefore also, the order passed by the learned Judge required to be interfered with by this Court. Accordingly, the appellants prayed for allowing this appeal.

8.5. The learned counsel appearing for the appellants in W.A.No.2795 of 2022 would contend that the appellants were appointed as Secondary Grade Teachers between 1991 and 2011 on various dates and they have rendered more than two decades of service without any promotion. However, during the course of their service, NCTE has made TET qualification mandatory for all appointments from the date of the notification on 23.08.2010. It was also made clear that for appointments made prior to the notification, possessing TET is not required.

9. <u>WP Nos. 3364 & 3368 of 2023:</u>

9.1. WP No. 3364 of 2023 is filed by TET Passed Candidates Welfare Association, while WP No. 3368 of 2023 has been filed by one Sakthivel. Both

these writ petitions have been filed to issue a Writ of Declaration declaring that the Special Rules for the Tamilnadu School Educational Subordinate Service issued in G.O. Ms. No.13, School Education Department dated 30.01.2020 insofar as it prescribes "a pass in 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 illegal being *ultra vires* the Right of Children to Free and Compulsory Education Act, 2009 and the Rules framed thereunder and the NCTE notifications dated 23.08.2010 and 29.07.2011.

9.2. According to the petitioner in WP No.3364 of 2023, it is a registered association and they have been espousing the cause of candidates who have passed TET. It is stated that NCTE issued the notification dated 23.08.2010 prescribing minimum qualification for being appointed as a Teacher for imparting teaching to students studying Classes I to V (secondary grade teachers) and Classes VI to VIII (B.T. Assistants). As per the notification dated 23.08.2010, the teachers appointed prior to the notification need not pass TET. However, by a subsequent notification dated 29.07.2011, amendments were made to the notification dated 23.08.2010 in which also, the requirement to pass TET has become necessary for the purpose of appointment. The Government also issued G.O. Ms. No.173, dated 08.11.2011 framing the Tamil Nadu Right of Free and Compulsory Education Rules, 2011 followed by

another order in G.O. (Ms.) No.181 dated 15.11.2011 appointing TRB as the nodal agency to conduct TET exam. As per the orders of the Government, passing TET is mandatory for all secondary grade teachers as well as BT Assistants in the State.

9.3. It is further stated by the petitioners that pursuant to the orders of the Government, TRB has conducted several TET exams and the results declared in those examinations were the subject matter of various litigations before this Court. However, it is clear that no selection shall be made to the post of Secondary Grade Teachers and BT Assistants without the TET qualification and no approval for any appointment was given by the educational agency in favour of those who do not pass TET.

9.4. The petitioners, in unison, would state that the Government of Tamil Nadu has now framed Special Rules for Tamil Nadu Elementary Education Subordinate Service in GO Ms. No.12, School Education [EE1(1)] Department dated 30.01.2020 and Special Rules for the Tamil Nadu School Educational Subordinate Service vide G.O. Ms. No.13, School Education [S.E 3(1)] Department dated 30.01.2020. In the aforesaid Government Orders, while prescribing qualification for the post of Graduate Teacher (BT Assistant) in Annexure I (as referred to in Rule 6) of the Special Rules, it was specified that "a pass in TET" is mandatory only for direct recruitment. As far as the mode of

appointment, it was stated that the post of BT Assistant/Graduate Teacher can be filled by way of transfer, promotion or direct recruitment, meaning thereby, for transfer and promotion, the in-service candidates in the post of Secondary Grade Teachers can be considered even without TET qualification for promotion to the post of BT Assistant.

9.5. The grievance of the writ petitioners is that such a prescription to promote the in-service candidates to the higher post without TET qualification is against the spirit of RTE Act and the Rules made thereunder. Therefore, challenging G.O. Ms. No.12, School Education Department dated 30.01.2020, the petitioner Association has earlier filed WP (MD) No. 9707 of 2022 before this Court. Similarly, another writ petition in WP (MD) No. 9708 of 2022 was filed by one K. Rajasekaran. Both the writ petitions were taken up for hearing on 11.05.2020 and an interim order was granted to the effect that any promotion order passed by the official respondents will be subject to the outcome of the final order to be passed in the writ petitions.

9.6. During the pendency of the writ petitions, the Commissioner of School Education has passed an order dated 30.06.2022 directing all the Chief Educational Officers to prepare a panel in the category of Secondary Grade Teacher for promotion to the post of BT Assistant. Challenging the said order dated 30.06.2022, the petitioner in WP No. 3368 of 2023 has earlier filed WP

No. 17895 of 2022 to quash the proceedings dated 30.06.2022 of the Commissioner of School Education, Chennai, insofar as it relates to promotion to the post of B.T. Assistant from those unqualified candidates without passing TET by conducting promotion counselling. In connection with the same dispute, some of the in-service candidates have also filed WP No. 19587 of 2022 challenging the order dated 11.07.2022 of the Commissioner of School Education, Chennai postponing the promotion counselling scheduled to be held on 14.07.2022 and 15.07.2022 for the post of B.T. Assistant from the post of Secondary Grade Teacher as per the proceedings dated 30.06.2022 and to direct the Commissioner of School Education to instruct all the Chief Educational Officers to conduct promotion counselling for promotion to the post of B.T. Assistant. Both the WP No.17895 of 2022 and WP No. 19587 of 2022 were taken up for hearing and by order dated 20.10.2022, WP No. 17895 of 2022 filed by the TET passed candidate Sakthivel was allowed and WP No. 19587 of 2022 was dismissed.

9.7. As against the common order dated 20.10.2022, the petitioners in WP No. 19587 of 2022 have filed Writ Appeal No. 2795 of 2022 before this Court, wherein the petitioner in WP No. 3364 of 2023 impleaded themselves as party respondent and opposed the writ appeal by stating that in-service candidates, who do not possess TET qualification cannot be conferred with

further promotion. According to the writ petitioners, number of in-service candidates do not possess TET qualification, however, they are asserting a right for promotion to the post of B.T. Assistant. If promotion to the post of B.T. Assistant is made from among unqualified secondary grade teachers, who do not pass TET, the qualified persons, who have passed TET, will be deprived of their legitimate right of appointment and promotion. The unqualified in-service candidates solely rely upon G.O. Ms. Nos. 12 and 13 dated 30.01.2020 for conferment of promotion to the post of B.T. Assistant without possession of TET and therefore, challenging the aforesaid orders of the Government, these writ petitions in WP Nos. 3364 & 3368 of 2023 have been filed.

9.8. A counter affidavit has been filed in WP No. 3368 of 2023 by the Joint Director (Personnel), Commissioner of School Education, Chennai contending *inter alia* that number of candidates, who do not possess the mandatory TET, have been appointed in Government aided school and therefore, their appointments are not approved by the Department. However, on the basis of interim order passed by this Court in the writ petitions filed by such candidates, they continue to remain in service and on the basis of such orders, temporary appointments have been given by the Department to the nonqualified teachers. It is stated in the counter affidavit that the nodal agency namely TRB has conducted TET examination on 03.06.2012 in which

3,05,405 candidates appeared, but only 1735 passed the examination. Subsequently, TET examination was conducted on various dates in which very few have passed the examination. It is further stated that the State Government strictly adheres to the provisions of RTE Act, 2009 which made it mandatory for all those teachers, both secondary grade teachers as well as B.T. Assistant appointed on or after 01.04.2020 to acquire TET qualification. As far as Government Schools are concerned, only those candidates, who passed TET, alone are appointed after the coming into force of the said Act. The teachers appointed in the minority aided schools claim that they need not acquire TET in view of the order passed by the Constitutional Bench of the Honourable Supreme Court in ***Paramati Educational and Cultural Trust and others v. Union of India [(2014) 8 SCC 1]***. However, the issue that was dealt with in that case relates to reservation of 25% of seats in the schools for the children belonging to weaker and disadvantaged sections of the society and the said decision has no application to their case.

9.9. With reference to the Judgment passed in W.A.(MD)No.859 of 2019 filed by Tmt. B. Annie Packiarani Bai, the Department has filed SLP (C) Diary No. 17702 of 2021 before the Honourable Supreme Court and it is pending. In another batch of cases in W.A. No. 1723 of 2019 filed against the order dated 30.04.2019 in WP No. 13306 of 2019, the Division Bench of this Court has

directed the Department to issue show cause notice to those who have not passed TET. However, this Court, by an order dated 16.05.2019, granted interim injunction restraining the Educational authorities from terminating the teachers pending disposal of the writ appeals. Thus, according to the respondent authorities, the prayer made in the writ petitions is devoid of merits and is liable to be rejected.

10. Writ Appeal Nos. 313 and 833 of 2022

10.1. These appeals arise out of the common order dated 29.07.2021 passed by the learned Judge in WP Nos. 23999 and 24003 of 2019.

10.2. Both the aforesaid writ petitions have been filed for issuing a Writ of Mandamus forbearing the respondents therein from insisting passing of TET and to direct the respondents to continue to make salary, including annual increment, incentive increment and other service benefits to them.

10.3. According to the writ petitioners, they were appointed as B.T. Assistant on 15.06.2011 and 29.07.2011 respectively and their appointment has also been approved by the educational agency. While so, after their appointment, the Government issued G.O. Ms. No.181, School Education Department dated 15.11.2011 appointing TRB as nodal agency to conduct TET. Therefore, the writ petitioners who were appointed prior to the issuance

of G.O. Ms. No.181 dated 15.11.2011, are not required to complete TET or the acquisition of TET qualification cannot be put against them for the purpose of conferment of annual increment, incentive and other service benefits. However, the school, where they were employed, are refusing to pay salary and other monetary benefits to them by citing non-possession of TET.

10.4. The learned Judge, on considering the rival submissions, held that the petitioners, who were appointed on 15.06.2011 and 29.07.2011, cannot be insisted to possess TET qualification as prescribed by NCTE. The learned Judge also, by placing reliance on the order dated 30.07.2020 passed by this Court in *WP (MD) Nos. 8313 of 2020 etc., batch* in *Mrs. D. Raja Malar vs. The State of Tamil Nadu, Department of School Education and others*, held that the writ petitioners were appointed prior to issuance of G.O. Ms. No.181 dated 15.11.2011 and they are not required to pass TET as a condition precedent for payment of salary and other monetary benefits. Accordingly, a direction was issued to the respondents therein to pay the salary, including annual increment and other incentives payable to the writ petitioners within a period of eight weeks. Aggrieved by the common order dated 29.07.2021 passed by the learned Judge in WP Nos. 23999 and 24003 of 2019, the present intra-court appeals in W.A. Nos. 313 and 833 of 2022 are filed.

10.5. Assailing the order dated 29.07.2021 of the learned Judge, it is contended by the appellants that the appointment of the writ petitioners without possession of TET would be considered as without adequate qualification and it is against the prescription of minimum qualification under the RTE Act, 2009. The learned Judge, while allowing the writ petitions, did not consider that sufficient and adequate time has been given to the teachers like the writ petitioners to acquire TET, however, they did not possess such qualification. After coming into force of the RTE Act, 2009, acquisition of TET qualification is mandatory for appointment as teachers. Even though the writ petitioners were appointed in the year 2011, till this date, they have not chosen to acquire such qualification and therefore, it shall be deemed that they are continuing in service as B.T. Assistant without the mandatory qualification prescribed under the RTE Act, 2009. While so, the order passed by the learned Judge, directing the appellants to pay the writ petitioners their salary, annual increments and other incentives is not proper and hence, prayed for setting aside the same by allowing the writ appeals.

11. W.A. No. 1891 of 2022

11.1. This appeal arises out of the order dated 22.10.2021 passed by the learned Judge in WP No. 22221 of 2021.

11.2. The aforesaid writ petition was filed by one K.A. Karpagam, praying to issue a Writ of Mandamus directing the appellants to sanction annual increment to her in the post of B.T. Assistant (Science-Zoology) in the second respondent school from the year 2016 without reference to passing TET with all consequential benefits.

11.3. According to the writ petitioner, she was appointed as B.T. Assistant in Sri Sarada Vidyalaya Higher Secondary School for Girls, Fairlands, Salem on 19.03.2011 and her appointment was also approved by the educational authorities on 24.05.2011. In the meanwhile, based on G.O. Ms. No.181 dated 15.11.2011, making TET qualification mandatory, the writ petitioner has not been paid annual increments payable to her. The writ petitioner further stated that she was appointed on 19.03.2011, prior to issuing G.O. Ms. No.181 dated 15.11.2011 and therefore insisting her to pass TET. as a condition precedent for payment of annual increment and other benefits. is illegal.

11.4. The learned Judge, by the order dated 22.10.2021, allowed WP No. 22221 of 2021 filed by the writ petitioner by placing reliance on the earlier order passed by this Court in WP No. 20013 of 2021 and held that as per Section 23 of the RTE Act, a teacher, who did not possess the minimum qualification shall acquire it within a period of five years, however, consequences of not obtaining such qualification has neither been prescribed

in the Act nor the Rules and Government Orders. It was further held that as long as the petitioner was working as a teacher, she is entitled to all the benefits that are available to the regular teachers as per the Rules.

11.5. Assailing the order dated 22.10.2021 passed in WP No. 22221 of 2021, it is contended on behalf of the appellants that minimum qualification to be possessed by a Teacher has been laid down by NCTE in exercise of powers conferred under Section 23(1) of The Right of Children to Free and Compulsory Education Act, 2009. The writ petitioner admittedly did not possess the minimum qualification prescribed by NCTE within five years from the date of commencement of the Act in the year 2009. Even the Government has passed the order in G.O. Ms. No.181, School Education Department dated 15.11.2011 to the effect that teachers to be recruited in future for the elementary segment must have passed TET. Therefore, as per the order of the Government, it is mandatory for the writ petitioner to possess TET and she cannot be permitted to state that her appointment was made prior to the issuance of the Government Order. Even the five years time limit prescribed under Section 23 (2) has lapsed but the writ petitioner did not acquire TET qualification. When the continuance of the writ petitioner in service itself is illegal, the learned Judge ought not to have issued a Mandamus directing the appellants herein to confer her all the consequential monetary benefits such as

annual increment etc. In this context, the appellants have relied on the order dated 24.03.2022 passed by this Court in ***WP No. 28284 of 2021 etc***., in ***K. Vasudevan v. The Principal Secretary, School Education Department and others***, wherein it was held that merely because the writ petitioners' appointment was made prior to the issuance of the Government Order and their appointments were also ratified by the educational authorities, it will not confer them the right to get annual increment etc. Thus, according to the appellants, when the writ petitioner did not possess the requisite mandatory qualification, she is not entitled to annual increment and other incentives and hence, the order of the learned Judge dated 22.10..2021 made in WP.No.22221 of 2021 will have to be set aside by allowing this appeal.

12. W.A. No. 2050 of 2022

12.1. This appeal arises out of the order dated 29.09.2021 passed by the learned Judge in WP No. 20911 of 2021.

12.2. The aforesaid writ petition has been filed praying to issue a Writ of Mandamus directing the appellants to sanction annual increment to the writ petitioner in the post of B.T. Assistant (Maths) from the year 2018 and also to pay incentive increment for having acquired M.Sc., Mathematics without reference to passing of TET.

12.3. According to the writ petitioner, he was appointed as B.T. Assistant on 12.09.2011 and he joined the said post on 12.12.2011 and that, his appointment was also approved by the educational authorities. It was further stated that after his appointment as B.T. Assistant, on 12.09.2011, the Government issued G.O. Ms. No.181 dated 15.11.2011 making it mandatory for the Secondary Grade Teachers and B.T. Assistant to possess TET. In any event, when he was appointed much earlier to the passing of the Government Order, the writ petitioner cannot be insisted to pass TET as a condition precedent for continuing in service or payment of his annual increment and other incentives.

12.4. The learned Judge, on consideration of the rival submissions, held that Section 23 of the RTE Act makes it clear that a Teacher, who, at the commencement of the Act did not possess the minimum qualification, shall acquire such qualification within five years. However, the consequences of not obtaining such qualification has neither been prescribed in the Act nor in the Rules or the Government Orders. As long as the writ petitioner continues to work as a Teacher, he is entitled for his salary and other incentives. Accordingly, the learned Judge allowed the writ petition No. 20911 of 2021 on 29.09.2021. Aggrieved by the same, W.A. No. 2050 of 2022 is filed by the appellants.

12.5. In the grounds of writ appeal, it is stated that the learned Judge did not consider the fact that adequate time has been granted to the candidates, including the writ petitioner, to acquire TET qualification. The writ petitioner, who joined services on 12.09.2011, did not pass TET till the date of filing the writ petition. When a statute prescribes a particular qualification as a minimum qualification for holding a post, the writ petitioner cannot be given any exemption from possessing such qualification. In any event, the appointment of the writ petitioner or continuance of his service without the mandatory TET qualification cannot be countenanced. In such circumstances, the learned Judge ought not to have directed the appellants to confer all the monetary benefits payable to the writ petitioner. Therefore, the appellants sought to allow this writ appeal.

13. W.A. No. 2082 of 2022

13.1. This appeal arises out of the order dated 29.09.2021 passed by the learned Judge in WP No. 20913 of 2021.

13.2. The aforesaid writ petition has been filed praying to issue a Writ of Mandamus directing the appellants to sanction annual increment to the writ petitioner in the post of B.T. Assistant (Maths) from the year 2018 and also to pay incentive increment for having acquired M.Sc., Mathematics without reference to passing of TET.

13.3. According to the writ petitioner, he was appointed as B.T. Assistant on 08.09.2011 and his appointment was also duly approved by the educational authorities on 27.12.2011. However, just prior to his appointment on 08.09.2011, the NCTE has issued the notification dated 27.09.2011, amending the earlier notification dated 28.08.2010. As per the notification dated 27.09.2011, passing of TET is considered as one of the eligibilities for appointment to the post of teacher taking classes from Standards I to VIII. It is the stand of the writ petitioner that after his appointment to the post of B.T. Assistant, the notification dated 27.09.2011 has been issued by NCTE and therefore, he is not required to pass TET.

13.4. The learned Judge allowed the writ petition by stating that as long as the writ petitioner is in service, he is entitled for all the monetary benefits attached to the post and he cannot be deprived of the same. Therefore, the learned Judge allowed the writ petition and directed the appellants to confer all the monetary benefits to the writ petitioner.

13.5. Assailing the order passed by the learned Judge, it is contended on behalf of the appellants that adequate time has been granted to the candidates including the writ petitioner, to acquire TET qualification. The writ petitioner who joined the service during the year 2011, did not pass TET till the date of filing the writ petition. When a statute prescribes a particular qualification as a

minimum qualification for holding a post, the writ petitioner cannot be given any exemption from possessing such qualification. In any event, the appointment of the writ petitioner or continuance in service without the mandatory TET qualification cannot be countenanced. In such circumstances, the learned Judge ought not to have directed the appellants to confer all the monetary benefits payable to the writ petitioner and hence, prayed for quashing the same.

14. W.A. No. 2617 of 2022

14.1. The appellants are aggrieved by the order dated 28.04.2022 passed by the learned Judge, dismissing their writ petition No. 35487 of 2019.

14.2. The appellants have filed the aforesaid writ petition praying to issue a Writ of Mandamus forbearing the respondents from insisting passing of TET for their appointment in the fifth respondent school on 10.12.2010 and 22.01.2011 respectively prior to G.O. Ms. No.181, School Education Department dated 15.11.2011 and consequently direct the respondents to continue to make payment of salary, including other service benefits with annual increment.

14.3. Before the learned Judge, on behalf of the writ petitioners-appellants, it was contended that the Government of Tamil Nadu issued G.O. (Ms.) No.244, School Education (EE3(2)) Department dated 30.11.2013 in

compliance with the order passed by the Honourable Supreme Court and therefore, they are not required to pass TET as a condition precedent for continuing in the post to which they are appointed. However, the learned Judge refused to accept such a plea by holding that the writ petitioners were appointed in an Aided School, which is receiving aid from the State Government. On the other hand, the order passed by the Honourable Supreme Court confers certain protection to the teachers appointed through the TRB in Government Schools. It was further held that TET has become mandatory to be acquired and the writ petitioners cannot claim exemption on any ground. The appointment of the writ petitioners as teachers in the fifth respondent school has been made on 10.12.2010, 10.12.2010 and 22.01.2011 respectively, after the notification dated 23.08.2010 was issued by the NCTE under Section 23 (1) of the RTE Act. Therefore, the writ petitioners cannot be granted exemption from passing TET and they are equally governed by the mandate contained in clause 5 (a) of the notification dated 23.08.2010 issued by the NCTE. Further, the writ petitioners have not passed the TET till the extended time on 31.03.2019 or on 08.06.2019 and 09.06.2019. Therefore, the learned Judge dismissed the writ petition filed by the writ petitioners/appellants.

14.4. According to the appellants, they were appointed in accordance with the Special Rules which was in force, without reference to TET. The

appointment of the writ petitioners were also approved by the educational authority. The appellants have also received salary and other monetary benefits, as applicable till December 2019. However, the fourth respondent orally intimated the writ petitioners that they will not be paid the monetary benefits attached to the post due to non-passing of TET. The notification issued by NCTE on 11.02.2011 specifically states in Clause 9 that the Government should give weightage to the TET scores in the recruitment process, meaning thereby, passing of TET is mandatory during the selection for recruitment of the post and it is not applicable to those who were already appointed, like the writ petitioners-appellants. Therefore, the qualification prescribed under Section 23 (1) cannot be put against the writ petitioners who were appointed much prior to the conduct of TET by the nodal agency for the first time in the State. Even thereafter, the Government issued G.O. Ms. No.90 dated 28.03.2012 changing the policy for recruitment of secondary grade teacher and Graduate Assistant by stating that "*henceforth the recruitment will be based on written examination in TET in accordance with guidelines framed by NCTE."* Thus it is evident that the notification issued by the NCTE as well as the Government would indicate that TET cannot be insisted against those candidates like the writ petitioners-appellants, who were appointed much prior to G.O. Ms. No. 181 dated 15.11.2011, G.O. Ms. No.90 dated 28.03.2012 and

prior to conducting TET in the State for the first time. Therefore also, the writ petitioners- appellants are not required to pass TET.

14.5. On behalf of the appellants, reference was made to the earlier orders passed by this Court in WP No. 1126 of 2016 dated 24.01.2017 wherein it was held that TET cannot be insisted to those candidates who were appointed much after the issuance of G.O. Ms. No.181 dated 15.11.2011. Further, the Honourable Supreme Court passed an order protecting those teachers appointed prior to G.O. Ms. No.181 dated 15.11.2011 and therefore, the learned Judge ought to have allowed the writ petition filed by the writ petitioners-appellants.

15. Writ Appeal Nos. 19, 31, 32 and 36 of 2023

15.1. These four appeals are filed by the State, assailing the common order dated 22.10.2021 passed by the learned Judge in WP Nos.22545, 22550, 22554 and 22556 of 2021 respectively.

15.2. The writ petitions namely WP Nos. 22545, 22550, 22554 and 22556 of 2021 have been filed by The Headmistress and Correspondent of St. Joseph's Higher Secondary School, Chennai against an order dated 02.09.2021 passed by the District Educational Officer, St. Thomas Mount, Chennai, refusing to approve the appointment of the Teachers appointed by the writ petitioner to the post of B.T. Assistant for non-possessing TET.

15.3. According to the writ petitioner, St. Joseph's Higher Secondary School, Vettuvankeni, Chennai - 600 115, is one among the several schools founded and administered by Congregation of the Sisters of St. Anne, Tiruchirapalli. The said school was established in the year 1978 and presently it is imparting education to children from Standards VI to XII. It was further stated that there are 31 teachers viz., 1 Headmistress, 2 Tamil Pandits, 10 BT Assistants, 15 Secondary Grade Teachers, 2 Physical Education Teachers and 1 Sewing Mistress working in the school. The teaching staff working in the school is in accordance with the student strength and staff fixation done during the academic year 2019-2020. While so, due to retirement of the teaching staff, they have appointed four teaching staff in the sanctioned post and upon their appointment, necessary proposal was sent for ratification of their appointment. While so, the District Educational Officer, St. Thomas Mount returned the proposal submitted by the petitioner School by citing an interim order dated 09.04.2019 passed by the Madurai Bench of this Court in WA (MD)No. 76 of 2019 etc., batch and also G.O. Ms. No.165, School Education Department dated 17.09.2019. According to the writ petitioner, the reliance made to the interim order dated 09.04.2019 is legally not sustainable inasmuch as it has culminated in passing final order dated 31.03.2021 in WA (MD) No. 76 of

2019 etc., batch upholding the validity of G.O. Ms. No.165, School Education Department dated 17.09.2019 as not operative.

15.4. The learned Judge, upon hearing the counsel for both sides, placing reliance on the earlier order dated 31.03.2021 in WA (MD) No. 76 of 2019, allowed the writ petitions filed by the Writ Petitioner School by a common order dated 22.10.2021. Aggrieved by the same, the present intra-court appeals are filed.

15.5. The appellants would state that the learned Judge allowed the writ petitions on the ground that G.O. Ms. No.165, School Education Department dated 17.09.2019 was ordered to be in-operative by the judgment dated 30.03.2021 in W.A. (MD) No. 76 of 2019 etc. batch. However, the Government has filed Special Leave Petition before the Honourable Supreme Court in which an order of interim stay was granted on 14.03.2022. Even otherwise, the teachers appointed by the writ petitioner/School did not possess TET qualification when they were appointed during the year 2020-2021. When the minimum educational qualification prescribed for a teaching faculty is a pass in TET and it is being adopted at the national level, the writ petitioner cannot seek to dispense with such mandatory qualification to be possessed by the teaching faculty. It is in those circumstances, the District Educational

Officer, St. Thomas Mount has rightly returned the proposals sent by the writ petitioner School for approval of appointment of their teacher.

15.6. The appellants would further state that this Court, in the order dated 07.04.2022 made in WP No. 28284 of 2021 referred to the decision of Honourable Supreme Court in ***Unaided Private School of Rajasthan v. Union of India [2012 (6) Supreme Court Cases 1]*** wherein it was held that the Rights of Children to Free and Compulsory Education Act, 2009 is constitutionally valid. The Act is applicable to the writ petitioner school and the appointment of the teachers without the mandatory TET qualification cannot be ratified by the educational authorities. Therefore, the appellants would pray for setting aside the common order dated 22.10.2021 passed by the learned Judge in the writ petitions.

## II. SUBMISSIONS OF COUNSELS

16.1. Mrs. Nalini Chidambaram, learned Senior counsel appearing for the appellants in W.A. No. 2795 of 2022 submitted that the appellants were appointed as Secondary Grade Teachers on various dates between the years 1991 and 2011. Their appointment is governed by the Tamil Nadu Educational Subordinate Service. While so, after two decades of the appointment of the appellants, on 26.08.2009, Parliament has passed the Right of Children to Free

and Compulsory Education Act, 2009 (Act 35 of 2009) to provide for free and compulsory education to all children of the age 6 to 14 year. The Act received the assent of the President on 26.08.2009. Thereafter, on 23.08.2010, in exercise of powers conferred under Section 23(1) of the RTE Act, the NCTE issued a notification dated 23.08.2010 prescribing minimum educational qualification for appointment of teacher to impart classes to students studying in Classes I to VIII. However, even as per the NCTE Regulations which was in force in the year 2001, TET was not mandatory.

16.2. In line with the enactment of the RTE Act, the Government of Tamil Nadu issued G.O. Ms. No.181, School Education Department dated 15.11.2011 making TET mandatory for appointment of teacher. It is in those circumstances, when Civil Appeal Nos. 6186 to 6187 of 2008 were taken up for hearing by the Honourable Supreme Court on 05.09.2013, it was held that "the Teachers who were appointed prior to G.O. dated 15.11.2011 will remain protected". Thus, all the teachers appointed prior to 15.11.2011 are protected and their services shall not be terminated for not passing TET as per the order passed by the Honourable Supreme Court.

16.3. Notwithstanding the above position, the Directorate of School Education issued a notification dated 01.10.2014 stating that TET is compulsory for all the teachers in service and directed that within five years of

their appointment as BT Assistant, they should pass TET. According to the learned Senior counsel for the appellants, TET can be insisted to those who are directly recruited to a teaching post and it cannot be insisted on the appellants who have been appointed between 1991 to 2011 and had completed two decades of service. While so, the observation made by the learned Judge in the order dated 20.10.2022, which is impugned in Writ Appeal No. 2795 of 2022 that the teachers who do not possess the minimum qualification of pass in TET are not entitled to continue in service in the schools/educational institutions is legally not sustainable.

16.4. The learned Senior counsel for the appellants further referred to the order dated 05.09.2013 passed by the Honourable Supreme Court in Civil Appeal Nos.6186 and 6187 of 2008 (*State of Tamil Nadu and another v. Unemployed Sec. Grade Teach. Welfare Association and others)* wherein it was held as follows:

> *"That the teachers who were appointed prior to the G.O. dated 15.11.2011 will remain protected and as far as the transfers sought by the teachers outside their Districts are concerned, it is for them to apply to the authority concerned and the authority concerned will consider their applications in accordance with law.*

16.5. According to the learned Senior counsel, in the light of the above observations made by the Honourable Supreme Court, the Teachers, who did not pass TET and who were appointed prior to 15.11.2011 are protected and that, insisting them to pass TET as a condition precedent for conferring

promotion to higher post is unjustified.

16.6. The learned Senior counsel also placed reliance on the decision of the Division Bench of this Court in ***The Secretary to Government, Government of Tamil Nadu, Education Department, Fort St. George and others v. S. Jeyalakshmi and others [(2016) 4 Law Weekly 841]*** wherein it was categorically held in para No.55 that when once a person is appointed as teacher after being found eligible as on the date of his or her appointment, he cannot be expected to write an examination and to qualify himself in such examination at a later point of time. The Division Bench also directed the Government to seek necessary clarification from the NCTE in the light of such observation made *inter alia* as to whether the prescription of minimum qualification of TET can be made applicable prospectively for the Teachers who were appointed subsequent to the date of the issue of Government Order in both non-minority and minority institutions so as to benefit the Teachers who have been serving for quite a long time. This observation of the Division Bench of this Court would make it very clear that insisting TET for those who were appointed long back, prior to the advent of RTE Act or to deny them the legitimate promotion, is uncalled for.

16.7. The learned Senior counsel for the appellant further relied on the order dated 08.03.2019 passed by one of us (*R. Mahadevan, J) in WP (MD) Nos. 5626 to 5630 of 2017 etc.,* batch, wherein it was held that the cut off date for acquiring the TET qualification is 27.09.2011 and the teachers who were appointed prior to that date need not pass TET. Even in the case of teachers who were appointed after that date, if the advertisement to initiate the process of appointment of teachers was made prior to that date, then their appointments can also be in accordance with NCTE Regulations, 2001 and they need not acquire the TET qualification. Thus, the learned senior counsel sought to quash the order of the learned Judge by allowing this writ appeal.

17.1. Ms. N. Kavitha Rameshwar, learned counsel appearing for the TET passed Candidates Welfare Association/Petitioners in WP Nos. 3364 and 3368 of 2023, as also the impleaded respondents in W.A.No. 2795 of 2022, would contend that a BT Assistant or a Graduate Teacher could be appointed either by direct recruitment or by transfer or by promotion. Adding further, the learned counsel submitted that the necessary qualification for the post of BT Assistant is an Under graduation and B.Ed. degree and a pass in TET. The Tamilnadu government has now framed Special Rules for Tamilnadu Elementary Educational Subordinate Service vide GO.Ms.No. 12 School Education (EE(1)) Department dated 30.01.2020 and Special Rules for the

Tamilnadu School Educational Subordinate Service vide GO Ms. No.13 School Education (S.E3(1)) Department dated 30.01.2020. The said Rules while prescribing qualifications for Graduate Teacher (BT Assistant) in its Annexure I (as referred to in Rule 6) of the Special Rules specifies "a pass in TET" only for direct recruitment. However, the mode of appointment to the said post of BT Assistant/ Graduate Teacher is mentioned as transfer, promotion or direct recruitment. This would mean that for transfer and promotion, the Government is open to promoting Secondary Grade Teachers without TET qualification as BT Assistants. The same is against the RTE Act and the Rules framed thereunder and the notifications issued by the respondents 2 and 3 from time to time apart from being unconstitutional.

17.2. The learned counsel also submitted that as the NCTE Notifications prescribing the qualifications did not mention or make any distinction in the qualifications on the basis of the mode/channel of appointment, the State Government cannot make such an artificial distinction and that, it would be beyond the competence of the State Legislature to do the same as the field is already occupied by Parliamentary legislation under Entry 66 of the Union List. In this context, the learned counsel contended that when once the field is occupied by Parliamentary legislation and the subject relates to an entry falling within the exclusive domain of the Parliament under the Union List, the State

Legislature has intended to legislate on a subject in respect of which it has no legislative competence, and thus the doctrine of colorable legislation is attracted to the present case. The learned counsel relied on the Constitution Bench judgment of the Supreme Court in ***K.C. Gajapati Narayan Deo and Ors. v. State of Orissa [(1954) 1 SCR 1]***, to substantiate her argument that once a legislature does not have competence to enact law on a particular subject, it cannot do indirectly what cannot be done directly. She further submitted that the impugned Rules are illegal and ultravires the RTE Act and the Rules framed thereunder and also the notifications dated 23.08.2010 & 29.07.2011, issued by the NCTE which prescribe TET as a mandatory eligibility criteria for the post of BT Assistant and that, the impugned provisions while prescribing the mode of appointment to the post of Graduate Teacher as either by transfer, promotion or by direct recruitment, cannot restrict TET as an essential eligibility criteria only for direct recruitment, when the NCTE notifications issued under the RTE Act make TET mandatory for appointment to the post of BT Assistant/Graduate Teacher.

17.3. The learned counsel would further contend that the impugned Rules are a colourable exercise of legislative power to the extent that 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) as the same *ultravires* the Right of Children to Free and Compulsory Education Act 2009 and the Rules framed thereunder and the NCTE Notification dated 23.08.2010 & 29.07.2011, and hence violative of Articles 14 and 16 of the Constitution of India. Section 23 of the RTE Act makes it mandatory that the minimum qualification prescribed by the academic authority is necessary for being appointed as teacher to teach classes 1 to 8. A graduate Teacher to teach classes 6 to 8 must also possess the necessary qualification prescribed by the academic authority. The NCTE, the academic authority had prescribed TET as minimum qualification for being appointed as teacher. The impugned provisions are directly contrary to the above legal provisions and hence, liable to be declared as illegal.

17.4. The learned counsel also placed reliance on the NCTE Regulations 2001 to buttress her case that even earlier the NCTE has intended to follow the qualifications for the respective posts in cases where there is movement from a lower to a higher or next level post in cases of already appointed persons. Further, a perusal of the Rules made by various States on the basis of the NCTE Notifications prescribing qualifications, including a pass in TET, would show that the said qualifications have been applied to both direct recruitment as well as to promotion to the post of BT Assistants. Also, the Order in Special Appeal No.737/2018, (Allahabad High Court) dated 04.09.2018 has been

pressed in to service by the learned counsel to contend that the very same question arose before the Allahabad High Court and the Court has affirmed that the qualifications prescribed by the NCTE including a pass in TET apply to all appointments made after the cutoff date, i.e. 29.07.2011, including to promotion to BT Assistant/Graduate Teacher.

17.5. The learned counsel submitted that the impugned Rules would create a situation where those appointed by direct recruitment to the post of BT Assistant would be TET qualified while those appointed through promotion would be unqualified in respect of TET, thereby defeating the provisions of the RTE Act that seeks to uniformly increase the standard of teaching and education while ensuring the right to education under Article 21-A of the Constitution of India.

17.6. Lastly, the learned counsel would contend that though all the members of the petitioner Association aspire for direct recruitment and the Rules contemplate 50 percent of appointments to BT Assistant through direct recruitment and 48 percent through promotion and the remaining 2 per cent by transfer from among categories mentioned therein, the writ petitioners and others are aggrieved by the impugned Rules on account of the fact that while the Government has not made any direct recruitment for a decade, it keeps filling up all vacant positions of BT/Graduate Assistants through promotion

from among candidates not possessing a pass in TET and that, the Government has not maintained the requisite quota for direct recruits, thereby meaning that unqualified candidates are being promoted while qualified candidates are waiting in the queue endlessly without employment and thus, the challenge is to the Rules relating to promotion.

17.7. That apart, Ms. Kavitha Rameshwar, learned counsel for the writ petitioners, placed reliance on several judgments with regard to the issue relating to the maintainability of the writ petition filed by a registered Association. It is her contention that the Association represents the unemployed teachers who are eligible and qualified and cannot be expected to individually knock the doors of the Court as they suffer from financial disability and the nature of their grievances are the same.

18.1. Mr. Silambannan, learned Additional Advocate General appearing for the State would contend that after the advent of RTE Act and appointment of TRB as nodal agency to conduct TET in the State, the teachers were required to pass the examination conducted by TRB within five years from 01.04.2010 to 31.03.2015. However, the deadline to pass the TET has been extended until 31.03.2019. Thus, nine years' time was given to the teachers to acquire the qualification, but several teachers have not acquired the TET

qualification. He would also submit that without such qualification, appointments were made in Government Aided Schools and therefore, the educational agency did not approve their appointment. But, those teachers whose appointments have not been approved or who were not paid the monetary benefits such as annual increment etc., have approached this Court with various writ petitions and obtained orders in their favour.

18.2. According to the learned Additional Advocate General, the State Government scrupulously adheres to the provisions of RTE Act and insists the teaching faculty to pass TET as mandated under the RTE Act. So far as the Government Schools are concerned, only the TET passed teachers are appointed through TRB after the coming into force of the RTE Act. At the same time, the learned Additional Advocate General made reference to clauses 4 and 5 of the notification dated 23.08.2010 issued by NCTE stating that those teachers appointed on or after 3rd September 2001 i.e., the date on which the NCTE (Determination of Minimum Qualification for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time) came into force in accordance with that Regulation.

18.3. The learned Additional Advocate General further submitted that promotion to the teachers in Government Schools is governed by the relevant Service Rules namely Tamil Nadu School Education Subordinate Service

Rules or Tamil Nadu Higher Secondary Educational Service Rules. In none of the aforesaid Rules it was prescribed that passing of TET for promotion of teachers to other categories is mandatory. Therefore, the teachers appointed before 01.04.2010 were exempted from passing TET. At the same time, those who are recruited directly to the post of B.T. Assistant after the said date must have passed TET. It is further submitted by the learned Additional Advocate General that whenever a new legislation or rule is introduced, it will only have prospective effect unless otherwise specifically notified that it will come into force from a particular date. In the present case, the RTE Act was enacted on and from 01.04.2010. Therefore, the teachers appointed much prior to the coming into force of the said Act are not required to clear TET and they are exempted from passing the TET.

18.4. With respect to promotion, it is submitted by the learned Additional Advocate General that once a teacher has been directly recruited under the governing Service Rules, his or her promotion or career prospects have to be decided only based on the Rules which were in force on the date of his or her appointment. As such, those who were appointed much prior to the coming into force of the Act are exempted from passing TET and consequently, they are entitled for further promotion based on their seniority and merits.

19.1. Mr. G. Sankaran, learned Senior counsel appearing for the appellants in W.A. No. 2617 of 2022 submitted that the appellants were appointed on 10.12.2010, 10.12.2010 and 22.01.2011 in the fifth respondent school. They were appointed in the vacancies that arose on 01.06.2009 due to retirement of teachers. The fifth respondent school, upon obtaining permission during September 2010 and on 28.12.2010 respectively appointed the appellants. The appointment of the appellants were also approved by the educational authorities on 24.02.2011. Thus, the appellants were appointed in accordance with the Special Rules without reference to TET. In the orders of appointment issued to the appellants, there was no pre-condition imposed to pass TET. While so, in the year 2019, the appellants were orally informed that they will not be eligible for payment of annual increment etc., for not passing TET.

19.2. The learned Senior counsel for the appellants invited the attention of this Court to the notifications dated 23.08.2010 and 11.02.2011 issued by NCTE and submitted that the directions contained therein can be made applicable only to the appointments to be made and not to those who were already appointed. He had drawn the attention of this Court to clause 9 of the notification dated 11.02.2011 of the NCTE wherein it was stated that the Government should give weightage to the TET scores in the recruitment process, meaning thereby, TET can be insisted only to those who are newly

recruited or appointed. Even the State Government in G.O. Ms. No. 90, School Education Department dated 28.03.2012 has directed that "henceforth, the recruitment will be based on written examination, namely TET in accordance with the guidelines issued by NCTE." The words "henceforth" employed in G.O. (Ms) No. 90, dated 28.03.2012 will make it amply clear that TET can be insisted only for the appointments to be made by resorting to a recruitment process and not to those who were already recruited and are in service. However, the learned Judge had concluded that the appointment of the appellants is after 23.08.2010, the date on which the NCTE issued the notification prescribing minimum educational qualification to be possessed by the Teachers in Classes I to VIII. The learned Judge further held that the process of appointment was initiated after 23.08.2010 and therefore, the appellants will not fall under the exempted category of cases. However, the learned Judge did not take note of the fact that as on 23.08.2010, the TRB has not conducted any TET examination and there are no qualified person available with TET qualification to be appointed as Teacher. While so, the learned Senior counsel submits that the appellants will come under the exempted category and consequently, passing of TET cannot be insisted against them.

19.3. In support of his contention, the learned Senior counsel invited the attention of this Court to the decision of this Court ***dated 30.07.2020 passed in WP (MD) No. 8313 of 2020 etc., in the case of D.Raja Malar v. State of Tamil Nadu and others,*** where, in similar circumstances, this Court held as follows:

> *"15.Therefore, it has become quite clear that the appointment of the petitioners as on 17.09.2010, 20.06.2011 and 20.06.2011 having been approved by the third respondent through the said approval order, the applicability of the prescription made by NCTE to have such qualification, insofar as the petitioners are concerned, cannot be made or applied. Therefore, the said reason cited in the impugned order by the third respondent, in the considered opinion of this Court, may not hold good. Therefore, on that reason, the petitioners service benefit like annual increment cannot be denied.*
>
> *16.Moreover, once the appointments are approved by the authority and the same still holds good, the petitioners have been brought under regular time scale of pay. When that being the position, the annual increment is part and parcel of the time scale of pay system being adopted for government employees/Teachers of the Government is concerned and when such is the position, the third respondent cannot insist upon any Government Order, which cannot be created by the petitioners.*
>
> *17.Moreover, if at all any such request is made by the petitioners for annual increment, that should have been decided by the respondents by taking into account the relevant Rule position, Service Law and the Government Order, if any available with the respondents, instead, off late, it has become a practice that some of the officials/authorities would raise a question that, in order to get the benefit sought for by the employees/Teacher/incumbent, whether any Government Order is available in their favour.*

19.4. The learned Senior counsel also placed reliance on the order dated 29.09.2021 passed in WP No. 20911 of 2021 as well as the order dated 20.12.2021 passed in WP No. 25138 of 2021, wherein this Court issued a Mandamus directing the respondents therein to continue to pay the annual

increment and other monetary benefits to the petitioners therein without insisting TET.

19.5. The learned Senior counsel for the appellants further relied on the order passed by the Madurai bench of this Court in WP (MD) Nos. 5626 to 5630 of 2017 etc., batch. According to the learned Senior counsel, the common prayer sought for in those writ petitions is to issue a Writ of Mandamus to forbear the official respondents from insisting the writ petitioners to pass TET for continuing their service as B.T. Assistant in the respondents schools. All the writ petitioners in those cases were admittedly appointed before issuance of notification and their appointments were also approved by the Educational Authorities. While so, it was contended on their behalf that when their appointment is proper, they cannot be compelled to write TET as a condition precedent for continuing in their service. This Court, upon examining the fact as to whether the writ petitioners, who were appointed before the cutoff date are entitled to get exemption from passing TET, after an in-depth analysis of the same, held that the writ petitioners are entitled to seek exemption from passing TET, as they were appointed prior to the cutoff date and the respondents were directed not to insist TET certificate from the writ petitioners as a condition precedent for their continuance in service as B.T. Assistants.

19.6. Reliance was also placed on the decision of the Division Bench of this Court in ***The Secretary to Government, Government of Tamil Nadu, Education Department and others v. S. Jeyalakshmi and another [2016 (4) Law Weekly 841]***. In that case, this Court had an occasion to consider as to whether the teachers, who were appointed prior to the Government Order introducing TET as a condition, are required to acquire TET qualification within a period of five years so as to continue in their service. The Division Bench of this Court, in Para Nos. 55 to 58 held as follows:

> *"55. A reading of the qualifications extracted above would clearly show that the B.T. Assistants are being appointed only if they are qualified and possessed with Teachers Training Certificate. As per G.O. Ms. No.181 dated 18.11.2011, Secondary Grade Teachers are being appointed only if they are qualified and possessed with Diploma in Teachers Education. Thus, it is evident that the persons who underwent either Teachers Training course or Diploma in Teachers Education alone are eligible for appointment either as B.T. Assistants or Secondary Grade Teachers as the case may be. Therefore, there cannot be an iota of doubt as to their eligibility for appointment as Teachers. Once they are appointed as Teachers after having been found eligible as on the said date of their appointment, they cannot be expected to write an examination and to qualify in such examination at a much later point of time.*
>
> *56. We are, therefore, of the considered view that the Government may seek a clarification from the NCTE, in the light of what is stated in the preceding paragraph, whether the prescription of minimum qualification of TET can be made applicable prospectively for the Teachers who were appointed subsequent to the date of the issue of G.O., in both non-minority and minority institutions and not retrospectively as the same would cause undue hardship to the Teachers who have been serving for a quite a long time.*
>
> *57. In case of NCTE clarifying that G.O. can be given prospective effect, the Government, in its wisdom, may think of conducting refresher course for the Teachers who were appointed prior to the issue of G.O., during the annual vacation, instead of insisting for qualifying in TET, since the Teachers have already undergone either Teachers Training Course or Diploma in Teachers Education, as the case may be, as per the Education Act of the State.*

*Moreover, we are of the opinion that asking the Teachers who have been appointed after having found eligible and working for quite a long time, to undergo TET examination and to pass the same at this stage, would be nothing but imposing upon them a task, which they have already achieved by passing the requisite tests for getting appointed. Further, an uncertainty also would get created in the minds of the Teachers that lest they pass the TET examination, their career would be hanging in balance as the Damocles Sword. Keeping the above in mind, the Government may, in consultation with NCTE, formulate a scheme for conducting refresher course for those Teachers who were appointed prior to the issue of G.O., as this would set at rest the uncertainty that would otherwise get created in the minds of the persons already in employment.*

*58. In our opinion, non qualifying in TET by the Teachers already in service should not defeat the object of the Government to provide quality and standard education and therefore, the Government may, in the alternative, conduct a refresher course and also some interactive sessions during annual vacation, in order to ensure and enhance the quality of education."*

19.7. By placing reliance on the aforesaid decision, the learned Senior counsel for the appellants submitted that the appellants are governed by the conditions imposed or the Rule prevailing as on the date of their appointment and hence, they cannot be compelled to pass TET which was introduced much after their appointment. With these submissions, the learned Senior counsel prayed for allowing this appeal.

20. Mr. V. Ashok Kumar, learned Central Government Counsel appearing for the first respondent in WP Nos. 3364 and 3368 of 2023 would submit that the Right of Children to Free and Compulsory Education Act, 2009 (Amendment Act, 2012) which represents the consequential legislation envisaged under Article 21-A of the Constitution of India came into force on 01.04.2010. Subsequently, the Central Government formulated the Central

RTE Rules, 2010 which could be adopted by the Union Territories not having the legislative Assembly. The Government of India also formulated the model RTE Rules, which were to be adopted by the concerned State based on the ground realities prevailing in the particular State. Section 23 of the RTE Act, prescribes the qualification for appointment and the terms and conditions of service of teachers. Section 23 (2) confers relaxation for teachers who were appointed or in position as on 31st March 2015, which means that this clause applies on those teachers who are in-service as on 31st March 2015. Further, as per Section 23 (2), the relaxation can be given only in academic qualifications in a case where a State does not have adequate institutions offering course or training in Teachers Education. Even such relaxation can be conferred till 31st March 2019 and not thereafter. He would further submit that TET is mandated by NCTE and therefore, the question of relaxation in TET is not covered under the above mentioned sections of the RTE Act. The Central Government has authorised the NCTE to lay down certain minimum qualification to be possessed by a person to become eligible for appointment of a teacher. Accordingly, the NCTE issued a notification dated 23.08.2010 and one of the essential qualifications for a person to be eligible for appointment as a teacher is that he or she should pass TET which will be conducted by the appropriate Government. In effect, the learned Central

Government Counsel submitted that the recruitment, service conditions and deployment of teachers are primarily in the domain of respective State Governments and Union Territory Administrations. As per the RTE Act, it is for the appropriate Government to take a decision on employment of teachers in accordance with the provisions of the RTE Act, 2017.

21. Mr. Karthikeyan, learned counsel appearing for the petitioners in CMP Nos. 6050 and 6349 of 2023, which were filed to implead themselves as party respondents in W.A. No. 2795 of 2022, would contend that the petitioners were appointed as Teachers during 1995 to 2001 on various dates and they cannot be brought within the fold of TET. The petitioners are working as such for more than 25 years and are waiting for their legitimate promotion to the post of B.T. Assistant. However, by citing the non-passing of TET, they are deprived of their legitimate promotion, which is unjustified. The provisions contained under the RTE Act or the notifications issued by NCTE prescribing minimum educational qualification vis-a-vis a pass in TET cannot be put against the petitioners to deny them their legitimate promotion. He placed reliance on the order passed by the Government in G.O. Ms. No.171, School Education Department dated 18.08.2008 and contends that if the petitioners are given promotion from the post of Secondary Grade Teacher to B.T. Assistant, the post which they have held (Secondary Grade Teacher) will

automatically be converted as B.T. Assistant in which event no one will be prejudiced. The learned counsel therefore prayed for allowing the impleading petitions and to direct the Government to conduct the promotion counselling to the petitioners to the post of B.T. Assistant without insisting TET.

22. We have heard the learned counsel appearing for all the parties at length and also perused the materials placed on record.

## III. DISCUSSION & FINDINGS

### A. W.A. No. 2795/2022 & W.P. Nos. 3364 and 3368/2023

23. The writ appeal arises out of the order of the Learned Judge wherein it has been held that the Teacher Eligibility Test (TET) shall be an essential eligibility criteria for those aspiring to be promoted as Graduate Teachers/ BT Assistants from the post of Secondary Grade Teachers. Apart from the various submissions made by the appellants, who were the writ petitioners originally, seeking promotion to the post of BT Assistant from the post of Secondary Grade teacher without insistence on TET, it is pertinent to mention that under the Special Rules for the Tamil Nadu School Educational Subordinate Service issued vide GO. Ms. No. 13 School Education [S.E.3 (1)] dated 30.01.2020, it has been stipulated that for the post of Graduate Teacher/ B.T. Assistant, a pass in Teacher Eligibility Test (TET) is mandatory only for direct recruitment as

mentioned in Annexure I to the Special Rules, as referred to in Rule 6 of the said Rules. The said Rules have been made by the State Government under Article 309 of the Constitution.

24. It is also pertinent to mention that while heavy reliance has been placed by the appellants on the said Rules which lends assistance to the sheet anchor of their case that TET as an eligibility criteria is required to be fulfilled only in the case of direct recruitment to the post of BT Assistant, the Learned Judge has, even in the face of the said Special Rules, adopted the view that it is mandatory even for promotion to the post of BT Assistant from the category of secondary grade teacher after the coming into force of the RTE Act, 2009 and the NCTE notifications issued pursuant thereto. In the light of the operation of the Special Rules as stated above, stating that a pass in TET is required only for direct recruitment to the post of Graduate Teacher/BT Assistant, the natural outcome should be that in the absence of a challenge to the Rules, the position stated in the Rules would have to be applied. However, while the said Rules had not been subject to challenge before the Learned Judge, the said Rules have now been challenged by way of two writ petitions and therefore, the moot question would now be on the validity or otherwise of the said Special Rules. The entire issue therefore now narrows down to the

validity or otherwise of the said Special Rules which have now been challenged before us. Once we pronounce upon the validity of the said rules, all the issues including the correctness of the order passed by the Learned Judge in the present writ appeal, would stand settled.

25. The essential question therefore relates to the determination of the validity of the Special Rules (hereinafter referred to as "the impugned Rules") by which it has been prescribed that for the post of Graduate Teacher/BT Assistant, a pass in Teacher Eligibility Test (TET) is mandatory for direct recruitment alone. Two writ petitions have been filed challenging the *vires* of the said Rules, one of them being by a registered Association that espouses the cause of all candidates who have passed TET, and the other petition by an individual who is an aspirant for the post of Graduate Teacher/BT Assistant, by direct recruitment.

THE RTE ACT, 2009 & THE LEGAL FRAMEWORK ON TET AS AN ELIGIBILITY CRITERIA

26. The Right of Children to Free and Compulsory Education Act, 2009 was passed with the avowed objective of ensuring free and compulsory education to all children in the age group of 6 to 14 years, pursuant to Article 21-A inserted by the Constitution (86th amendment) 2002 which provides for free and compulsory education of all children in the age group of 6 to 14 years

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

> “*2(n) “School” means any recognized school imparting elementary education and includes –*
> *(i)a school established, owned or controlled by the appropriate Government or a local authority;*
> *(ii)an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;*
> *(iii)a school belonging to specified category; and (iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.”*

27. At the commencement of the Act, under Section 23 of the Act, it has been stated 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.”*

28. Thereafter, by Notification dated 31.03.2010, the 1st respondent appointed the 2nd respondent NCTE as the academic authority to lay down the minimum qualifications for a person to be eligible to be appointed as a teacher.

On 08.10.2010, the 1st respondent by virtue of powers conferred under Section 38 of the Act, framed Right of Children to Free and Compulsory Education Rules 2010. Pursuant to the provisions of the Act, the National Council Teacher Education (NCTE) issued a notification dated 23.08.2010 prescribing the minimum qualifications for teachers from Classes I to V- 'Secondary Grade Teachers' as well as for Classes VI to VIII- 'BT Assistant'. Apart from prescribing the minimum educational qualifications, the important eligibility criteria added by way of the notification is – "Pass in Teacher Eligibility Test (TET)". This notification stated under paragraph 4 that teachers appointed prior to the date of this notification need not acquire the minimum qualification prescribed by the notifications. Under para 5 it has been stated that those teachers appointed after date of this notification, but in whose case the process of appointment was initiated prior to the date of this notification would also be exempt from acquiring the minimum qualifications including Teacher Eligibility Test (TET) as prescribed under Para 1 of the notification. The said Para 5 of the notification dated 23.08.2010 came to be amended by the notification of the NCTE dated 29.07.2011 whereby Para 5 was substituted by Para 5(a) with the same provision while shifting the cut off date from 23.08.2010 to 29.07.2011, meaning thereby that where the Government, Local Authority or School issued the advertisement to initiate the process of

appointment prior to the date of this notification i.e., 29.07.2011, such appointments may also be made in accordance with the NCTE Regulations 2001 i.e., exempting them from acquiring TET for appointment as the teacher. The NCTE Notification dated 11.02.2011 issued guidelines relating to conduct of TET. In Para 3 of the said Guidelines (though subsequently amended in notification dated 29.07.2011 and the reason for same is not understood), the rationale for including the TET as minimum qualification can be seen, and the same is reproduced:

> "*3. The rationale for including the TET as a minimum qualification for a person to be eligible to be appointed as a teacher is as under:*
> *(i) It would bring national standards and benchmark of teacher quality in the recruitment process;*
> *(ii) It would induce teacher education institutions and students from these institutions to further improve their performance standards;*
> *(iii) It would send a positive signal to all stakeholders that the Government lays special emphasis on teacher quality."*

29. Thereafter, the State Government framed the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011 vide GO. Ms. No. 173 dated 08.11.2011. The State Government issued GO.Ms.No. 181 dated 15.11.2011, appointing Teachers Recruitment Board (hereinafter called 'TRB') as the nodal agency to conduct TET exams. The said GO makes it very clear in categorical terms that passing of TET is mandatory for all Secondary Grade Teachers and BT Assistants in Tamil Nadu.

MAINTAINABLITY OF THE WRIT PETITIONS IMPUGNING THE SPECIAL RULES

30. At the outset, as an objection has been raised to the maintainability of the writ petition by an Association, it is only appropriate that we deal with the said issue first. The issue whether a writ petition is maintainable at the instance of an Association is now no longer *res integra* and the Hon'ble Supreme Court has made authoritative pronouncements laying down broad guidelines on the said issue in various judgements, most of which have been relied upon by the counsel for the petitioner in the writ petition impugning the Special Rules. The following judgments have been referred to by the Learned counsel for the writ petitioner:

***(i)Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented v. Union of India and Others [1981 (1) SCC 246]***

***(ii)West Bengal Head masters' Association and ors. v. Union of India (UOI) and Others [AIR 1983 Cal 448]***

***(iii)Umesh Chand Vinod Kumar and others v. Krishi Utpadan Mandi Samiti and others [AIR 1984 All 46]***

***(iv)D.C.Wadhwa and others v. State of Bihar and others [AIR 1987 SC 579]***

***(v)State Bank of Bikaner and Jaipur v. State Bank of Bikaner and Jaipur Employees Association and others [MANU/TN/0293/1991]***

***(vi)Confederation of Ex-servicemen Associations and Others v. Union of India (UOI) and Others [AIR 2006 SC 2945]***

***(vii)Andhra Pradesh Scheduled Tribes Employees Association v. Aditya Pratap Bhanj Dev and Others [MANU/AP/0696/2001], and***

***(viii)Tamilnadu Co-operative Subordinate Officers' Association v. Government of Tamil Nadu [MANU/TN/0876/2003]***

31. While it may not be necessary to extract all the above judgments, the law laid down in ***State Bank of Bikaner's case*** (cited above) by this court, succinctly states as follows:

> "*8.Before the learned single Judge, several contentions were raised, one with respect to the defence of party, the other with respect to the nature of the relief and the third with respect to any right of the members of the writ petitioner-Association to claim anything in the name of interest beyond what had been stipulated under Regulation 12 aforesaid. Learned Single Judge has held :*
>
> > *"Keeping in trend with the pronouncements of the Supreme Court, it is not possible to throw out the writ petition at the threshold itself on the sole ground that it has been filed by an association of employees, without going into the merits of the other contentions. Even otherwise, the second petitioner is an individual employees and he must be deemed to be directly interested in and affected by the proposed action of the respondents. Besides, the first petitioner is a registered trade union, and it is stated that it has got membership of about 5,000, who are all employees of the second respondent all over India. It cannot be stated that the rights of its members would not be affected by the proposed action of the respondent. The writ laid by the first petitioner, as representing a large body of employees of the second respondent whose rights and interest are likely to be affected, must be held to be competent. Representative actions even in Writ jurisdiction cannot be thrown*

> *out on the simple ground that the body which represents the cause of its members on roll is not by itself affected. It would suffice the purpose if the rights of its members are affected; and then, as observed by the Supreme Court, collective proceedings are permissible instead of driving each individual employee affected to file an independent writ, which would result only in plurality of litigation on the common question. The Supreme Court was prepared to countenance a non-recognised association maintaining a writ petition. As observed earlier, the first petitioner is a Registered trade union and it can legitimately, as representing its member, employees of the second respondent, give vent to their grievance and seek redress and relief, as representing their cause."*

*For us to say, if at all it is necessary, that, this is the most correct view is not a mere formality. Learned single Judge has not come to the said conclusion without examining the scope of the writ action by a body of individual members, who together joined as an Association for such action, which is in the interest of all the members. He has rightly distinguished the cases of N.A. District Pawn Brokers' Association v. Secretary to Government of India, 1975 I MLJ 290; C. I. Kannan v. E.S.I. Corporation MANU/TN/0205/1968 : (1968) I LLJ 770 Mad and M. Ramaswami v. Government of Tamil Nadu (Writ Appeal No. 472 of 1976, Judgment dated August 11, 1980) and relied upon the statement of law in the case of F.C.K.U. (Registered). Sindri v. Union of India MANU/SC/0010/1980 : (1981) I LLJ 193 SC and A.B.S.K. Sangh (Rly.) v. Union of India MANU/SC/0058/1980 : (1981) I LLJ 209 SC . The law on the subject has been candidly stated by the Supreme Court in the last of them that MANU/SC/0058/1980 : (1981) I LLJ 209 SC at 230" a technical point of this kind has to be overruled for the reasons that a large body of persons with a common grievance can always approach the Court on principle, "our current procedural jurisdiction is not of individualistic Anglo-Indian mould. It is broad-based and people-oriented and envisions access to justice through 'class actions,' 'public interest litigation' and 'representative proceedings'. Indeed, little Indians in large numbers seeking remedies in Court through collective proceedings; instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of 'cause of action', and 'person aggrieved' and individual litigation is becoming obsolescent in some jurisdictions. It must fairly be stated that the learned Attorney General has taken no objection to a non-recognised association maintaining the writ petitions." In the instant case, the Association is a recognised body as a trade union of the employees."*

Thus, the principle that emerges from the above is that a body of individuals, who have a common grievance and by reason of some disability, or incapacity,

are not in a position to approach the court individually, a writ petition is certainly maintainable by an association.

32. In the present case, the writ petition has been filed by an association which espouses the cause of its members who are all persons who have cleared the teacher eligibility test and have been unemployed while waiting for direct recruitment to the post of BT Assistant for more than a decade now. It has also been mentioned in the affidavit that it is one of the most prominent associations whose members are qualified persons eligible to be appointed as teachers and who possess a pass in TET. When the grievance of all the members of the petitioner Association is common, it would be to stand on technicality to say that each one of those members and each one of the members of the public who have a common grievance should have approached the court individually, and that the Association cannot represent its members in a case of this nature. Such a hyper technical approach would amount to a negation of justice and this Court is clearly not in favour of such an approach, especially in the light of the pronouncements of the Hon'ble Supreme Court in this regard.

33. With respect to the other writ petition filed by an individual who is an aspirant for direct recruitment to the post of Graduate Teacher/BT Assistant,

the objection raised by the State Government was that as the Rules stipulate a quota of 50% for direct recruitment and the remaining for appointment by promotion and transfer, the petitioner cannot have any grievance with respect to the manner in which appointment is made by promotion from the post of Secondary Grade Teacher to the post of Graduate Teacher/BT Assistant. In this regard, the counsel for the petitioner had stated that while the Rules specify a quota of 50% for direct recruitment, it is a fact that in the state of Tamil Nadu, as admitted by the state government, direct recruitment to the post of Graduate Teachers/BT Assistants, after the coming into force of the RTE Act and NCTE notifications, has not been made after 2013. The state government also has not come out with a clear picture as to the number of vacancies available in the post of Graduate teachers and the number of posts for direct recruitment as against the number of posts/vacancies available for promotion. It is the case of the petitioner that while the state government is wanting to promote more and more secondary grade teachers as graduate teachers without insistence on TET, while also filling up several vacancies by temporary appointments without insistence on TET, the posts which are supposed to be earmarked for direct recruitment to the post of graduate teachers are also being taken up, and by reason of their being qualified and yet being unemployed for the past 10 years and more, and inspite of which, when the impugned Rules stipulate that TET is

an essential criterion for appointment only for direct recruitment and not for promotion or other modes of appointment, it will definitely affect their rights. After giving our anxious consideration to the grievances expressed by the petitioners in the writ petitions, this court is convinced that the writ by an association which is espousing the common grievances of all similarly placed persons who are qualified and unemployed, as well as the writ petitioner in WP No.3368 of 2023, is maintainable and the said writ petitions cannot be thrown out at the threshold on the ground of non-maintainability. Besides, the right to equality of opportunity in public employment under Article 16 as a facet of Article 14, is a cherished fundamental right that furthers the solemn ideals of equality and justice as envisaged in our Constitution. This Court while dealing with a matter of public employment under Article 16, cannot reject the petitions on hyper technical ground of non-maintainability.

VALIDITY OF THE IMPUGNED RULES

34. Coming to the merits of the case, the validity of the impugned Rules has to be tested on the anvil of the legislative competence of the State Legislature to issue them in the teeth of the parliamentary legislation, viz. the RTE Act 2009 and the NCTE notifications prescribing the minimum eligibility requirement for the post of Graduate Teacher, the NCTE being the designated

academic authority under the Act. It is seen that under Entry 66 of List I in Schedule VII to the Constitution, the legislative head mentioned is – 'Coordination and determination of standards in institution for higher education or research and scientific and technical institutions'. Also, 'Education, including technical education, medical education and universities, subject to the provisions of entries 63,64,65 and 66 of List I; vocational and technical training of labour', as a head of legislation is found in Entry 25 of List III (Concurrent list) under Schedule VII to the Constitution of India. Entry 66 of List I deals with coordination and determination of standards of higher education. Teacher education has been legislated upon by the Union government by way of parliamentary legislation by virtue of the RTE Act 2009. Under the Act, the NCTE which has been designated as the academic authority, has issued notifications prescribing the minimum eligibility criteria for the post of Graduate Teacher/BT Assistant and the same is binding on all state governments unless the law to the contrary has been made by the state government in accordance with Article 254 of the Constitution. Here again, the legislative head as stated in Entry 25 of List III, has been made subject to Entry 66, List I and hence, the area available for the State to legislate in the arena of teacher education is diminished to the point of non-availability. In the present case, it is seen that the state of Tamil Nadu is not governed by any

specific legislation or statute dealing with teacher education and therefore, the further question of the same being either contrary or repugnant to the provisions of the RTE Act and the consequential or pursuant subordinate legislation does not arise. In other words, the parliamentary legislation as well as the subordinate legislation made pursuant thereto are binding on the state government in the absence of a plenary legislation made by the state legislature pursuant to its power under the Concurrent List, which again is subject to the parliamentary legislation made under Entry 66, List I. It is in this background that one will have to test the validity of the impugned Rules. A perusal of the NCTE notification made pursuant to the RTE Act would make it clear that the NCTE has prescribed eligibility criteria in terms of educational qualification as also a pass in the teacher eligibility test for appointment to the post of graduate teacher. As pointed out rightly by the counsel for the petitioners in the writ petitions challenging the *vires* of the impugned Rules, the mode of appointment or the channel of appointment whether by direct recruitment or promotion or transfer has not been specified in any of the prescribed qualifications made by the NCTE. What has been prescribed by the NCTE is the eligibility criteria for appointment by whatever means/mode to the posts of Graduate Teacher/BT Assistant. On the contrary, it is seen that the impugned Rules while apparently adopting the eligibility criteria as mentioned

by the NCTE, has now attempted to restrict the eligibility criteria of passing the teacher eligibility test only to direct recruitment. The very same impugned Rules also specify that 50% of the appointments to the postgraduate teacher are to be made by direct recruitment, while 48% is to be made by promotion and the remaining 2% by transfer from other posts as specified in the Rules made therein. When the Academic Authority designated under the parliamentary legislation has not made distinction in the eligibility criteria on the basis of the channel or mode of appointment, it is not legally permissible for the state government to prescribe or make modifications which are contrary to what has been prescribed by subordinate legislation made pursuant to the parliamentary legislation which holds the field.

35. In this context, the judgment of the Hon'ble Supreme Court in ***Union of India (UOI) and Ors. v. Shah Goverdhan L. Kabra Teachers College [(23.10.2002 - SC) : MANU/SC/0882/2002]***, where the issue was one related to legislative competence of the State to alter or dilute the parliamentary legislative provisions in teacher education, is of relevance and is extracted hereunder for easy reference:

> "*6. In view of the rival submissions at the bar, the question that arises for consideration is whether the impugned legislation can be held to be a law dealing with coordinated development of education system within Entry 66 of the List I of the Seventh Schedule or it is a law dealing with the service conditions of an employee under the State Government. The power to legislate is engrafted under Article 246 of the Constitution and the various entries for the three lists of the Seventh Schedule are the "fields of*

*legislation". The different entries being legislative heads are all of enabling character and are designed to define and delimit the respective areas of legislative competence of the Union and the State legislature. They neither impose any restrictions on the legislative powers nor prescribe any duty for exercise of the legislative power in any particular manner. It has been a cardinal principle of construction that the language of the entries should be given the widest scope of which their meaning is fairly capable and while interpreting an entry of any List it would not be reasonable to import any limitation therein. The rule of widest construction, however, would not enable the legislature to make a law relating to a matter which has no rational connection with the subject matter of an entry. When the vires of enactment is challenged, the court primarily presumes the constitutionality of the statute by putting the most liberal construction upon the relevant legislative entry so that it may have the widest amplitude and the substance of the legislation will have to be looked into. The Court sometimes is duty bound to guard against extending the meaning of the words beyond their reasonable connotation in anxiety to preserve the power of the legislature.*

*7. It is further a well-settled principle that entries in the different lists should be read together without giving a narrow meaning to any of them. Power of the Parliament as well as the State legislature are expressed in precise and definite terms. While an entry is to be given its widest meaning but it cannot be so interpreted as to over-ride another entry or make another entry meaningless and in case of an apparent conflict between different entries, it is the duty of the court to reconcile them. When it appears to the Court that there is apparent overlapping between the two entries the doctrine of "pith and substance" has to be applied to find out the true nature of a legislation and the entry with which it would fall. In case of conflict between entries in List I and List II, the same has to be decided by application of the principle of "pith and substance". The doctrine of "pith and substance" means that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it cannot be held to be invalid, merely because it incidentally encroaches on matters assigned to another legislature. When a law is impugned as being ultra-vires of the legislative competence, what is required to be ascertained is the true character of the legislation. If on such an examination it is found that the legislation is in substance one on a matter assigned to the legislature then it must be held to be valid in its entirety even though it might incidentally trench on matters which are beyond its competence. In order to examine the true character of the enactment, the entire Act, its object and scope and effect, is required to be gone into. The question of invasion into the territory of another legislation is to be determined not by degree but by substance. The doctrine of "pith and substance' has to be applied not only in cases of conflict between the powers of two legislatures but in any case where the question arises whether a legislation is covered by particular legislative power in exercise of which it is purported to be made.*

*8. Bearing in mind the aforesaid principles of rule of construction if the provisions of the impugned statute, namely, the National Council of Teacher Education Act, 1993 are examined and more particularly Section 17(4) thereof which we have already extracted, the conclusion is irresistible that the statute is one squarely dealing with coordination and determination of standards in institutions for higher education within the meaning of Entry 66 of List I of the Seventh Schedule. Both Entries 65 and 66 of List I empower the Central Legislature to secure the standards of research and the standards of higher education. The object behind being that the same standards are not lowered at the hands of the particular State or States to the detriment of the national progress and the power of the State legislature must be so exercised as not to directly encroach upon power of Union under Entry 66. The power to coordinate does not mean merely the power to evaluate but it means to harmonics or secure relationship for concerted action. A legislation made for the purpose of coordination of standards of higher education is essentially a legislation by the Central legislature in exercise of its competence under Entry 66 of List I of the Seventh Schedule and Sub-section (4) of Section 17 merely provides the consequences if an institution offers a course or training in teacher education in contravention of the Act though the ultimate consequences under Sub-section (4) of Section 17 may be that unqualified teacher will not be entitled to get an employment under the State or Central Government or in a university or in a college. But by no stretch of imagination the said provision can be construed to mean a law dealing with employment as has been held by the High Court in the impugned judgment.*

*9. In our considered opinion, the High Court committed gross error in construing the provisions of Sub-section (4) of Section 17 of the Act to mean that it is a legislation dealing with recruitment and conditions of services of persons in the State service within the meaning of Proviso to Article 309 of the Constitution. The High Court committed the aforesaid error by examining the provisions of Sub-section (4) on its plain terms without trying to examine the true character of the enactment which has to be done by examining the enactment as a whole, its object and scope and effect of the provisions. Even, the High Court does not appear to have applied the doctrine of "pith and substance" and, thus, committed the error in interpreting the provisions of Sub-section (4) of Section 17 to mean to be a provision dealing with conditions of service of an employee under the State Government.*

*10. In the aforesaid premises, the conclusion of the High Court that Section 17(4) is ultra-vires being beyond the competence of the Union legislature cannot be sustained and the said conclusion is accordingly set aside. On examining the statute as a whole and on scrutiny of the object and scope of the statute, we have no manner of doubt that even Sub-*

*section (4) of Section 17 is very much a law dealing with the coordination and determination of standards in institution for higher education coming within Entry 66 of the List III of the Seventh Schedule and, thus, the Union legislature did have the competence for enacting the said provision.*

*11. We are also of the further opinion that the de-recognition of the B.Ed (Vacation Course) cannot be nullified on the ground of failure to comply with the principle of natural justice. In the judgment under challenge, the High Court has held also that when the institution is imparting the B.Ed. (Vacation Course) then National Council for Teacher Education could not have refused to recognise the said course. We are unable to accept this reasoning inasmuch as the NCTE is an expert body created under the provisions of the National Council for Teacher Education Act, 1993 and the Parliament has imposed upon such expert body the duty to maintain the standards of education, particularly, in relation to the teachers education. Education is the backbone of every democracy and any deterioration in the Standard of teaching in the B.Ed course would ultimately produce sub-standard prospective teachers who would be teaching in schools and colleges throughout the country and on whose efficiency the future of the country depends. Inasmuch as the teacher himself has received a sub-standard education it is difficult to expect from him a higher standard of teaching to the students of the schools or other institutions. It is from this perspective, the conclusion of an expert body should not be lightly tinkered with by court of law without giving due weightage to the conclusion arrived at by such expert body. From this standpoint, we are of the considered opinion that the High Court committed error in holding that there was no reasonable justification for not recognising the B.Ed (Vacation course) which was being imparted by the institution of Shah Goverdhan Lal Kabra Teachers College. In the aforesaid premises, we set aside the impugned Judgment of High Court and allow this appeal."*

36. Also, in ***State of Maharashtra v. Sant Dyaneshwar Shikshan Shastra Mahavidyalaya and Ors. [(31.03.2006 - SC): MANU/SC/1756/2006]***, it has been stated by the Hon'ble Supreme Court as follows:

"*20. The learned Counsel for various colleges supported Mr. Raju Ramachandran on interpretation and application of the provisions of the Act and final decision of the High Court. They, however, had taken other contentions as well. According to them, the State has no locus standi to challenge the decision of NCTE. The State cannot be said to be "person aggrieved" or "aggrieved party" so as to challenge the decision of NCTE. If the decision is against the college, it is only the college which has*

*'standing' to impugn the said decision. The High Court, therefore, in the submission of the learned Counsel for colleges, ought to have dismissed the petition filed by the State as not maintainable without entering into the merits of the matter. It was also submitted that under the scheme of the Constitution, particularly Articles 245, 246, 248 and 254 read with Schedule VII thereof, only Parliament has power of co-ordination and determination of standards in institutions for higher education or research, scientific and technical institutions. State Legislatures have no authority to enact any law in the field covered by Entry 66 of List I of Schedule VII. Obviously, therefore, State Government has no authority to take a policy decision in respect of the subjects covered by Entry 66 of List I of Schedule VII for which a specific enactment has been made by Parliament and under the said Act authority has been granted to NCTE to take an action. As to Regulations and Guidelines, it was submitted that under the Act power has been conferred on NCTE. It is, therefore, only NCTE, which can consider the question and take appropriate decision under the Act and it is not open to NCTE to make Regulations or frame Guidelines empowering the State Government to undertake such exercise. According to the counsel, therefore, even if Regulations are framed or Guidelines made, they are not in consonance with the Act and there is abdication of power by NCTE in favour of State Government which is hit by the doctrine of impermissible and excessive delegation. Regulations permitting such excessive / impermissible delegation must be declared inconsistent with the parent Act as also ultra vires and unconstitutional. The counsel also submitted that so-called policy decision of the State Government is arbitrary and unreasonable and would be hit by Clause (g) of Article 19(1) of the Constitution which allows all citizens to have the right to practise any profession, or to carry on any occupation, trade or business, otherwise legal and lawful. Article 19(6) cannot be invoked by the State as total prohibition to open B.Ed. college can never be said to be in the interest of general public and would not fall within "reasonable restriction" permissible under the said provision. It is also violative of Article 21A as inserted by the Constitution (Eighty-sixth Amendment) Act, 2002. Over and above constitutional inhibitions, the order dated 28th December, 2004 is arbitrary and unreasonable inasmuch as considerations which weighed with the State Government relating to employment of B.Ed. teachers were totally irrelevant and extraneous. Taking education and getting employment are two different things. The colleges are not claiming any grant or financial aid from the State, nor do they give any assurance or guarantee to students admitted to B.Ed. colleges that the State will give them employment. It is, therefore, not open to the State Government to refuse to grant NOC because the State is not able to give employment to teachers after they get B.Ed. degree. There are several Arts, Commerce and Science colleges in the State in which students take education and get degrees of B.A., B.Com. or B.Sc. It is not even the case of the State that all those students got employment at one or the other place. Thus, the so-called policy decision of the State*

*Government not to grant NOC to B.Ed. colleges is totally irrational. It was also submitted by the respondents that they had made huge investments and if at this stage they will be refused permission, irreparable injury and loss would be caused to them. Finally, it was submitted that since the decision of NCTE is legal, lawful and in consonance with the provisions of the Act as also consistent with the law laid down by this Court in several judgments, the order passed by the High Court deserves to be upheld by allowing the institutions to open B.Ed. colleges from the year 2005-06 as has been done by NCTE. If this Court considers it appropriate, specific direction may be issued to the respondents to conduct extra classes/lectures and to hold supplementary/additional examination. Once the action of NCTE is found to be lawful and the decision of the State Government bad, no prejudice should be caused to the institutions.*

*21. Before we deal with the contentions of the parties, it would be appropriate if we refer to the relevant provisions of law. Part XI of the Constitution deals with relations between Union and States. Chapter I thereof relates to legislative relations and distribution of legislative powers. Article 245 enables Parliament to make laws for the whole or any part of territory of India. Similarly, a Legislature of a State has power to make laws for the whole or any part of the State. Article 246 provides for distribution of legislative power between Parliament and Legislatures of States and reads thus:*

> *246. Subject-matter of laws by Parliament and by the Legislatures of States-(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").*
>
> *(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").*
>
> *(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the mattes enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').*
>
> *(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included [in a State] notwithstanding that such matter is a matter enumerated in the State List.*
>
> *Whereas Article 248 provides for residuary power of Legislature, Article 254 covers cases of inconsistency between laws made by Parliament and by Legislatures of States.*

*22. Schedule VII to the Constitution comprises of three Lists: (i) Union List, (ii) State List and (iii) Concurrent List. While exclusive power to enact laws lies with Parliament under List I, the power to enact laws under List II is with the State Legislatures. In respect of subjects falling under List III, it is open to Parliament as well as State Legislatures to enact laws subject to the provisions of Articles 254.*

*22.1 Entries 63 to 66 of List I of Schedule VII relate to higher education. Entry 66 which is relevant reads thus:*

> *66. Co-ordination with determination of standards in institutions for higher education or research and scientific and technical intuitions*

*22.2 Entry 11 of List II inter alia included university education. It was omitted by the Constitution (42nd Amendment) Act, 1976 and became part of Entry 25 of List III (Concurrent List). Entry 25, as originally stood read as under:*
*25. The vocational and technical training of labour.*
*After the amendment of 1976, the Entry as it stands now reads thus:*
*25. Education, including technical education medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.*

*23. The National Council for Teacher Training Act, 1993 has been enacted by Parliament and deals with teacher's education. It came into force with effect from July 1, 1995. The Preamble of the Act is relevant and reads thus:*

> *An Act to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and co-ordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith.*

*24. Section 2 is definition clause wherein various terms have been defined. "Council" is defined as the National Council for Teacher's Education established under Sub-section (1) of Section 3 of the Act. "Institution" has been defined as "an institution which offers courses for training in teacher's education". "Teacher education" is defined thus:*
*Teacher education means programmes of education, research or training of persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools, and includes non-formal education, part-time education, adult education and correspondence education."*

37. In ***Maa Vaishno Devi Mahila Mahavidyalaya v. State of U.P. and Ors. [(13.12.2012 - SC) : MANU/SC/1102/2012]***, it has been held by the Hon'ble Supreme Court that

> "*43.Now, we may examine some of the judgments of this Court which have dealt with these aspects. In the case of State of Tamil Nadu and Anr. v. Adhiyaman Educational and Research Institute and Ors. MANU/SC/0709/1995 : (1995) 4 SCC 104, the Supreme Court while discussing various aspects in regard to constitutional validity of Tamil Nadu Private College Regulation Act, 1976 and the provisions of the All India Council for Technical Education Act clearly spelled out the preferential role of the Council as under:*
>
> > *22. The aforesaid provisions of the Act including its preamble make it abundantly clear that the Council has been established under the Act for coordinated and integrated development of the technical education system at all levels throughout the country and is enjoined to promote qualitative improvement of such education in relation to planned quantitative growth. The Council is also required to regulate and ensure proper maintenance of norms and standards in the technical education system. The Council is further to evolve suitable performance appraisal system incorporating such norms and mechanisms in enforcing their accountability. It is also required to provide guidelines for admission of students and has power to withhold or discontinue grants and to de-recognise the institutions where norms and standards laid down by it and directions given by it from time to time are not followed. This duty and responsibility cast on the Council implies that the norms and standards to be set should be such as would prevent a lopsided or an isolated development of technical education in the country.*
> > *...It is necessary to bear this aspect of the norms and standards to be prescribed in mind, for a major debate before us centered around the right of the States to prescribe standards higher than the one laid down by the Council. What is further necessary to remember is that the Council has on it representatives not only of the States but also of the State Universities. They have, therefore, a say in the matter of laying down the norms and standards which may be prescribed by the Council for such education from time to time. The Council has further the Regional Committees, at present, at least, in four major geographical zones and the constitution and functions of the Committees are to be prescribed by the Regulations to be made by the Council. Since the Council has the representation of the States and the provisional bodies on it which*

*have also representation from different States and regions, they have a say in the constitution and functions of these Committees as well....*

*44. Further, the Court, while noticing the inconsistency between the Central and State statutes or the State authorities acting contrary to the Central statute, held as under:*

*41. (vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities de-recognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally.*
*XXX*

*43. As a result, as has been pointed out earlier, the provisions of the Central statute on the one hand and of the State statutes on the other, being inconsistent and, therefore, repugnant with each other, the Central statute will prevail and the de-recognition by the State Government or the disaffiliation by the State University on grounds which are inconsistent with those enumerated in the Central statute will be inoperative.*

*45. Still, in another case of Jaya Gokul Educational Trust v. Commissioner and Secretary to Government Higher Education Deptt., Thiruvananthapuram, Kerala State and Anr. MANU/SC/0269/2000 : (2000) 5 SCC 231, the Court reiterating the above principle, held as under:*

*22. As held in the Tamil Nadu case AIR 1995 SCW 2179, the Central Act of 1987 and; in particular, Section 10(K) occupied the field relating the `grant of approvals' for establishing technical institutions and the provisions of the Central Act alone were to be complied with. So far as the provisions of the Mahatma Gandhi University Act or its statutes were concerned and in particular statute 9(7), they merely required the University to obtain the `views' of the State Government. That could not be characterised as requiring the "approval" of the State Government. If, needed, the University statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of Section 10(K) of the AICTE Act, 1987 and would again be void. As pointed out in the Tamil Nadu case there were*

*enough provisions in the Central Act for consultation by the Council of the AICTE with various agencies, including the State Governments and the Universities concerned. The State Level Committee and the Central Regional Committees contained various experts and State representatives. In case of difference of opinion as between the various consultees, the AICTE would have to go by the views of the Central Task Force. These were sufficient safeguards for ascertaining the views of the State Governments and the Universities. No doubt the question of affiliation was a different matter and was not covered by the Central Act but in the Tamil Nadu case, it was held that the University could not impose any conditions inconsistent with the AICTE Act or its Regulation or the conditions imposed by the AICTE. Therefore, the procedure for obtaining the affiliation and any conditions which could be imposed by the University, could not be inconsistent with the provisions of the Central Act. The University could not, therefore, in any event have sought for `approval' of the State Government.*

*46. This view of the Supreme Court was reiterated with approval by a larger Bench of the Supreme Court in the case of State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Ors. MANU/SC/1756/2006 : (2006) 9 SCC 1. While discussing in detail the various legal issues in relation to grant of affiliation/ recognition to the institution and permission to start a new college, the Court held as under:*

*53. The Court then considered the argument put forward on behalf of the State that while it would be open for the Council to lay down minimum standards and requirements, it did not preclude the State from prescribing higher standards and requirements.*

*54. Negativing the contention, the Court quoted with approval the following observations of B.N. Rau, J. in G.P. Stewart v. Brojendra Kishore Roy Chaudhury (MANU/WB/0202/1939 : AIR 1939 Cal. 628 : 43 CWN 913):*

*It is sometimes said that two laws cannot be said to be properly repugnant unless there is direct conflict between them, as when one says `do' and the other 'don't', there is no true repugnancy, according to this view, if it is possible to obey both the laws. For reasons which we shall set forth presently, we think that this is too narrow a test; there may well be cases of repugnancy where both laws say `don't' but in different ways. For example, one law may say `no person shall sell liquor by retail, that is, in quantities of less than five gallons at a time' and another law may say, 'no person shall sell liquor by retail, that is, in quantities of less than ten gallons at a time'. Here, it is obviously possible to obey both laws, by obeying the more stringent of the two, namely, the second*

> *one; yet it is equally obvious that the two laws are repugnant, for to the extent to which a citizen is compelled to obey one of them, the other, though not actually disobeyed, is nullified.*
> *XXX*
> *64. Even otherwise, in our opinion, the High Court was fully justified in negativing the argument of the State Government that permission could be refused by the State Government on "policy consideration". As already observed earlier, policy consideration was negatived by this Court in Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust v. State of Tamil Nadu MANU/SC/0601/1996 : 1996 DGLS (soft) 327 : 1996 (3) SCC 15 : JT 1996 (2) SC. 692 as also in Jaya Gokul Educational Trust.*
> *XXX*
> *74. It is thus clear that the Central Government has considered the subject of secondary education and higher education at the national level. The Act of 1993 also requires Parliament to consider teacher-education system "throughout the country". NCTE, therefore, in our opinion, is expected to deal with applications for establishing new Bed colleges or allowing increase in intake capacity, keeping in view the 1993 Act and planned and coordinated development of teacher-education system in the country. It is neither open to the State Government nor to a university to consider the local conditions or apply "State policy" to refuse such permission. In fact, as held by this Court in cases referred to hereinabove, the State Government has no power to reject the prayer of an institution or to overrule the decision of NCTE. The action of the State Government, therefore, was contrary to law and has rightly been set aside by the High Court.*

*47. The above enunciated principles clearly show that the Council is the authority constituted under the Central Act with the responsibility of maintaining education of standards and judging upon the infra-structure and facilities available for imparting such professional education. Its opinion is of utmost importance and shall take precedence over the views of the State as well as that of the University. The concerned Department of the State and the affiliating University have a role to play but it is limited in its application. They cannot lay down any guideline or policy which would be in conflict with the Central statute or the standards laid down by the Central body. State can frame its policy for admission to such professional courses but such policy again has to be in conformity with the directives issued by the Central body. In the present cases, there is not much conflict on this issue, but it needs to be clarified that while the State grants its approval, and University its affiliation, for increased intake of seats or commencement of a new course/college, its directions should not offend and be repugnant to what has been laid down in the conditions for approval granted by the Central authority or Council.*

*What is most important is that all these authorities have to work ad idem as they all have a common object to achieve i.e. of imparting of education properly and ensuring maintenance of proper standards of education, examination and infrastructure for betterment of educational system. Only if all these authorities work in a coordinated manner and with cooperation, will they be able to achieve the very object for which all these entities exist.*

*48. The NCTE Act has been enacted by the Parliament with reference to Entry 66 of List I of Schedule VII of the Constitution. There is no such specific power vested in the State Legislature under List II of the Seventh Schedule. Entry 25 of List III of the Seventh Schedule is the other Entry that provides the field for legislation both to the State and the Centre, in relation to education, including technical education, medical education and Universities; vocational and technical training and labour. The field is primarily covered by the Union List and thus, the State can exercise any legislative power under Entry 25, List III but such law cannot be repugnant to the Central law. Wherever the State law is irreconcilable with the Central law, the State Law must give way in favour of the Central law to the extent of repugnancy. This will show the supremacy of the Central law in relation to professional education, including the teacher training programmes. In the case of Medical Council of India v. State of Karnataka MANU/SC/0424/1998 : (1998) 6 SCC 131, the Court had the occasion to discuss this conflict as follows:*

> *27. The State Acts, namely, the Karnataka Universities Act and the Karnataka Capitation Fee Act must give way to the Central Act, namely, the Indian Medical Council Act, 1956. The Karnataka Capitation Fee Act was enacted for the sole purpose of Regulation in collection of capitation fee by colleges and for that, the State Government is empowered to fix the maximum number of students that can be admitted but that number cannot be over and above that fixed by the Medical Council as per the Regulations. Chapter IX of the Karnataka Universities Act, which contains provision for affiliation of colleges and recognition of institutions, applies to all types of colleges and not necessarily to professional colleges like medical colleges. Sub-section (10) of Section 53, falling in Chapter IX of this Act, provides for maximum number of students to be admitted to courses for studies in a college and that number shall not exceed the intake fixed by the university or the Government. But this provision has again to be read subject to the intake fixed by the Medical Council under its Regulations. It is the Medical Council which is primarily responsible for fixing standards of medical education and overseeing that these standards are maintained. It is the Medical Council which is the principal body to lay down conditions for recognition of medical colleges which would include the fixing of intake for admission to a medical college. We*

*have already seen in the beginning of this judgment various provisions of the Medical Council Act. It is, therefore, the Medical Council which in effect grants recognition and also withdraws the same. Regulations under Section 33 of the Medical Council Act, which were made in 1977, prescribe the accommodation in the college and its associated teaching hospitals and teaching and technical staff and equipment in various departments in the college and in the hospitals. These Regulations are in considerable detail. Teacher-student ratio prescribed is 1 to 10, exclusive of the Professor or Head of the Department. Regulations further prescribe, apart from other things, that the number of teaching beds in the attached hospitals will have to be in the ratio of 7 beds per student admitted. Regulations of the Medical Council, which were approved by the Central Government in 1971, provide for the qualification requirements for appointments of persons to the posts of teachers and visiting physicians/surgeons of medical colleges and attached hospitals.*

*XXX*

*29. A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study. The Medical Council, in all fairness, does not wish to invalidate the admissions made in excess of that fixed by it and does not wish to take any action of withdrawing recognition of the medical colleges violating the Regulation. Henceforth, however, these medical colleges must restrict the number of admissions fixed by the Medical Council. After the insertion of Sections 10A, 10B and 10C in the Medical Council Act, the Medical Council has framed Regulations with the previous approval of the Central Government which were published in the Gazette of India dated 29-9-1993 (though the notification is dated 20-9-1993). Any medical college or institution which wishes to increase the admission capacity in MBBS/higher courses (including diploma/degree/higher specialities), has to apply to the Central Government for permission along with the permission of the State Government and that of the university with which it is affiliated and in conformity with the Regulations framed by the Medical Council. Only the medical college or institution which is recognised by the Medical Council can so apply.*

*49. A Constitution Bench of this Court in the case of Dr. Preeti Srivastava and Anr. v. State of Madhya Pradesh and Ors. MANU/SC/1021/1999 : (1999) 7 SCC 120, while dealing with the provisions of the Medial Council of India Act and referring to Entry 25 of List III and Entry 66 of List I with reference to the Articles 245, 246, 254 and 15(4) of the Constitution, spelled out the supremacy of the Council and the provisions of the Central Act, particularly in relation to the control and Regulation of higher education. It also discussed providing of the eligibility conditions and qualifications and determining the standards to be maintained by the Institutions. The Court in paragraph 36 of the judgment held as under:*

> *36. It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are:*
>
> *(1) the calibre of the teaching staff;*
> *(2) a proper syllabus designed to achieve a high level of education in the given span of time;*
> *(3) the student-teacher ratio;*
> *(4) the ratio between the students and the hospital beds available to each student;*
> *(5) the calibre of the students admitted to the institution;*
> *(6) equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;*
> *(7) adequate accommodation for the college and the attached hospital; and*
> *(8) the standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged."*

38. As such, the principle that the field of teacher education is the exclusive preserve of Parliamentary legislation, has been stressed upon in all

cases where the NCTE act has been considered, and it has been held that all issues pertaining to teacher education will fall within Entry 66 of List I and hence, within the legislative competence of Parliament. In the present case, the issue relates to school education where the NCTE has been designated as the authority to prescribe the essential eligibility criteria for appointment to the post of graduate teachers. In this context, the judgement of the Hon'ble Supreme Court cited supra is relevant to point out that the essential eligibility criteria prescribed by the designated authority under the RTE Act cannot be treated as one that deals with the recruitment and conditions of service of persons in a State under Article 309 of the Constitution, but is one which is made in exercise of the powers conferred upon the NCTE by a parliamentary legislation in the subject of teacher education which falls within Entry 66 of List I. The above judgement thus squarely covers the issue and once, it is established that the subject matter is one that falls within the legislative head of ‘education’ as well as ‘higher education’, and when Parliament has made a law governing the said field, it is not open to the State government in exercise of its powers under Article 309 to issue Rules that alter, modify, or dilute the standards or in any manner tamper with the same except in accordance with the provisions relating to the constitutional provisions governing the overcoming of repugnancy between Parliamentary and State legislation, which

again is open only in cases where the legislative head falls under the Concurrent List. In the present case, as the subject – 'Teacher Education' falls within the domain of parliamentary legislation, seeking to set uniformly high standards for all teachers throughout the country, under the RTE Act, 2009, the further question of the State coming up with a repugnant law will not arise.

39. Further, we find force in the submissions of the counsel for the writ petitioner that the impugned Rules are a piece of colourable legislation to the extent that they seek to tweak the mandate of the NCTE Regulations that applies the minimum eligibility criteria to all appointments to BT Assistants, irrespective of the mode of appointment. The doctrine of Colourable Legislation came to be examined by a Constitution Bench of this Court in ***K.C. Gajapati Narayan Deo and Ors. v. State of Orissa [(1954) 1 SCR 1]***, in which, it was held that the doctrine of colourable legislation does not involve any question of 'bona fides' or 'mala fides' on the part of the Legislature. The whole doctrine revolves around the question of competence of a particular Legislature to enact a particular law. If the Legislature is competent to pass a particular law, the motives, which impelled it to act, are really irrelevant. On the other hand, if the Legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not, is thus always a question of power (*Vide* Cooley's Constitutional Limitations, Vol. 1, p. 379).

The crucial question to be asked is whether there has been a transgression of legislative authority as conferred by the Constitution which is the source of all powers as also the separation of powers. A legislative transgression may be patent, manifest or direct or may also be disguised, covert and indirect. It is to this latter class of cases that the expression 'colourable legislation' has been applied in certain judicial pronouncements. The expression 'colourable legislation' means that although apparently a Legislature in passing a statute which purports to act within the limits of its powers, yet, in substance and in reality, it transgresses those powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise. The discerning test is to find out the substance of the act and not merely the form or outward appearance. If the subject matter in substance is something which is beyond the legislative power, the form in which the law is clothed, would not save it from condemnation. The constitutional prohibitions cannot be allowed to be violated by employing indirect methods. To test the true nature and character of the challenged legislation, the investigation by the Court should be directed towards examining (i) the effect of the legislation; and (ii) its object, purpose or design. While doing so, the Court cannot enter into investigating the motives, which induced the Legislature to exercise its power.

40. The abovesaid view was reiterated by Larger Bench (Seven Judges) in ***R.S. Joshi, S.T.O. v. Ajit Mills Ltd. [(1978) 1 SCR 338]***, and by Constitution Bench in ***Naga People's Movement of Human Rights v. Union of India [AIR 1998 SC 465]*** and has been the law applied in a catena of decisions thereafter.

41. In order to further support her case, the learned counsel for the petitioners also relied upon the NCTE Regulations of the year 2001 which make it rather clear that even for movement from one level to a higher level post, the minimum qualifications as given or prescribed in the concerned promotional level post would also require to be fulfilled. If there was any doubt on this score, the said Regulations bring out the intention of the NCTE in this regard and the said principle applied in consonance with the NCTE Regulations, 2010, prescribing qualifications and eligibility criteria for Graduate Assistants, without making any distinction in the qualifications so prescribed on the basis of mode/channel of appointment, will lead to the inevitable conclusion that as on date, any person aspiring to be appointed as a Graduate Assistant/BT Assistant, by whatever mode of appointment, be it by direct recruitment, promotion or transfer, would have to necessarily fulfil the eligibility criteria as prescribed by the NCTE Regulations, 2010, under which a pass in TET is clearly mandatory. It is also seen from the additional

documents filed in the writ petition impugning the Special Rules that in several other States where the NCTE notifications have been adopted, the essential eligibility criteria of passing TET has been stressed upon in all appointments irrespective of the channel of appointment that is by direct recruitment or by promotion. Further, in an identical case before the Division Bench of the Allahabad High Court in ***Subedar Yadav and Ors. v. State of U.P. and Ors. [Special Appeal no. 737 of 2018 dated 04.09.2018]***, it has been pleased to hold that the requirement of passing TET is mandatory for selection, promotion or for any other mode of appointment and it is not only confined to selection from open recruitment.

42. The reliance of the appellants on the order passed by the Hon'ble Supreme Court in C. A. Nos. 6186-6187 of 2008 dated 05.09.2013 that the teachers who were appointed prior to G.O. Ms. No. 181 dated 15.11.2011 will remain protected, is misplaced in the context of the present issue. As rightly held by the Learned Judge in the order under appeal, the said appeals before the Hon'ble Supreme Court arose out of different facts and circumstances, where essentially the question was with respect to the initial methods of recruitment and the zone of consideration for appointment, that is, whether there should be a state-wide selection or district-wise selection and it is in those circumstances that after the coming into force of the RTE Act, the

Hon'ble Supreme Court while disposing of the said appeals, had held that those who had already been appointed prior to the coming into force of G.O. Ms. No. 181 dated 15.11.2011 shall remain protected. This observation/ direction of the Hon’ble Supreme Court cannot, by any stretch of imagination, be deemed to be understood as meaning that all those appointed prior to the date of the said G.O. Ms. No. 181 dated 15.11.2011 would not have to pass the Teacher Eligibility Test even if they aspire for a promotion to the higher post of Graduate Teacher, when at present the qualifications prescribed by the NCTE require a pass in TET, apart from the other essential educational qualifications. As such, the contention that the observation in the civil appeals would exempt the writ appellants from passing the teacher eligibility test while seeking for promotion to the postgraduate teacher, is hereby negatived.

43. At the risk of repetition, it must be stated that while the NCTE notifications had clearly protected those who had already been appointed prior to the date of the notification from passing TET, there is nothing in the said notification which affords an exemption from passing TET when they aspire for fresh appointments by way of direct recruitment, promotion or otherwise to the post of Graduate Teacher. The principle of interpretation that when the language of the statute is clear and unambiguous, it is not for the courts to substitute their opinion or inject their philosophy into the provisions, is trite

law and the same is to be applied. The principle of literal interpretation would lead to the inevitable conclusion that only those who have been appointed prior to the date of issuance of the NCTE notifications are protected and exempted from passing TET for continuance in the respective posts against which they have been appointed. Hence, we conclude that those appointed prior to 29.07.2011 and in order to extend the benefit to the date of passing of G.O. Ms. No. 181 dated 15.11.2011, those appointed prior to that date, i.e.15.11.2011 either in the post of Secondary Grade teacher or Graduate Teacher/BT Assistant are exempted from passing TET for continuance in the said posts. However, for promotion to the post of Graduate Teacher from the post of Secondary Grade teacher or appointment to the post of Secondary Grade teacher or Graduate teacher/BT Assistant by any channel or mode of appointment by either direct recruitment or promotion or by transfer, a pass in Teacher Eligibility Test is mandatory in accordance with the RTE Act read with the NCTE notifications.

44. In the result, the writ petitions challenging the *vires* of the impugned Special Rules are hereby allowed, and the Special Rules for the Tamilnadu 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 illegal being *ultravires* the Right of Children to Free and Compulsory Education Act 2009 and the Rules framed thereunder and the NCTE Notifications dated 23.08.2010 and 29.07.2011. Accordingly, W.A.No. 2795/2022 is hereby dismissed.

B. WA Nos. 313, 833, 1891, 2050, 2082, 2617 of 2022 & W.A. Nos.19, 31, 32, 36 of 2023

RIGHT OF THOSE APPOINTED PRIOR TO THE RTE ACT, NCTE NOTIFICATIONS TO CONTINUE IN SERVICE WITHOUT INSISTENCE ON TET.

45. The next question relates to whether those already in service prior to the commencement of the Act are obliged to acquire a pass in TET for continuance in service as Secondary Grade Teachers without seeking any further promotion. Here, a reading of Section 23 of the RTE Act would reveal the following:

(a) The sub-clause (1) to Section 23 of the Act provides that any person would be eligible "*for appointment*" as a teacher provided he possesses minimum qualification as laid down by an academic authority authorized by the central government namely NCTE. As a matter of fact, pursuant to Section 23 of the Act, a notification was issued by NCTE dated 23.08.2010 that teachers shall be eligible for appointment from

among those who have passed Teachers Eligibility Test (TET).

(b) The expression "*for appointment*" employed in Subsection (1) to Section 23 of the Act is indicative of the fact that the provision was intended to impose conditions for appointments of teachers to be appointed subsequent to the introduction of the Act and notification.

(c) Subsection (2) to Section 23 of the Act provides for certain relaxation in cases of States where there are no adequate institutions offering courses or training in teacher education or States where there are no adequate number of teachers possessing minimum qualification as laid down in subsection (1) to section 23 viz., TET. In such cases the central government may by notification relax the minimum qualifications required for appointment as a teacher for a period not exceeding five years.

(d) It is important to note that Subsection (2) to Section 23 of the Act also governs future appointments and does not intend to touch upon the rights of teachers or impair the rights of teachers who are already in service to continue in service.

46. Reliance was sought to be placed on the proviso to sub section (2) to Section 23 of the Act to suggest that the qualification test is not only with reference to teachers who are to be appointed but also teachers who were already in service ought to pass TET test to remain in service. This is in view of the fact that the proviso "a teacher who had at the commencement of this Act does not possess minimum qualification would be required to acquire the minimum qualification within a period of five years". The expression

"teacher" here would not include those, who are already in service but is meant to cover candidates who intend or who desire to be appointed as teachers. This would be evident from a reading of sub section (2) to Section 23 of the Act which provides that "teachers possessing minimum qualification" which qualifies the expression "*for appointment*" as a teacher. It is thus clear that the expression "teacher" employed in Section 23 of the Act does not cover teachers who are already in appointment/in service but those who intend or desire to be appointed as teachers.

47. Secondly, a proviso is normally only a carve out or an exception to the main provision and there is no reason to take a different view. There is consistency between the proviso and sub section (2) to section 23 inasmuch as both look to a period of five years for the purpose of acquiring a qualification viz., passing the TET test within a period of five years, under the circumstances set-out therein.

48. Any doubt as to whether the first proviso would govern teachers who are already in service is put to rest through the proviso introduced by the Right of Children to Free and Compulsory Education (Amendment) Act, 2017, which reads as under;

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

*(24 of 2017)"*

49. A reading of the above proviso would make it clear that every teacher appointed or in position as on 31.04.2015 and not possessing the minimum qualification shall acquire such minimum qualification within a period of four years from 2017. The expression "for appointment" employed in sub sections (1) and (2) to Section 23 when contrasted with every teacher "**appointed"** would clearly indicate the fact that when the provisions were first introduced in 2010 they were only looking at **future appointments**. However, the proviso introduced in the year 2017 also looks to teachers "**who are already in service".** The expression "**for appointment"** is indicative of the fact that the teachers shall qualify for appointment which is to be made in future and therefore it has to be prospective. If so, sub section (2) to Section 23 of the Act having found to cover appointments made after the introduction, the proviso must also apply only to the said class of candidates/teachers covered by sub section (2) to Section 23 of the Act.

50. Section 23 of the Act would make it clear that the intention of the Legislature to prescribe minimum qualifications for teachers was made while being alive to the fact that there may be certain States which do not have adequate institutions offering courses or training in teacher education, or where teachers possessing minimum qualifications are not available in

sufficient numbers. It is in this context that the Proviso to Section 23(2) states that a teacher who, at the commencement of this Act (understood to mean those appointed after the commencement of the Act), does not possess minimum qualifications as laid down under sub section (1), shall acquire such minimum qualification from five years. The legislature therefore has made it mandatory for every teacher who at the time of commencement of the Act does not possess minimum qualifications as prescribed under the Act, to acquire the said minimum qualifications within a period of 5 years. The emphasis is on the words “at the commencement of this Act” and hence, it needs to be examined whether the legislature intended to apply the new qualifications to teachers who are already in service at the commencement of the Act, or only to those to be appointed after the commencement of the Act. Pursuant to the provisions of the Act, the National Council Teacher Education (NCTE) issued a notification dated 23.08.2010 prescribing the minimum qualifications for teachers from Classes I to V- ‘Secondary Grade Teachers’ as well as for Classes VI to VIII- ‘BT Assistant’. Apart from prescribing the minimum educational qualifications, the important eligibility criteria added by way of the notification is – “Pass in Teacher Eligibility Test (TET)”. This notification stated under paragraph 4 that teachers appointed prior to the date of this notification need not acquire the minimum qualification prescribed by the

notifications. Under para 5 it has been stated that those teachers appointed after date of this notification but in whose case the process of appointment was initiated prior to the date of this notification would also be exempt from acquiring the minimum qualifications including Teacher Eligibility Test (TET) as prescribed under Para 1 of the notification. The said Para 5 of the notification dated 23.08.2010 came to be amended by the notification of the NCTE dated 29.07.2011 whereby Para 5 was substituted by Para 5(a) with the same provision while shifting the cut off date from 23.08.2010 to 29.07.2011, meaning thereby that where the Government, Local Authority or School issued the advertisement to initiate the process of appointment prior to the date of this notification i.e., 29.07.2011 such appointments may also be made in accordance with the NCTE Regulations 2001 i.e., exempting them from acquiring TET for appointment as the teacher.

51. At this juncture, we may refer to some of the legal principles relating to the issue involved herein, qua the nature of employment under the Government and interpretation of provisions in a manner as to cause least hardship to existing employees, the rule against retrospectivity, and in this context, whether the possession of TET is mandatory for those, who were already appointed as secondary grade teachers prior to the notification dated

29.07.2011 for continuance in service and getting annual increment, incentive, etc. They are as follows:

Employment by State and its instrumentalities as a right under Article 16

52. We may now examine the nature of state employment and the legal status of the teachers appointed by the State. Article 16 of the Constitution provides that there should be equality of opportunity for all citizens for the matters relating to employment or appointment to any office under the state. Public employment in a sovereign socialist secular Democratic Republic has to be a set down by the Constitution and the laws made under the constitution vis-à-vis the employment by the government and its instrumentalities on the basis of procedure established on that behalf.

53. The expression employment or appointment covers not only the initial appointment but also attributes of service like promotion and age of superannuation etc. The expression 'matters relating to employment' used in Article 16 is not confined to initial matters prior to the act of employment but to cover all matters in relation to employment both prior and subsequent. It would cover salary, leave, gratuity, pension, superannuation, promotion and termination of employment as held in ***Girish Jayanthilal Vaghela [2006 2 SCC 482]*** and cited with approval by Balasubramanyan, J in ***State of Karnataka v. Umadevi [(2006) 4 SCC 1)].***

54. In ***Union Public Service Commission* v. *Girish Jayanti Lal Vaghela* [(2006) 2 SCC 482],** the Apex court observed that:

> *"12. Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional right to equality of opportunity and employment in public offices. The words 'employment' or 'appointment' cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation, etc. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution."*

State Employment is not mere contract

55. The employment in the state is not only a contract, but also a status acquired by the employee. The salary and duration of work by the government servant are governed by statute or statutory rules which may be framed by the Government. In this context, the following decisions of the Hon'ble Supreme court are of relevance and the observations made thereunder are usefully extracted below:

**(i)** ***Dinesh Chandra Sangma v. State of Assam [(1977) 4 SCC 441]***

> "*The above is a special provision which deals with a special situation where a contract is entered into between the Government and a person appointed under the Constitution to hold a civil post. But simply because there may be, in a given case, a contractual employment, as envisaged under Article 310(2) of the Constitution, the relationship of all other government servants, as a class, and the Government, cannot be said to be contractual. It is well-settled that except in the case of a person who has been appointed under a written contract, employment under the Government is a matter of status and not of contract even though it may be said to have started, initially, by a contract in the sense that the offer of appointment is accepted by the employee."*

**(ii)** ***Roshan Lal Tandon v. Union of India [(1968) 1 SCR 185]***

> "*It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by Salmond and Williams on Contracts as follows:*
>
> > "*So we may find both contractual and status-obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligations defined by the law itself, and so pertaining to the*

*sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status."*
*(Salmond and Williams on Contracts, 2nd Edn. p. 12).*

### (iii) *State of H.P. v. Raj Kumar [(2023) 3 SCC 773]*

*"26. Though the relationship between the employee and the State originates in contract, but by virtue of the constitutional constraint, coupled with the legislative and executive rules governing the service, the relation attains a unique position. Identifying such a relationship as being a "status", as against a contract, this Court in Roshan Lal Tandon v. Union of India [Roshan Lal Tandon v. Union of India, (1968) 1 SCR 185 : AIR 1967 SC 1889], explained what such a "status" constitutes. We have extracted hereinbelow the exposition of the concept of "status" as explained by the Constitution Bench for ready reference. .......It is true that the origin of government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a government servant is more* ***one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere of the parties****. The emolument of the government servant and his terms of service are governed by statute or statutory rules which may be* ***unilaterally altered*** *by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are* ***fixed by the law*** *and in the enforcement of these duties, society has an interest."*

State as a Model Employer

56. The Government being an employer, must act in accordance with the rules and regulations framed by it. It should respond the legitimate aspirations of the employees and create trustworthiness to them. The Hon'ble Supreme Court in ***Bhupendra Nath Hazarika v. State of Assam [(2013) 2 SCC 516]*** pointed out the same in the following ways:

> *"State is a model employer and it is required to act fairly giving due regard and respect to the rules framed by it. We have stated the role of the State as a model employer with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the employees. It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a model employer should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretised. That public employment is a facet of right to equality envisaged under Article 16 of the Constitution of India and that the recruitment rules are framed with a view to give equal opportunity to all the citizens of India entitled for being considered for recruitment in the vacant posts. As a model employer the Government must conduct itself with high probity and candour with its employees, The main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16."*
>
> *(emphasis supplied)*

Rule against retrospectivity

57. It would be evident that the teachers who were appointed on the basis of eligibility criteria set out during their employment prior to the

introduction of the Act and having secured employment and having been in the employment for decades cannot now be required to satisfy the eligibility criterion which is introduced in the year 2010. Any attempt to do so would result in giving retrospective effect to the Act. This would warrant an examination, whether the provisions under consideration can be given retrospective operation, when it does not expressly provide for the same. There is a presumption of prospectivity articulated in the legal maxima *Nova Constitutio Futuris Formam Imponere Debet, Non Praeteritis* that is "a new law ought to regulate what is to follow, not the past". It is trite law that any provision or statute dealing with substantive rights is prospective unless it is expressly or by necessary implication made to have retrospective operation as held in ***Mahadeolal Kanodia v. Administrator-General of W.B., (1960) 3 SCR 578*** and ***CIT v. Vatika Township (P) Ltd., (2015) 1 SCC 1 at page 21,*** the relevant passage of which are quoted below for ready reference:

**(i)** ***Mahadeolal Kanodia v. Administrator-General of W.B. [(1960) 3 SCR 578]***

> "**8.***The principles that have to be applied for interpretation of statutory provisions of this nature are well-established. The first of these is that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective; they are retrospective only if by express words or by necessary implication the legislature has made them retrospective; and the retrospective operation will be limited only to the extent to which it has been so made by express words, or necessary implication. The second rule is that the intention of the legislature has always to be gathered from the words used by it, giving to the words their*

> *plain, normal, grammatical meaning. The third rule is that if in any legislation, the general object of which is to benefit a particular class of persons, any provision is ambiguous so that it is capable of two meanings, one which would preserve the benefit and another which would take it away, the meaning which preserves it should be adopted. The fourth rule is that if the strict grammatical interpretation gives rise to an absurdity or inconsistency such interpretation should be discarded and an interpretation which will give effect to the purpose the Legislature may reasonably be considered to have had will be put on the words, if necessary even by modification of the language used."*

**(ii)** ***CIT v. Vatika Township (P) Ltd. [(2015) 1 SCC 1 at page 21]***

> "***28.*** *Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips v. Eyre [(1870) LR 6 QB 1] , a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law."*

58. Thus, it could be inferred from the above that when Parliament in its wisdom has made the provisions of the Act only prospective, it would not be open through a process of interpretation by courts or on the basis of interpretation/understanding by the executive or a subordinate legislation to give a retrospective effect though the plenary legislation does not either expressly or by necessary implication provide for retrospective operation of its provisions.

Subordinate legislation to be in conformity with plenary legislation

59. Any attempt to suggest that the subordinate legislation must be understood as imposing a condition which requires the teachers who were in service to clear the test despite the fact that plenary legislation in the form of RTE Act does not provide for the same would render the subordinate legislation bad for it is settled principle that any subordinate legislation ought to be in confirmity with the parent Act as well as other plenary legislation. The decisions of the Hon'ble Supreme Court referred to below explained the same.

(i) ***Shri Sitaram Sugar Ltd v. Union of India [(1990) 3 SCC 223)]***

> "*45. Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be "reasonably related to the purposes of the enabling legislation". See Leila Mourning v. Family Publications Service, 411 US 356, 36 L Ed. 2d 318. If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, courts might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires", per Lord Russel of Killowen, C.J. in Kruse v. Johnson, [1988] 2 Q.B. 91.*"

**(ii)** ***State of Tamil Nadu & Ors. vs P. Krishnamurthy & Ors [(2006) 4 SCC 517]***

> "*12. There is a presumption in favour of constitutionality or validity of a sub-ordinate Legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a sub-ordinate legislation can be challenged under any of the following grounds:-*
>
> *a) Lack of legislative competence to make the sub-ordinate legislation.*
>
> *b) Violation of Fundamental Rights guaranteed under the Constitution of*

> *India.*
>
> *c) Violation of any provision of the Constitution of India.*
>
> *d) Failure to conform to the Statute under which it is made or exceeding the limits of authority conferred by the enabling Act.*
>
> *e) Repugnancy to the laws of the land, that is, any enactment.*
>
> *f) Manifest arbitrariness/unreasonableness (to an extent where court might well say that Legislature never intended to give authority to make such Rules).*

60. The court considering the validity of a subordinate Legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate Legislation conforms to the parent Statute. Where a Rule is directly inconsistent with a mandatory provision of the Statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the Rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the Parent Act, the court should proceed with caution before declaring invalidity.

Arbitrariness violates Article 14: Construction that avoids unjust, arbitrary and absurd results to be adopted

61. It may be relevant to note that parliament would make laws which are just and reasonable, and that, there is also a presumption that Parliament

would frame laws which are constitutionally valid. To assume that the provisions of Section 23 of the Act are effective retrospectively, would result in rendering the provision vulnerable to challenge as offending Article 14 of the Constitution. In this regard, it may be useful to note that manifest arbitrariness by itself is a ground to invalidate even plenary legislation as held in ***Shayara Bano v. Union of India, [(2017) 9 SCC 1]***, the relevant passage of which is usefully extracted below:

> "***95...****In particular, which stated that legislation can be struck down on the ground that it is "arbitrary" under Article 14, went on to conclude that "arbitrariness" when applied to legislation cannot be used loosely. Instead, it broad based the test, stating that if a constitutional infirmity is found, Article 14 will interdict such infirmity. And a constitutional infirmity is found in Article 14 itself whenever legislation is "manifestly arbitrary" i.e. when it is not fair, not reasonable, discriminatory, not transparent, capricious, biased, with favouritism or nepotism and not in pursuit of promotion of healthy competition and equitable treatment. Positively speaking, it should conform to norms which are rational, informed with reason and guided by public interest, etc.,"*

Hardship, inconvenience, injustice, absurdity and anomaly to be avoided

62. The Court will adopt that which is just, reasonable and sensible rather than what is none of those things. In ***Modern School v. Union of India, (2004) 5 SCC 583***, the Hon'ble Supreme Court has observed that a construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results.

This rule has no application, when the words are susceptible to only one meaning and no alternative construction is reasonably open.

63. In selecting out of different interpretations 'the court will adopt that which is just, reasonable and sensible rather than that which is none of those things' as it may be presumed that 'the legislature should have used the word in that interpretation which least offends our sense of justice'. If the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity, and inconsistency. Similarly, a construction giving rise to anomalies should be avoided as noted by the Supreme Court in ***N.T. Veluswami Thevar v. G. Raja Nainar*** **[1959 Supp (1) SCR 623]**

> *"12…… It is no doubt true that if on its true construction, a statute leads to anomalous results, the courts have no option but to give effect to it and leave it to the legislature to amend and alter the law. But when on a construction of a statute, two views are possible, one which results in an anomaly and the other, not, it is our duty to adopt the latter and not the former, seeking consolation in the thought that the law bristles with anomalies. Anomalies will disappear, and the law will be found to be simple and logical, if it is understood that when a question is raised in an election petition as to the propriety of the rejection of a nomination paper, the point to be decided is about the propriety of the nomination and not the decision of the Returning Officer on the materials placed before him, and that decision must depend on whether the candidate is duly qualified and is not subject to any disqualifications as provided in Section 36(2). Further, as approved by Venkatarama Aiyar, J.,* ***in Tirath Singh v. Bachittar Singh, (1955) 2 SCR 457***
>
> > *"….Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence".*

> *(Maxwell's Interpretation of Statutes, 10th Edn., p. 229). Reading the proviso along with clause (b) thereto, and construing it in its setting in the section, we are of opinion that notwithstanding the wideness of the language used, the proviso contemplates notice only to persons who are not parties to the petition."*

64. Legislature must be presumed to enact laws that are just, fair and reasonable and in society's interest, unless it is explicitly intended to result in any harsh or ridiculous effect. The words of K.S. Hedge, J. as held in ***Bhudan Singh v. Nabi Bux, [(1969) 2 SCC 481 at page 485],*** reads as under:

> "***9.****Before considering the meaning of the word "held" in Section 9, it is necessary to mention that it is proper to assume that the law makers who are the representatives of the people enact laws which the society considers as honest, fair and equitable. The object of every legislation is to advance public welfare. In other words as observed by Crawford in his book on "Statutory Constructions" that the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every peace of legislation. Consequently where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most instance, it would seem that the apparent or suggested meaning of the statute, was not the one intended by the law makers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, there is little reason to believe that it represents the legislative intent."*

Any interpretation that would lead to absurdity has to be avoided, according to the rules of interpretation (Central India Spg., Wvg. & Mfg. Co. Ltd. v. Municipal Committee, 1958 SCR 1102). Therefore, a construction resulting in unreasonable, harsh and unjust result ought to be avoided.

Data relating to TET

65. It may also be useful to refer to the following data to understand the consequences of treating RTE to be retrospective insofar as it requires teachers

to pass the TET exam.

| *TET* | *Paper* | *Examination Date* | *No. of Candidates Appeared* | *No. of candidates passed* | *Pass Percen tage* |
|---|---|---|---|---|---|
| 2012 | I | 12.07.2012 F.N. | 305405 | 1735 | 0.56 |
| 2012 | II | 12.07.2012 A.N. | 409121 | 713 | 0.17 |
| Supplementary | I | 14.10.2012 F.N. | 278725 | 10397 | 3.73 |
| Supplementary | II | 14.10.2012 A.N. | 364370 | 8864 | 2.43 |
| 2013 | I | 17.08.2013 | 262187 | 30592 | 11.67 |
| 2013 | II | 18.08.2013 | 400311 | 42124 | 10.52 |
| PWD | II | 21.05.2014 | 4693 | 945 | 20.14 |
| PWD | II | 21.05.2014 | 4693 | 945 | 20.14 |
| 2017 | I | 29.04.2017 | 241555 | 16197 | 6.71 |
| 2017 | II | 30.04.2017 | 5122260 | 18578 | 3.63 |
| 2019 | I | 08.06.2019 | 162316 | 551 | 0.33 |
| 2019 | II | 09.06.2019 | 379735 | 316 | 0.08 |
| Total | | | 3320678 | 131012 | |

The data from the website of TRB would reveal that between 2012 to 2019, 33,20,678 had taken part in TET exams, out of which only 1,31,012 numbers have cleared resulting in an overall average of 3.95 percentage. The consequence of treating the passing of TET exams as mandatory even to continue in service apart from rendering the provision as being arbitrary, produces results which are absurd / obnoxious in as much as it could result in more than a lakh of teachers being unemployed. It would also have the ripple effect of affecting the careers of students inasmuch as it is impossible to find adequate alternate hands to impart education. Inasmuch as applying the above

data, it would require at least 30,00,000 people to take part in TET exams to have a lakh of teachers clearing TET thereby qualifying for appointment.

66. It is also relevant to note that the legislature is presumed to understand and appreciate the needs of its own people and that its laws are directed towards problems realized through experience [Refer: **Ram Krishna Dalmia v. SR Tendolkar, 1959 SCR 279 para 11]**. It cannot be overemphasized that experience is also important and Parliament must be imputed with the wisdom that experience is relevant and therefore the legislature ensured that the provisions are only prospective and not retrospective, if we bear the above data in mind, the consequences that could possibly result in treating TET examinations as applying even in respect of teachers who are already in services at the time of introduction of TET, would produce results which are absurd and obnoxious something which ought to be avoided. In this regard it may be useful to refer to the judgment of the Supreme Court in ***Sirsi Municipality v. Cecelia Kom Francis Tellis, [(1973) 1 SCC 409],*** to understand what is their nature of appointment and the consequences of terminating them in view of the non-fulfillment of an eligibility criteria introduced subsequent to their appointment.

Hardship to those in employment to be avoided

67. The Hon'ble Supreme Court in ***Girjesh Shrivastava v. State of M.P. [(2010) 10 SCC 707]*** found that cancellation of appointment after long period which would result in large number of people being unemployed is arbitrary and undesirable also in view of the fact that they would have left their previous employment and would have reached an age where the prospects of them finding another job are rather dim and all this if taken into account cumulatively would indicate that the provisions of the Act in the first place is only prospective on a plain reading of the provisions and any attempt to suggest that it must be given retrospective effect ought to be rejected for it would fall foul of Article 14, 16 and 19 (1)(g) of the Constitution. The relevant paragraph of the said decision is profitably reproduced as under:

> "***31.*** *More importantly, in deciding these issues, the High Court should have been mindful of the fact that an order for cancellation of appointment would render most of the appellants unemployed. Most of them were earlier teaching in non-formal education centres, from where they had resigned to apply in response to the advertisement. They had left their previous employment in view of the fact that for their three-year long teaching experiences, the interview process in the present selection was awarding them grace marks of 25%. It had also given them a relaxation of 8 years with respect to their age. Now, if they lose their jobs as a result of the High Court's order, they would be effectively unemployed as they cannot even revert to their earlier jobs in the non-formal education centres, which have been abolished since then. This would severely affect the economic security of many families. Most of them are between the age group of 35-45 years, and the prospects for them of finding another job are rather dim. Some of them were in fact awaiting their salary raise at the time of quashing of their appointment by the High Court."*

68. Reverting to the present case, pursuant to the said Act as well as notification issued by the NCTE the State Government issued G.O.Ms.No.181 School Education (C2) Department dated 15.11.2011, wherein, in paragraph 3, it has been mentioned as follows:

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

69. A reading of the provisions of the Act read with the NCTE Notifications as stated above would make it clear that all those appointed prior to the notification dated 29.07.2011 can continue in service as Secondary Grade Teachers or BT Assistants as the case may be, without acquiring TET. They can be granted their increments and other monetary benefits. To this extent, 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. The time-limit granted for acquiring a pass in TET is applicable only for those who have been appointed after the commencement of the Act, and who for the reasons stated in Section

23(2) of the Act, were appointed without qualifying in TET. The amendment to the RTE Act on 09.08.2017 by Act No. 24 of 2017 with effect from 01.04.2015 by inserting the following Second proviso to the Section 23(2) of the RTE Act, reads as follows:

> "*23(2) ...*
> *Provided further that every teacher appointed or in position as on the 31st March 2015, who does not possess minimum qualifications as laid down under sub-section(1), shall acquire such minimum qualifications within a period of four years from the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017".*

The aforesaid proviso is also to be read in the same manner as being applicable only for those who have been appointed after the commencement of the Act, and who for the reasons stated in Section 23(2) of the Act, were appointed without qualifying in TET. The words "every teacher appointed or in position as on the 31st March 2015" would clear any semblance of doubt as to the category of persons whom it refers to, meaning thereby that every teacher appointed after the Act and who is in service as on 31st March 2015 has been mandated under the Act to acquire the minimum qualifications within a period of four years from the date of commencement of the amendment Act of 2017 (.i.e., Act 24 of 2017) to the RTE Act w.e.f 01.04.2015. It is to be seen that the question whether teachers appointed prior to the notification of the NCTE dated 29.07.2011 would require to pass the TET for continuing in service came

up for consideration in ***M.Maharani v. The State of Tamilnadu and Ors. [MANU/TN/0608/2019]*** wherein it has been held as follows:

> *"….*
> *10. However, there is no cut-off date specified in the said G.O. Ms. No. 181, with regard to acquiring the qualification of pass TET to continue in service as B.T. Assistants /Secondary Grade Teachers, who are working as such in the respondent Schools. In this regard, a cursory glance at Clause (5) of the notification dated 23.08.2010 and its amended notification dated 29.07.2011 issued by the NCTE, the contents of which are reproduced at paragraph nos. 8.2 and 8.4 above, would reveal that if the process of appointment of teachers was initiated prior to the date of notification by issuing advertisement, such appointments have to be made in accordance with NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 and the same was amended with effect from 29.07.2011. As per the said NCTE Regulations 2001, there is no qualification prescribed with regard to possession of TET certificate, for appointment to the post of B.T Assistant and Secondary Grade Teachers. The qualification of passing TET was first introduced by the notification dated 23.08.2010 and it was amended vide notification dated 27.09.2011. Thus, it could be inferred that the cut-off date for acquiring the TET qualification is 27.09.2011 and the teachers, who were appointed prior to that date need not pass TET and even in the case of the teachers who were appointed after that date, if the advertisement to initiate the process of appointment of teachers was made prior to that date, then, their appointments also can be in accordance with the NCTE Regulations 2001 and they need not acquire the TET qualification.*
>
> *12. In the ultimate analysis, this Court has no hesitation to hold that the petitioners are entitled to seek exemption from passing TET, as they were appointed prior to the cut-off date and the respondents are directed not to insist TET certificate from the petitioners as a pre-condition for their continuance in service as B.T. Assistants."*

70. The aforesaid judgment was also followed in ***V.Fathima Riswana and others v The Chief Educational Officer, Tirunelveli and Others [MANU/TN/4852/2020 dated 13.08.2020].***

71. In line with above reasoning, the orders of the learned Judge holding that even those appointed prior to the commencement of the Act must acquire

a pass in TET is liable to be set aside. The Secondary Grade Teachers only seeking continuance in service with increments, are fundamentally a different class of persons from those seeking promotion to B.T.Assistant from Secondary Grade Teacher.

72. In the light of the above narration, taking note of the factual background, the legal provisions spelling out the intention of the legislature and the effect of the subordinate legislation pursuant thereto, the inescapable conclusion of this court would be that every teacher whether Secondary Grade or BT Assistant, whether appointed by direct recruitment or promotion in the case of BT Assistant, after the coming into force of the RTE Act and the NCTE notifications must necessarily possess/acquire the eligibility of a pass in TET. Therefore, the claim that Secondary Grade Teachers appointed prior to the commencement of the Act and notifications will now be eligible for promotion to the post of BT Assistant without passing TET, cannot be countenanced. For any fresh appointments, whether by direct recruitment in the case of Secondary Grade Teachers, or by either direct recruitment or promotion or transfer in the Graduate Assistants/BT Assistants, a pass in TET is an essential eligibility criteria to be fulfilled.

73. Further, it is made clear that all those appointed prior to 29.07.2011 are exempt from passing TET only for the purpose of continuance in the post

of secondary grade teacher or BT Assistant without promotional prospects. Any appointments whether by direct recruitment or promotion or transfer made after 29.07.2011, will have to necessarily adhere to the minimum eligibility criteria of passing TET.

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 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.

75. The narration of facts which propelled this case would indicate that the teachers have not been appointed for the last ten years inspite of being qualified with a pass in TET. On the basis of the above findings and observations made, the State Government is directed to conduct TET periodically and make direct recruitment of teachers and promotion from among TET qualified candidates at the earliest.

76. With these observations, Writ Petition Nos.3364 and 3368 of 2023 are allowed, Writ Appeal Nos. 313, 833, 1891, 2050, 2082, 2795 of 2022 & Writ Appeal Nos.19, 31, 32, 36 of 2023 are dismissed. WA.No.2617/2022 is

allowed. No costs. Consequently, connected miscellaneous petitions are closed.

[**R.M.D., J**] [**M.S.Q., J**]
02.06.2023

rsh

Index: Yes / No
Speaking Order / Non-speaking Order
Neutral Citation : Yes / No

To

1. The Director of School Education
   D.P.I. Campus, College Road
   Chennai - 600 006

2. The Chief Educational Officer
   Kancheepuram District
   Kancheepuram

3. The District Educational Officer
   Chengalpattu Education District
   Kancheepuram District

**R. MAHADEVAN, J**
and
**MOHAMMED SHAFFIQ, J**

rsh

Pre-delivery Judgement in
WA No. 313 of 2022 etc., batch

02.06.2023