

(2020) 12 GAU CK 0025

In the Gauhati High Court

Case No : Writ Petition (C) No. 4237, 4227, 4269, 3851, 3722, 4174, 3833, 4258, 3898, 3727, 4256, 4282, 3860, 4139, 4156, 3838, 3720, 3866, 4406 Of 2020

Abdullah Al Mamun Choudhury

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 17-12-2020

Acts Referred:

Right Of Children To Free And Compulsory Education Act, 2009 — Section 2(a), 23(1)

Citation : (2020) 12 GAU CK 0025

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : L Mohan, E Ahmed, K M Mahanta, D M Nath, K K Mahanta, P D Nair, S Borthakur, A B Bhuyan, P K Mazumdar, A Deka

Final Decision : Dismissed

Judgement

1. Heard Mr. K.K. Mahanta, learned senior counsel for the petitioners in WP(C) No. 3720/2020, WP(C) No. 3722/2020, WP(C) No.3851/2020,

WP(C) No.4174/2020 and WP(C) No.4227/2020. Also heard Mr. S. Borthakur, learned counsel for the petitioners in WP(C) No. 3727/2020, WP(C)

No. 3838/2020, WP(C) No. 4156/2020, WP(C) No. 4256/2020, WP(C) No. 4258/2020 and WP(C) No. 4282/2020. Also heard Mr. A. Deka, learned

counsel for the petitioners in WP(C) No. 3866/2020. Also heard Mr. P.D. Nair, learned counsel for the petitioner in WP(C) No. 3833/2020 and Mr. E.

Ahmed, learned counsel for the writ petitioner in WP(C) No. 4237/2020. Also heard Mr. A.R. Bhuyan, learned counsel for the writ petitioners in

WP(C) No. 3860/2020. Also heard Mr. L. Mohan, learned counsel for the writ petitioners in WP(C) No. 3898/2020 and WP(C) No. 4406/2020. Also

heard Mr. D. Saikia, learned senior counsel for the Elementary Education

Department of Government of Assam and Mr. S.K. Medhi, learned counsel for the respondent, Union of India.

2. All the writ petitions involve a common issue requiring a determination based upon a common set of facts as well as the same set of laws.

Accordingly, we propose to give a consideration to the writ petitions by a common judgment and order.

3. The petitioners herein are all qualified in the Teachers Eligibility Test (in short TET) conducted by the Central Board of Secondary Education on

behalf of the Government of India and for a easy reference hereinafter it would be referred as CTET.

4. It is stated that the CTET examinations are held periodically over the years and the petitioners have all successfully completed the CTET held at

different times and their qualifications in CTET are valid even as on today. The common grievance of the petitioners is that the authorities in the

Elementary Education Department of Government of Assam have allowed the CTET qualified candidates to participate in recruitment processes for

Assistant Teachers in the Elementary Education Schools in Assam since the year 2012 onwards and therefore, they have a legitimate expectation that

for the recruitment at hand i.e. as per the advertisement dated 11.09.2020 also the petitioners would be allowed to participate on the strength of their

CTET qualifications that they possess.

5. Mr. K.K. Mahanta, learned senior counsel for the petitioners leading the argument on behalf of the petitioners refers to the various advertisements

that were issued by the authorities in the Government of Assam in the Elementary Education Department over the years since 2012 to point out that

the CTET qualified candidates were all along held to be eligible to participate in such recruitment processes. According to the learned senior counsel,

CTET qualified candidates having been allowed to participate in the recruitment processes conducted by the authorities in the Elementary Education

Department of Government of Assam, a past practice has been put in place and by virtue of such past practice, there cannot be any deviation in

respect of the advertisement dated 11.09.2020 and accordingly, even the CTET qualified candidates are required to be allowed to participate in the

selection process.

6. The other contention raised by the learned senior counsel is that the doctrine

of legitimate expectation would also be applicable in favour of the petitioners inasmuch as, because of the conduct on the part of the respondent authorities in the Elementary Education Department the petitioners were let to believe that they would be allowed to participate in the recruitment process on the basis of their CTET qualification.

7. In this respect specific reliance is placed upon the stand that the Elementary Education Department had taken in an affidavit filed by the

Commissioner & Secretary to the Government of Assam, Elementary Education Department in WP(C) No. 2280/2018, which was an earlier writ

petition instituted by certain aspiring candidates who did not have the qualification of TET conducted by the Government of Assam (in short STET)

staking a claim that they should be allowed to participate in the recruitment process without having a TET qualification as because the authorities in

the Elementary Education of the Government of Assam had not held any TET examinations for the years 2013, 2014, 2015, 2016, 2017 and 2018.

8. The relevant paragraphs relied upon by the learned senior counsel from the said affidavit in WP(C) No. 2280/2018 provides that although the TET

examination had not been held in Assam every year, the intending candidates for the post of teachers in the Elementary Schools can appear and get

qualified in the CTET for being eligible to participate in such recruitment process. By relying on the said provision, it is the contention that it is a stated

policy decision of the Government of Assam in Elementary Education Department that candidates who have the qualification of CTET are also

equally eligible to participate in any recruitment process for the post of teachers in the Elementary Schools in Assam.

9. Accordingly, the third contention raised is that as no TET has been held in the Elementary Education Department of Government of Assam in the

year 2020, therefore, the said stated decision in the affidavit would still hold good and the CTET qualified candidates would have to be construed to be

eligible to participate in the recruitment process.

10. Mr. A.R. Bhuyan, learned counsel for the petitioner in WP(C) No. 3860/2020 and Mr. A. Deka, learned counsel for the petitioner in WP(C) No.

3866/2020 have raised the contention that even otherwise, the statutory provisions and the guidelines framed for the purpose do make the CTET

qualified candidates eligible to participate in the recruitment process involved in

this writ petition.

11. Mr. S. Borthakur, learned counsel for the writ petitioner in WP(C) No. 3727/2020, WP(C) No. 3838/2020, WP(C) No. 4156/2020, WP(C) No.

4256/2020, WP(C) No. 4258/2020 and WP(C) No. 4282/2020 has also raised the contention that the candidates who are qualified in the CTET have a

legitimate expectation that they will be allowed to participate in the recruitment process pursuant to the advertisement involved in this writ petition by

making it known to them through the various stands taken by the authorities in the Elementary Education Department from time to time, based on the

past practice followed by the respondent authorities.

12. Mr. K.K. Mahanta, learned senior counsel has raised a further contention that by excluding CTET qualified candidates, the authorities in the

Elementary Education Department of Government of Assam has favoured their own chosen STET candidates to be the exclusion of the CTET

candidates and further even if the CTET qualified candidates had a desire to get themselves qualified in the STET but they were deprived from such

participation and preference was shown only towards the STET qualified candidates.

13. Mr. D. Saikia, learned senior counsel for the respondent Elementary Education Department of the Government of Assam per contra raises the

contention that the requirement of having TET qualified candidates is a statutory requirement provided in the Minimum Qualification prescribed by the

National Council for Teacher Education (NCTE), which is a statutory provision framed under Section 23(1) of the Right of Children to Free and

Compulsory Education Act, 2009 (in short RTE Act of 2009).

14. By referring to the Minimum Qualification prescribed by the NCTE which is a statutory provision, Mr. D Saikia, refers to Clause 10(b) thereof

which inter alia provides that one of the minimum qualifications is to pass in the TET to be conducted by the appropriate Government in accordance

with the guidelines framed by the NCTE for the purpose. The learned senior counsel thereafter refers to the definition of appropriate government as

defined in Section 2(a) of the RTE Act of 2009 which inter alia provides that appropriate Government means in relation to a school established, owned

or controlled by the Central Government, the Central Government and in relation to a school, other than the school established owned and controlled

by the Central Government to be the State Government. In other words, according to the learned senior counsel, the provisions of the Minimum

Qualification providing for a qualification in TET to be conducted by the appropriate government would mean that in the event, the given school is

established, owned and controlled by the Central Government, the TET would have to be conducted by the Central Government and in the event of a

school established, owned or controlled by the State Government it would have to be a TET conducted by the State Government.

15. The further contention raised is that the guidelines framed as notified in the communication dated 11.02.2011 of the Principal Secretary of the

NCTE would have to be read conjointly with the statutory provisions of the Minimum Qualifications and to that extent the provisions of Clause 10(a)

and 10(b) are to be in conformity with the statutory Minimum Qualifications.

16. Mr. D Saikia, learned senior counsel further contends that as per the provisions in the guidelines after Clause 10(b), in case the State Government

decides not to conduct a TET, in that event, the State Government would consider the CTET, would have to be read in the context only when there is

a decision or in fact a factual situation where the TET had not been conducted by the State Government. In other words, if the State Government

does not conduct a TET, in such event, it would be permissible to also accept the candidates having a CTET qualification for participating in a

recruitment process conducted by the State Government. Further contention raised by referring to Clause 11 of the guidelines is that the appropriate

Government should conduct a TET at least once a year.

17. A contention is raised that on a conjoint reading of the provisions of Clause 10 providing for the acceptability of a CTET, in the event the State

Government does not conduct TET and the provisions of Clause 11 providing that the appropriate Government should conduct the TET once a year, it

has to be understood that if in a given year the TET was not conducted by the State Government, the CTET qualified candidates would become

eligible to participate in a recruitment process to be conducted by the State Government and on the other hand, if in a given year the STET was held,

in such event, the CTET qualified candidates would not be eligible.

18. With regard to the contention raised by the petitioners that they have a legitimate expectation that even the CTET qualified would be held eligible

to participate in a recruitment process pursuant to the advertisement of 11.09.2020, Mr. D Saikia, learned senior counsel refers to a judgment of the Supreme Court on the question of applicability of the doctrine of legitimate expectation and raises the contention that the doctrine of legitimate expectation and the doctrine of promissory estoppels both goes together and the doctrines require that in order to invoke the doctrine of legitimate expectation also there must be an act on the part of the authorities which had led the aggrieved persons to alter their position to their own detriment and only under such situation they would be entitled to the benefit of the doctrine of legitimate expectation.

19. The learned senior counsel contends that there is no such act on the part of the respondent authorities which had led the petitioners to alter their position to their own detriment and therefore the doctrine of legitimate expectations would not be attracted in the present case. The said contention is fortified with the further contention that what had happened with the petitioners in the present case is a mere anticipation and any altering of their position pursuant to such anticipation, even if it is to their own detriment, cannot attract the doctrine of legitimate expectation.

20. Mr. D Saikia, learned senior counsel also raises the contention that it is the prerogative of the employer to lay down the eligibility condition for a recruitment process and the same cannot be governed or dictated by the intending candidates as to what the eligibility condition should be. In reply thereof, Mr. KK Mahanta, learned senior counsel reiterates that the stand taken in paragraph 6 of the affidavit in WP(C)No. 2280/2018 still holds good and it depicts a policy decision on the part of the respondents in the Elementary Education Department that the authorities would allow even the CTET qualified candidates to be eligible to participate in a recruitment process conducted by the State Government.

21. Mr. KK Mahanta, learned senior counsel reiterates that as the stand taken in the affidavit in WP(C) No.2280/2018 still holds good, the expectation of the writ petitioners flows from such stand depicted in the affidavit and therefore, they thought it necessary that they are not required to acquire any STET qualification. In other words, we are to understand that the writ petitioners have altered their position to their detriment on the basis of such act on the part of the respondent authorities. In reply, even the earlier stand that consistent past practices allowing the CTET qualified candidates to

participate in the recruitment process is being reiterated.

22. Contentions have also been raised that the STET examination conducted by the State Government authorities in December, 2019 was not a suo

moto action on the part of the State Government, but on the other hand, it was the requirement of the direction of this Court in its judgment dated

28.03.2019 in WA No.32/2019. The only question sought to be raised by such contention is that the STET held in December, 2019 was not a regular

TET and, therefore, its existence is not to be taken note of, meaning thereby to be construed that the TET was not held at all.

23. A further contention has been raised in reply by Mr. KK Mahanta, learned senior counsel that even otherwise the petitioners ought to have been

informed by the respondent authorities that in the recruitment process pursuant to the advertisement of 11.09.2020, only the STET qualified candidates

would be acceptable and CTET qualified candidates would not be taken into consideration. Absence of any such information renders the action of the

respondents to be unfair, unreasonable and hit by the doctrine of fair play, as well as, has resulted in a bias against the petitioners by favouring only the

STET qualified candidates.

24. The further contention raised by Mr. KK Mahanta, learned senior counsel for the petitioners that there was no policy decision by the authorities in

the Government of Assam in the Elementary Education Department that only the STET qualified candidates would be eligible to the exclusion of the

CTET qualified candidates and a decision contained in the minutes of the meeting dated 01.09.2020 is not a policy decision as the required procedure

for conducting a policy decision was not followed. On a conspectus of the aforesaid contentions raised by the rival parties, the core issue which calls

for a decision of the Court would be:

(i) Whether there was any past practice to allow even the CTET qualified candidates to participate in a recruitment process for teachers in the

Elementary Schools in Assam and whether such past practice has resulted in a legal right to be accrued to the CTET qualified candidates that they

would be continued to be allowed to participate in such recruitment process.

(ii) Whether a legal right had accrued in favour of the petitioners on the basis of the doctrine of legitimate expectation that they would have to be

required to be allowed to participate in the recruitment process on the strength

of their CTET qualification alone, although otherwise, it would be contrary to the statutory provisions.

(iii) Whether the statutory provisions in place entitles a CTET qualified candidates to participate in a recruitment process for Assistant Teachers in the Elementary schools in the State of Assam.

(iv) Whether by not allowing the CTET qualified candidates to participate in the recruitment process, a class within a class have been created.

25. A corollary of the said issues as raised by the writ petitioners is that had they been duly informed about the change in the policy decision, they would have availed the opportunity to get themselves qualified in a STET conducted by the State Government.

Past Practice:

26. The petitioners refer to the factual situation that in the year 2012 a TET was conducted by the State Government and a TET was also conducted

by the Central Government and the recruitment process that took place in the year 2012 had allowed both, the STET qualified candidates as well as

CTET qualified candidates to participate. In other words, it has been urged upon that even though the statutory rules may provide for CTET for the

schools established, owned and controlled by the Central Government and STET for the schools established, owned and controlled by the State

Government, but even in such schools established, owned and controlled by the State Government, the CTET qualified candidates were allowed to

participate although for the given year, the STET was also held. It is also stated that for the subsequent years, i.e. 2013, 2014, 2015, 2016 and 2017,

the CTET qualified candidates were allowed to participate in the recruitment processes conducted by the State Government. As because the CTET

qualified candidates were also allowed to participate all along since the year 2012 up to the year 2018, therefore, a past practice has been put in place

requiring the CTET qualified candidates to be allowed to participate in such recruitment process in all subsequent years. As past practice has already

been put in place, it is the grievance of the petitioners that any deviation to be taken by the respondent authorities from such past practice would have

to be proceeded by a definite policy decision with due intimation to all concerned.

27. Mr. D Saikia, learned senior counsel for the respondents in the Elementary Education Department on the other hand urges upon that the year 2012

was an exception in the circumstance that the concept of TET was implemented for the first time in the given year and, therefore, the situation was fluid to a great extent, which resulted in a deviation from the statutory provisions. But as regards the years 2013 onwards up to 2018, it is urged upon that for those given years, the Government of Assam in the Elementary Education Department had not conducted any TET and therefore, even though the CTET qualified candidates were allowed to participate in the recruitment process that had taken place, the same would be saved by the provisions of Clause 10 of the guidelines which provides that in the event, the State Government decides not to hold or does not hold the TET for a given year, the recruitment processes that may be initiated in such year can be carried forward by including the CTET qualified candidates. As no TET was conducted by the authorities in the Government of Assam in the Elementary Education Department for the years from 2013 to 2018, the authorities in conformity with the provisions of Clause 10 of the guidelines allowed even the CTET qualified candidates to participate in such recruitment process. Accordingly a distinction is sought to be made in the concept of past practice that for the years 2013-2018, the CTET qualified candidates were allowed to participate in a situation where the State Government had not conducted the TET for the given years and therefore it was not a practice adopted that CTET qualified candidates were allowed even when the State Government had conducted its own TET for the given years.

28. It is true that for the year 2012, the CTET qualified candidates were also allowed to participate in the recruitment process although for that given year, the Govt. of Assam had also conducted the TET. The explanation provided by Mr. D. Saikia, learned senior counsel for the respondents with regard to allowing CTET candidates to participate in the year 2012 is that the requirement of TET was introduced for the first time in the year 2012 and therefore, the situation was termed to be fluid, meaning thereby that the authorities as well as respective candidates were unsure as to what precise procedure is required to be followed in a strict manner. We do not offer any view on the said submission and also do not venture into the question of deciding the question as to whether if a situation is fluid as because a particular requirement of the law was introduced for the first time,

the authorities can be allowed to deviate from the prescribed statutory procedure, as because they were unsure of the requirements.

29. The contention of claiming a legal right by the petitioners is based upon that from the years 2012 up to 2018, there was a practice put in place by

the authorities in the Government of Assam in the Elementary Education Department allowing the CTET qualified candidates to also participate in a

recruitment process for teachers in the Elementary Schools which was owned, established and controlled by the Government of Assam.

30. The said fact itself would definitely lead to a conclusion that in-fact there was a past practice allowing the CTET candidates to participate in such

recruitment process conducted by the Government of Assam in the Elementary Education Department. But if we take a closer look on the factual

aspect that had actually taken place, we are required to look into the aspect that for the year 2012, the CTET qualified candidates were allowed to

participate in the recruitment process although correspondingly a STET was conducted by the authorities in the Government of Assam in the

Elementary Education Department. In other words, in spite there being a STET being conducted, the CTET candidates were also allowed to

participate in such selection process. To understand the implication of such conduct on the part of the Govt. of Assam in the Elementary Education

Department, we are required to look into the statutory provisions that govern the concept the Minimum Qualification prescribed by the NCTE in

exercise of the powers under Section 23(1) of the RTE Act, 2009. In Clause 1(b) of the Minimum Qualification for Classes I to V in the Elementary

Education system, a candidate is required to pass the Teachers Eligibility Test (TET) to be conducted by the appropriate government in accordance

with the guidelines framed by the NCTE for the purpose. The relevant provisions of Clause 1(b) of the Minimum Qualification prescribed by the

NCTE as published in the notification dated 23.08.2010 is extracted below:-

â??1(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) B.A./B.Sc and 2 year Diploma in Elementary Education (by whatever name known)

or

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

or

B.A./B.Sc with at least 45% marks and 1 year Bachelor in Education (B.Ed) in accordance with the NCTE (Recognition Norms and

Procedure) Regulations issued from time to time in this regard.

or

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

or

Senior Secondary (or its equivalent) with at least 50% marks and 4 year BA/BSc Ed or BA. Ed/BSc Ed

or

B.A./B.Sc with atleast 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.??

In other words, the statutory provision provided for a qualification in the TET to be conducted by the appropriate government. The

appropriate government is defined in Section 2(a) of the RTE Act, 2009 which is extracted as under:-

??2(a) appropriate Government means-

(i) in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union territory, having

no legislature, the Central Government;

(ii) in relation to a school, other than the school referred to in sub-clause (i), established within the territory of-

(A) a State, the State Government;

(B) a Union territory having legislature, the Government of that Union Territory;??

31. A reading of the definition of the appropriate government makes it explicit that in relation to a school owned, established and controlled by the

Central Government, the appropriate government would be the Central Government, whereas in relation to a school owned, established and controlled by the State Government, the appropriate government would be the State Government. In other words, the statutory definition of appropriate government gives the meaning that if the school is established, owned, and controlled by the Central Government, the appropriate government to conduct the TET would be the Central Government whereas, if a school is established, owned and controlled by the Central Government, the appropriate government to conduct the TET would be the State Government.

32. A conjoint reading of the provision of Clause 1(b) of the Minimum Qualification prescribed by the NCTE as published in the notification dated 23.08.2010 and the provision of Section 2(a) of the RTE Act, 2009 would make it discernible that the prescribed statutory qualification for appointment as a teacher in the Elementary Schools from Classes 1 to V would be that if the school concerned is established, owned or controlled by the Central Government, the intending candidate would mandatorily require to have a qualification of TET conducted by the Central Government and on the other hand, if the school concerned is established, owned and controlled by the State Government, the intending candidate would mandatorily require to have a qualification of TET conducted by the State Government. In other words, the statutory provisions makes it explicit that for a school established, owned and controlled by the Central Government, STET qualified candidate would be excluded from having the minimum qualification and vice-versa in respect of a school established, owned and controlled by the State Government, the CTET qualified candidate would be excluded from having the minimum qualification for the post of teacher in such Elementary Schools. From the said point of view, we have to conclude that even though in the year 2012, the authorities in the Government of Assam in the Elementary Education Department had also allowed the CTET qualified candidates to participate in the recruitment process in spite of the existence of STET qualified candidates for the given year, such conduct on the part of the State Government would have to be accepted to have been contrary to the statutory law provided in the notification dated 23.08.2010 read with Section 2(a) of the RTE Act, 2009. Hence, we are to construe that such act may have been practiced in the past, but at the same time, it would also have to be

construed that it was contrary to the statutory law.

33. As regards the assertion that even for the years 2013 up to 2018, the CTET qualified candidates were allowed to participate in a recruitment

process for teachers in the Elementary Education Schools conducted by the Government of Assam in the Elementary Education Department, where

we take note of that it is an admitted position of the parties that for the aforesaid years, the Government of Assam in the Elementary Education

Department had not conducted any TET of their own, the provision of Clause -10 of the guidelines framed by the NCTE provides for that it would be

permissible to allow the CTET qualified candidates to participate in the recruitment processes for those given years.

34. From such point of view, the past practice urged upon for the years 2013 up to 2018 would have to be understood to be a practice that was

allowed in the absence of any STET being conducted by the Government of Assam in the Elementary Education Department.

35. From the aforesaid aspect, we are now required to look into the concept of the doctrine of past practice and whether in the facts and

circumstance as indicated above, such doctrine would be applicable so as to arrive at a conclusion that the petitioners herein have a legal right in their

favour.

36. In D. Stephen Joseph & vs- Union of India and Others reported in (1997) 4 SCC in paragraphs 4 and 5 the Supreme Court arrived at its

conclusion that a past practice would be acceptable to be the foundation of a legal right provided such practice confirms to the rule or the law that was

prevalent at that relevant point of time. Any past practice that was de hors the rules cannot be accepted to be a past practice to have been

consistently followed for a long period of time for interpreting any such rule.

37. The proposition thereof laid down by the Supreme Court in paragraphs-4 and 5 are extracted below:-

4. Mr. Venkataramani, learned counsel appearing for the appellant, has contended that the plain language of the rule need not be

followed in all cases and in applying the rule for promotion to 50% quota form amongst Junior Engineers with degree in Electrical

Engineering, past practice is required to be considered as held by this Court in N. Suresh Nathan v. Union of India. If the past practice is

taken into consideration for the purpose of interpreting the said rule, it will be quite evident that experience of three years had always been

reckoned from the date of the acquisition of the degree in Electrical Engineering. Therefore, the decision of the Tribunal cannot be

sustained and the promotion of private respondents in the 50% quota earmarked for the persons holding degree in Electrical Engineering

could not have been given to the said private respondents.

5. It appears to us that the State Government is laboring under a wrong impression as to the applicability of the past practice as indicated in

Suresh Nathan case. This Court in the said decision, has only indicated that past practice should not be upset provided such practice

conforms to the rule for promotion and consistently for some time past the rule has been made applicable in a particular manner. In our

view, the decision in Nathan case only indicates that past practice must be referable to the applicability of the rule by interpreting it in a

particular manner consistently for some time. Any past practice dehors the rule cannot be taken into consideration as past practice

consistently followed for long by interpreting the rule. It may be indicated here that a similar question also came up for consideration

before this Court in M.B. Joshi v. Satish Kumar Pandey. The decision in Suresh Nathan case was distinguished in the facts of that case and

it was indicated that when the language of the rule is quite specific that if a particular length of service in the feeder post together with

educational qualification enables a candidate to be considered for promotion, it will not be proper to count the experience only from the

date of acquisition of superior educational qualification because such interpretation will violate the very purpose to give incentive to the

employee to acquire higher education.â??

38. Again in National Board of Examinations â??vs- G. Anand Ramamurthy and others reported in (2006) 5 SCC 515 in paragraph-6, the Supreme

Court had clearly laid down the proposition that any alleged past practice cannot override the statutory rules and regulations.

39. Paragraph-6 is quoted herein below:-

â??6. Mr. S. Bala Krishnan, learned Senior Counsel for the respondents, per contra submitted that the stand of the petitioner herein was

totally inconsistent not only in terms of the eligibility criteria but also as per past practice. According to him, the petitioner Institution has been allowing the candidates for taking the super specialty examinations, which were conducted in the month of June. But the facts remain that such a past practice as argued before the High Court has not been pleaded at all. This apart, the alleged past practice cannot override the statutory rules and regulations since the respondents are not qualified as per clause 7.12. We are, therefore, not permitting them to sit for the examinations in June 2006 as directed by the High Court.â??

40. As noticed above, the propositions laid down by the Supreme Court is explicit and clear that a past practice can be the basis of a foundation of a legal right only when such practice did conform to the statutory laws in place and on the contrary if the past practice was contrary or inconsistent with the statutory laws that were in force at that given point of time, even if such practice did prevail at an earlier point of time, such practice cannot be the basis to form a legal right to be claimed in a subsequent situation on the basis of the doctrine of past practice.

41. In the instant case, we have already taken note of that although in the year 2012, the CTET qualified candidates were allowed to participate in the recruitment process conducted by the Elementary Education Department of the Government of Assam in spite of there being the STET qualified candidates for that given year, but the said practice allowed by the Government of Assam clearly did not conform to the statutory laws provided in

Clause 10(b) of the Minimum Qualifications prescribed by the NCTE in the notification dated 23.08.2010 under Section 23(1) of the RTE Act, 2009 read with Section 2(a) of the said Act. As the said practice allowed by the Government of Assam was not in conformity with the statutory provisions, the same in view of the propositions laid down by the Supreme Court while elucidating the doctrine a past practice cannot be accepted to be the basis to form a legal right in favour of the petitioners for a direction that in the recruitment process at hand also the same should be accepted and the petitioners be allowed to participate.

42. As regards the assertion of the prevalence of the past practice from the years 2013 up to 2018, we have already taken note of that during the said years it was in fact not the past practice but a practice in conformity with the

provision of Clause-10 of the guidelines by the NCTE meaning thereby that whenever for a given year the State Government decides not to hold or does not hold the STET, the CTET qualified candidates would be acceptable for participating in the recruitment process for such given year. Consequently, the said practice was on the premises that for those given years, the Government of Assam in the Elementary Education Department had not held the STET. It being so, the same cannot be brought in for the purpose of accepting that even for the given year where the Government of Assam in the Elementary Education Department had held the STET the practice of allowing the CTET candidates to participate in the recruitment process have to be continued.

Legitimate Expectation:

43. The petitioners collectively had also urged that the conduct of the authorities in the Government of Assam in the Elementary Education Department for the years from 2012 up to 2019 had led the petitioners to believe that even CTET qualified candidates would be eligible to participate in the recruitment process for teachers in the Elementary Education system of the Government of Assam and therefore, they had a legitimate expectation that the same would also prevail in the recruitment process pursuant to the advertisement dated 11.09.2020.

44. Mr. K.K. Mahanta, learned senior counsel for the petitioners lays the foundation of his argument that the doctrine of legitimate expectation would also prevail in the facts and circumstance of the case by referring to an averment made by the authorities in the Government of Assam in the Elementary Education Department in an affidavit filed in an earlier writ petition being WP(C) 2280/2018. According to the learned senior counsel it was a categorical stand being expressed by the Government of Assam in the Elementary Education Department that as a policy decision the Government of Assam had not conducted the TET every year and any resident of Assam who intend to participate in a recruitment process for the post of teachers in the Elementary Education Schools can appear and acquire the CTET for being eligible for the post in terms of any advertisement as and when published by the authorities.

45. Mr. K.K. Mahanta, learned senior counsel has argued that the said stand taken by the respondent Government of Assam in the Elementary

Education Department had clearly spelt out that the CTET qualified candidates are also acceptable to the Government of Assam for participating in the recruitment process for teachers in the Elementary Education Schools.

46. According to Mr. KK Mahanta, learned senior counsel, the said stand is binding on the Government of Assam in the Elementary Education

Department and the authorities now cannot come out of it and take a contrary stand. It has been further submitted by Mr. KK Mahanta, learned

senior counsel that the specific stand by the Government of Assam in the Elementary Education Department had led the petitioners to believe that

they would be eligible to participate in the recruitment process on the strength of their CTET qualification and because of such belief the petitioners

have thought that they would still be qualified even if they do not go for the STET qualification.

47. Mr. KK Mahanta, learned senior counsel contends that the said averments made by the Government of Assam in the Elementary Education

Department in the affidavit in WP(C)No.2280/2018 was an act which had led the petitioners to change their position to their detriment and, therefore,

they would be governed by the doctrine of legitimate expectation. Mr. KK Mahanta, learned senior counsel also urges upon certain other situations

which had led the petitioners not to acquire the STET qualification. In order to substantiate his contention that the facts and circumstances of the

instant case warrants the invocation of the doctrine of legitimate expectation, Mr. KK Mahanta, learned senior counsel has relied upon the

pronouncement of the Supreme Court in Confederation of Ex-Servicemen Association and Others Vs. Union of India and others reported in (2006) 8

SCC 399 by specifically referring to paragraphs 33, 34 and 35 thereof.

48. The Supreme Court in Confederation of Ex-Servicemen Association (supra) had referred to a passage from a decision in Attorney General of

Hongkong Vs. Ng Yuen Shiu, wherein Lord Fraser by referring to an earlier exposition of the proposition by Lord Denning in Schmidt Vs. Secretary

of State had held as extracted:

“The expectations may be based on some statement or undertaking by, or on behalf of, the public authority which has the duty of making

the decision, if the authority has, through its officers, acted in a way that would make it unfair or inconsistent with good administration for

him to be denied such an inquiry.â??

49. By referring to the aforesaid extracts, the Supreme Court was of the view that in the matter of an action by administrative authority there is a

requirement to act judicially as well as fairly and that the doctrine of legitimate expectation is based on the principle that good administration demands

observance of reasonableness and where it had adopted a particular practice for a long time, even in the absence of provisions of law, it should adhere

to such practice without depriving the citizens the benefits enjoyed by them. The extract in Attorney General (supra) had clearly provided that for the

doctrine of legitimate expectation to have its role, the expectations may be based on some statement or undertaking by or on behalf of the public

authorities which has a duty of making the decision and if the authority through its officers act in a way that would be unfair or inconsistent with good

administration, such situation would warrant an invocation of the doctrine of legitimate expectation.

50. Mr. KK Mahanta, learned senior counsel also heavily relied upon the exposition of the proposition of doctrine of legitimate expectation by the

Supreme Court in paragraph 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 in Civil Appeal No.3860-3862/2020 in State of Jharkhand and Others Vs.

Brahmaputra Mettals Ltd., Ranchi and Another. The provisions of the aforesaid paragraphs are extracted below:

32. Under English Law, the doctrine of promissory estoppel has developed parallel to the doctrine of legitimate expectations. The doctrine

of legitimate expectations is founded on the principles of fairness in government dealings. It comes into play if a public body leads an

individual to believe that they will be a recipient of a substantive benefit. The doctrine of substantive legitimate expectation has been

explained in R vs North and East Devon Health Authority, ex p Coughlan²¹ in the following term:

â??55. But what was their legitimate expectations?â? where there is a dispute as to this, the dispute has to be determined by the court, as

happened in In re Findlay. This can involve a detailed examination of the precise terms of the promise or representation made, the

circumstances in which the promise was made and the nature of the statutory or other discretion.

â?¡â?¡.

56. Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not

simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so

unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established,

the court will have the task of weighting the requirements of fairness against any overriding interest relied upon for the change of policy.

33. Under English Law, the doctrine of legitimate expectation initially developed in the context of public law as an analogy to the doctrine

of promissory estoppels found in private law. However, since then, English Law has distinguished between the doctrines of promissory

estoppels and legitimate expectation as distinct remedies under private law and public law, respectively. De Smithâ??s Judicial Review 22

notes the contrast between the public law approach of the doctrine of legitimate expectation and the private law approach of the doctrine of

promissory estoppels:

â?? [d]espite dicta to the contrary [Rootkin v Kent CC, (1981) 1 WLR 1186 (CA); R v Jockey Club Ex p Ram Racecourses Ltd, [1993] AC

380 (HL); R v IRC Ex p Camacq Corp, (1990) 1 WLR 191 (CA)], it is not normally necessary for a person to have changed his position or to

have acted to his detriment in order to qualify as the holder of a legitimate expectation [R v Ministry for Agriculture, Fisheries and Foods

Ex p Hamble Fisheries (Offshore) Ltd, (1995) 2 All ER 714 (QB)]â?¡. Private law analogies from the field of estoppels are, we have seen, of

limited relevance where a public law principle requires public officials to honour their undertakings and respect legal certainty,

irrespective of whether the loss has been incurred by the individual concerned [Simon Atrill, â??The End of Estoppel in Public Law? (2003)

62 Cambridge Law Journal 3]â??

34. Another difference between the doctrine of promissory estoppel and legitimate expectation under English Law is that the latter can

constitute a cause of action 23. The scope of the doctrine of legitimate expectation is wider than promissory estoppels because it not only

takes into consideration a promise made by a public body but also official practice, as well. Further, under the doctrine of promissory

estoppels, there may be a requirement to show a detriment suffered by a party due to the reliance placed on the promise. Although typically

it is sufficient to show that the promisee has altered its position by placing reliance on the promise, the fact that no prejudice has been

caused to the promisee may be relevant to hold that it would not be inequitable for the promisor to go back on their promise. 24

However, no such requirement is present under the doctrine of legitimate expectation. In *Regina (Bibi) vs Newham London Borough Council*

25, the Court of Appeal held:

“55 The present case is one of reliance without concrete detriment. We use this phrase because there is moral detriment, which should

not be dismissed lightly, in the prolonged disappointment which has ensued; and potential detriment in the deflection of the possibility, for a

refugee family, of seeking at the start to settle somewhere in the United Kingdom where secure housing was less hard to come by. In our

view these things matter in public law, even though they might not found an estoppel or actionable misrepresentation in private law,

because they go to fairness and through fairness to possible abuse of power. To disregard the legitimate expectation because no concrete

detriment can be shown would be to place the weakest in society at a particular disadvantage. It would mean that those who have a choice

and the means to exercise it in reliance on some official practice or promise would gain a legal foothold inaccessible to those who, lacking

any means of escape, are compelled simply to place their trust in what has been represented to them.

35. Consequently, while the basis of the doctrine of promissory estoppel in private law is a promise made between two parties, the basis of

the doctrine of legitimate expectation in public law is premised on the principles of fairness and non-arbitrariness surrounding the conduct

of public authorities. This is not to suggest that the doctrine of promissory estoppel has no application in circumstance when a State entity

has entered into a private contract with another private party. Rather, in English law, it is inapplicable in circumstances when the State has

made representation to a private party, in furtherance of its public functions.

H.5 Indian Law and the doctrine of legitimate expectations

36. Under Indian Law, there is often a conflation between the doctrines of promissory estoppel and legitimate expectation. This has been

described in Jain and Jain's well known treatise, Principles of Administrative Law 27:

At times, the expressions "legitimate expectation" and "promissory estoppel" are used interchangeably, but that is not a

correct usage because "legitimate expectation" is a concept much broader in scope than "promissory estoppel".

!

A reading of the relevant Indian cases, however, exhibit some confusion of ideas. It seems that the judicial thinking has not as yet

crystallized as regards the nature and scope of the doctrine. At times, it has been referred to as merely a procedural doctrine; at times, it

has been treated interchangeably as promissory estoppels. However both these ideas are incorrect. As stated above, legitimate expectation

is a substantive doctrine as well and has much broader scope than promissory estoppel.

37. While this doctrinal confusion has the unfortunate consequence of making the law unclear, citizens have been the victims.

Representations by public authorities need to be held to scrupulous standards, since citizens continue to live their lives based on the trust

they repose in the State. In the commercial world also, certainly and consistency are essential to planning the affairs of business. When

public authorities fail to adhere to their representations without providing an adequate reason to the citizens for this failure, it violates the

trust reposed by citizens in the State. The generation of a business friendly climate for investment and trade is conditioned by the faith which

can be reposed in government to fulfil the expectations which it generates. Professors Jain and Deshpande characterize the consequences

of this doctrinal confusion in the following terms:

Thus, in India, the characterization of legitimate expectations is on a weaker footing, than in jurisdictions like UK where the courts are now

willing to recognize the capacity of public law to absorb the moral values

underlying the notion of estoppels in the light of the evolution of doctrines like LE (Legitimate Expectations) and abuse of power. If the Supreme Court of India has shown its creativity in transforming the notion of promissory estoppels from the limitations of private law, then it does not stand to reason as to why it should also not articulate and evolve the doctrine of LE for judicial review of resilement of administrative authorities from policies and long-standing practices. If such a notion of LE is adopted, then not only would the Court be able to do away with the artificial hierarchy between promissory estoppels and legitimate expectation, but, it would also be able to hold the administrative authorities to account on the footing of public law outside the zone of promises on a stronger and principled anvil. Presently, in the absence of a like doctrine to that of promissory estoppels outside the promissory zone, the administrative law adjudication of resilement of policies stands on a shaky public law foundation.

38. We shall therefore attempt to provide a cogent basis for the doctrine of legitimate expectation, which is not merely grounded on analogy with the doctrine of promissory estoppels. The need for this doctrine to have an independent existence was articulated by Justice

Frankfurter of the United State Supreme Court in *Vitarelli vs Seton*

An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.

39. However, before we do this, it is important to clarify the understanding of the doctrine of legitimate expectation in previous judgments

of this Court. In *National Buildings Construction Corporation vs S. Raghunathan* (National Buildings Construction Corpn) a three Judge bench of this Court, speaking through Justice S. Saghir Ahmed, held that:

18. The doctrine of legitimate expectation has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements

of policy or intention and treat the citizens with full

personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively.

Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of legitimate

expectation was evolved which has today become a source of substantive as well as procedural rights. But claims based on legitimate

expectation have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based

on promissory estoppel.

(emphasis supplied)

However, it is important to note that this observation was made by this Court while discussing the ambit of the doctrine of legitimate

expectation under English Law, as it stood then. As we have discussed earlier, there was a substantial conflation, or overlap between eh

doctrines of legitimate expectation and promissory estoppel even under English Law since the former was often invoked as being analogous

to the latter. However, since then and since the judgment of this Court in National Buildings Construction Corporation (supra), the English

Law in relation to the doctrine of legitimate expectation has evolved. More specifically, it has actively tried to separate the two doctrines

and to situate the doctrine of legitimate expectations on a broader footing. In Regina (Reprotech (Pebsham) Ltd) vs East Sussex County

Council, the House of Lords has held thus:

33. In any case, I think that it is unhelpful to introduce private law concepts of estoppels into planning law. As lord Scarman pointed out in

Newbury District Council v Secretary of State for the Environment [1981] AC 578, 616 estoppels bind individuals on the ground that it

would be unconscionable for them to deny what they have represented or agreed. But these concepts of private law should not be extended

into "the public law of planning control, which binds everyone."

34. There is of course an analogy between a private law estoppels and the public law concept of a legitimate expectation created by a

public authority, the denial of which may amount to an abuse of power! But it is no more than an analogy because remedies against

public authorities also have to take into account the interests of the general public which the authority exists to promote. Public law can

also take into account the hierarchy of individual rights which exist under the Human Rights Act 1998, so that, for example, the

individual's right to a home is accorded a high degree of protection while ordinary property rights are in general far more limited by

considerations of public interest.

35. It is true that in early cases such as the Wells case [1971] 1 WLR 1000 and Lever Finance Ltd v Westminster (City) London Borough

Council [1971] 1 QB 222, Lord Denning MR used the language of estoppels in relation to planning law. at that time the public law concepts

of abuse of power and legitimate expectation were very undeveloped and no doubt the analogy of estoppels seemed useful. It seems to me

that in this area, public law has already absorbed whatever is useful from the moral values which underlie the private law concept of

estoppels and the time has come for it to stand upon its own two feet.

(emphasis supplied)

40. In a concurring opinion in Monnet Ispat and Energy Ltd vs Union of India (Monnet Ispat), Justice HL Gokhale highlighted the different

considerations that underlie the doctrines of promissory estoppels and legitimate expectation. The learned judge held that for the

application of the doctrine of promissory estoppels, there has to be a promise, based on which the promisee has acted to its prejudice. In

contrast, while applying the doctrine of legitimate expectation, the primary considerations are reasonableness and fairness of the State

action. He observed thus:

â??Promissory Estoppel and Legitimate Expectations

289. As we have seen earlier, for invoking the principle of promissory estoppels there has to be a promise, and on that basis the party

concerned must have acted to its prejudice. In the instant case it was only a proposal, and it was very much made clear that it was to be

approved by the Central Government prior where to it could not be constructed as containing a promise. Besides, equity cannot be used

against a statutory provision or notification.

290. In any case, in the absence of any promise, the Appellants including Aadhunik cannot claim promissory estoppels in the teeth of

the notifications issued under the relevant statutory powers. Alternatively, the Appellants are trying to make a case under the doctrine of

legitimate expectations. The basis of this doctrine is in reasonableness and fairness. However, it can also not be invoked where the decision

of the public authority is founded in a provision of law, and is in consonance with public interest.

41. In *Union of India Vs. Lt. Col. PK Choudhary*, speaking through Chief Justice TS Thakur, the Court discussed the decision in

Monnet Ispat (supra) and noted its reliance on the judgment in *Attorney General for New South Wales Vs. Quinn*. It then observed:

This Court went on to hold that if denial of legitimate expectation in a given case amounts to denial of a right that is guaranteed or is

arbitrary, discriminatory, unfair or biased, gross abuse of power or in violation of principles of nature justice, the same can be questioned

on the well-known grounds attracting Article 14 of the Constitution, but a claim based on mere legitimate expectation without anything more

cannot ipso facto give a right to invoke these principles.

Thus, the Court held that the doctrine of legitimate expectation cannot be claimed as a right in itself, but can be used only when the denial

of a legitimate expectation leads to the violation of Article 14 of the Constitution.

42. As regards the relationship between Article 14 and the doctrine of legitimate expectation, a three judge Bench in *Food Corporation of*

India Vs. Kamdhenu Cattle Feed Industries, speaking through Justice JS Verma, held thus:

7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution

of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to

use them for public good. This imposes the duty to act fairly and to adopt a procedure which is fairplay in action. Due observance

of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his

interaction with the State and its instrumentalities, with this element forming a

necessary component of the decision-making process in all

State actions. To satisfy this requirement of non-arbitrariness in a State action, it is therefore, necessary to consider and give due weight to

the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the

power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made

would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power,

as it is unrealistic, but provides for control of its exercise by judicial review.

8. The mere unreasonable or legitimate expectation of a citizen in such a situation, may not by itself be a distinct enforceable right, but

failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a

legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate

expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is

reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according

to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would

otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would

satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the

rule of law and operates in our legal system in this manner and to this extent.â??

(emphasis supplied)

More recently, in NOIDA Entrepreneurs Assn. vs NOIDA³⁵, a two-judge bench of this Court, speaking through Justice B.S. Chauhan,

elaborated on this relationship in the following terms:

â??39. State actions are required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution. Action of the State or

its instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a â??democratic

form of Government demands equality and absence of arbitrariness and discrimination. The rule of law prohibits arbitrary action and

commands the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be

suggestive of discrimination, nor even apparently give an impression of bias, favouritism and nepotism. If a decision is taken without any

principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.

41. Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social

interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a case. Public authorities cannot play

fast and loose with the powers vested in them. A decision taken in an arbitrary manner contradicts the principle of legitimate expectation.

An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood

conferred. In this context, "in good faith" means "for legitimate reasons". It must be exercised bona fide for the purpose and for

no other purpose.

As such, we can see that the doctrine of substantive legitimate expectation is one of the ways in which the guarantee of non-arbitrariness

enshrined under Article 14 finds concrete expression.

51. Paragraphs 32, 33, 34 of the judgment in *Brahmaputra Metalics Ltd., Ranchi and Another* (supra) deals with the distinction between doctrine of

promissory estoppels and doctrine of legitimate expectation. A distinction put forth by the Supreme Court is that under the doctrine of promissory

estoppels there may be a requirement to show that the aggrieved party had altered their position to their detriment based upon an act or assurance of

the other party, whereas under the doctrine of legitimate expectation there is no such requirement.

52. In paragraphs 36 and 37 of the judgment in *Brahmaputra Metalics Ltd., Ranchi and Another* (supra), the Supreme Court dealt with the aspect of

there being a conflation of promissory estoppels and legitimate expectation which resulted in a doctrinal confusion resulting in an unfortunate

consequence of making the law unclear and the citizens becoming victims of it. It

is provided that the representations filed by the public authorities

need to be held to be of a scrupulous standard since the citizens continued to live a life based on the trust they repose in the State.

53. The extract of the Administrative Law by Jain and Jain was taken note of which provided that in India the characterization of legitimate

expectation is on a weaker footing than that of other countries like UK etc. Accordingly in paragraph 38 a conclusion was arrived that the doctrine of

legitimate expectation would have an independent existence and to separate the two doctrines it has to be accepted that the doctrine of legitimate

expectation is on a broader footing than the doctrine of promissory estoppels. In paragraph 40 by relying on the proposition of law laid down in Monnet

Ispat and Energy Limited Vs. Union of India and others, reported in (2012) SCC 1, the Supreme Court had arrived at its view that while applying the

doctrine of legitimate expectation the primary consideration are reasonableness and fairness of State action.

54. By relying on the aforesaid propositions of law laid down by the Supreme Court in Brahmaputra Mettalic (supra), Mr. KK Mahanta, learned senior

counsel submits that the conduct of the Government of Assam in the Elementary Education Department in excluding the CTET candidates from

participating in the recruitment process for teachers in the Elementary Education Department is hit by the principles of reasonableness and fairness of

State action.

55. The relevant paragraph in the affidavit by the Government of Assam in the Elementary Education Department in WP(C)No.2280/2018 which has

been heavily relied upon by the petitioners is extracted as below:

â??6. That the deponent states that Teachers Eligibility Test (TET) is conducted by both Central Government and the State Government in

India and the citizens of India are open to appear in TET examination conducted by the Central or State Government. It is stated that the

SSA, Assam is the nodal agency for conducting TET in Assam as per the approval the government. Though Assam has not conducted the TET

every year, but any resident of Assam, who are intending candidates for the post of Regular Teachers in LP/UP Schools can appear and

acquire Central TET for being eligible for the post in terms of the advertisement as and when published by the authority. There is no

problem for the candidates, who have acquired CTET for applying for the post of regular teachers against the advertisement dated

11.03.2018. It is stated that there are 20 Nos. of languages including Assamese available in the CTET examination.

56. In order to substantiate his argument that the principles of reasonableness and fairness in State action had been violated by the authorities in the

Government of Assam in the Elementary Education Department, Mr. Mahanta, learned senior counsel again relies upon the averments made by the

Government of Assam in the Elementary Education Department in its affidavit in WP(C)No.2280/2018 wherein according to the learned senior

counsel a specific stand has been taken that a CTET qualified candidate would also be acceptable to participate in the recruitment process. Mr.

Mahanta, learned senior counsel further refers to the minutes of the meeting dated 01.09.2020.

57. According to the learned senior counsel, the decision contained in the minutes of the meeting of 01.09.2020 cannot be termed to be a policy

decision of the Government of Assam inasmuch as, the required procedure under Article 166 of the Constitution of India read with the Rules of

Executive Business had not been followed. A further contention has been raised by Mr. KK Mahanta, learned senior counsel that prior to issuing the

advertisement dated 11.09.2020 there was a requirement on the part of the authorities in the Government of Assam to inform the CTET qualified

candidates that they would not be acceptable in the recruitment process and in the absence of any such intimation, there was a lack of a fair action on

the part of the State authorities.

58. Mr. D Saikia, learned senior counsel of the Government of Assam in the Elementary Education Department on the other hand, relies upon the

pronouncement of the Supreme Court in *Monnet Ispat* (supra) and relies upon paragraphs 182, 183 and 184 thereof. By referring to the propositions

laid down in paragraph 182 in *Monnet Ispat* (supra) Mr. D Saikia, learned senior counsel points out to the doctrine of promissory estoppels and relies

upon the proposition that where one party by his work or conduct made to the other party a clear and unequivocal promise, which is intended to create

a legal relation or effect a legal relation to arrive in future, nothing was intended that it would be acted upon by the other party to whom the promise is

made. It would be unequivocal on the part of the party making promise to retract in a situation where the other party had changed its position pursuant to such promise. By referring to the said principle in paragraph 182, the learned senior counsel refers to paragraph 183 to make his submission that there are parallels between the doctrine of promissory estoppels and the doctrine of legitimate expectation and both the doctrines are founded on the concept of fairness and arise out of natural justice. Accordingly, by relying on the proposition of paragraph 183, the learned senior counsel submits that even for the purpose of the doctrine of legitimate expectation it has to be shown that there was an act resulting in a promise by the State Government which had warranted a change of position by the petitioners to their detriment so as to invoke the doctrine of legitimate expectation. By so submitting it was contended that in the facts and circumstances of the present case, there was no such act or promise on the part of the authorities in the Government of Assam in the Elementary Education Department which may have led the petitioners to change their position to their detriment so as to enable them to invoke the doctrine of legitimate expectation. Further reliance has been placed on the proposition in paragraph 184 in *Monnet Ispat* (supra) that the legitimacy of an expectation can be inferred only if it was founded on the sanction of law or custom or an established procedure followed in a regular and natural sequence and that every such legitimate expectation by itself does not fructify into an enforceable right. Further reliance has been placed in the proposition put forth by the Supreme Court in paragraph 188.4 in *Monnet Ispat* (supra) which provides that legitimate expectation is different from anticipation and an anticipation cannot amount to an assertable expectation. By referring to paragraph 188.4 of *Monnet Ispat* (supra), the learned senior counsel submits that the circumstances made out by the petitioners through their pleadings in the writ petition and the submissions made thereof merely depict that it was an anticipation on the part of the petitioners and therefore the doctrine of legitimate expectation would not be available. Paragraphs 182, 183, 184 and 188 of *Monnet Ispat* (supra) are extracted as below:

182. In my view, the following principles must guide a court where an issue of applicability of promissory estoppel arises:

182.1. Where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal

relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom

the promise is made and it is, in fact, so acted upon by the other party, the promise would be binding on the party making it and he would

not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place

between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not.

182.2. The doctrine of promissory estoppel may be applied against the Government where the interest of justice, morality and common

fairness dictate such a course. The doctrine is applicable against the State even in its governmental, public or sovereign capacity where it is

necessary to prevent fraud or manifest injustice. However, the Government or even a private party under the doctrine of promissory

estoppel cannot be asked to do an act prohibited in law. The nature and function which the Government discharges is not very relevant. The

Government is subject to the rule of promissory estoppel and if the essential ingredients of this doctrine are satisfied, the Government can

be compelled to carry out the promise made by it.

182.3. The doctrine of promissory estoppel is not limited in its application only to defence but it can also furnish a cause of action. In other

words, the doctrine of promissory estoppel can by itself be the basis of action.

182.4. For invocation of the doctrine of promissory estoppel, it is necessary for the promisee to show that by acting on promise made by the

other party, he altered his position. The alteration of position by the promisee is a sine qua non for the applicability of the doctrine.

However, it is not necessary for him to prove any damage, detriment or prejudice because of alteration of such promise.

182.5. In no case, the doctrine of promissory estoppel can be pressed into aid to compel the Government or a public authority to carry out a

representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the

public authority to make. No promise can be enforced which is statutorily prohibited or is against public policy.

182.6. It is necessary for invocation of the doctrine of promissory estoppel that a

clear, sound and positive foundation is laid in the petition.

Bald assertions, averments or allegations without any supporting material are not sufficient to press into aid the doctrine of promissory estoppel.

182.7. The doctrine of promissory estoppel cannot be invoked in abstract. When it is sought to be invoked, the court must consider all

aspects including the result sought to be achieved and the public good at large. The fundamental principle of equity must forever be present

to the mind of the court. Absence of it must not hold the Government or the public authority to its promise, assurance or representation.

183. As there are parallels between the doctrines of promissory estoppel and legitimate expectation because both these doctrines are

founded on the concept of fairness and arise out of natural justice, it is appropriate that the principles of legitimate expectation are also

noticed here only to appreciate the case of the appellants founded on the basis of the doctrines of promissory estoppel and legitimate

expectation.

184. In *Union of India v. Hindustan Development Corpn.* [(1993) 3 SCC 499] this Court had an occasion to consider the nature, scope and

applicability of the doctrine of legitimate expectation. The matter related to a government contract. This Court in para observed as follows:

(SCC pp. 548-49)

35. Legitimate expectations may come in various forms and owe their existence to different kind of circumstances and it is not possible

to give an exhaustive list in the context of vast and fast expansion of the governmental activities. They shift and change so fast that the start

of our list would be obsolete before we reached the middle. By and large they arise in cases of promotions which are in normal course

expected, though not guaranteed by way of a statutory right, in cases of contracts, distribution of largess by the Government and in

somewhat similar situations. For instance discretionary grant of licences, permits or the like, carry with it a reasonable expectation, though

not a legal right to renewal or non-revocation, but to summarily disappoint that expectation may be seen as unfair without the expectant

person being heard. But there again the court has to see whether it was done as

a policy or in the public interest either by way of G.O., rule or by way of a legislation. If that be so, a decision denying a legitimate expectation based on such grounds does not qualify for interference unless in a given case, the decision or action taken amounts to an abuse of power. Therefore the limitation is extremely confined and if the according of natural justice does not condition the exercise of the power, the concept of legitimate expectation can have no role to play and the court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. For instance if an authority who has full discretion to grant a licence prefers an existing licence-holder to a new applicant, the decision cannot be interfered with on the ground of legitimate expectation entertained by the new applicant applying the principles of natural justice. It can therefore be seen that legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. It would thus appear that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected. In other words such a legal obligation exists whenever the case supporting the same in terms of legal principles of different sorts, is stronger than the case against it. As observed in Attorney General for New South Wales case [Attorney General for New South Wales v. Quin, 1990 HCA 21 : (1990) 64 ALJR 327 (Aust)] :

â??To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise

of a power when its exercise otherwise accords with

law.â?? If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or

biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting

Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles.

It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles

warranting interference. It depends very much on the facts and the recognized general principles of administrative law applicable to such

facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of

administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of

administrative power in a particular case. It follows that the concept of legitimate expectation is â??not the key which unlocks the treasury

of natural justice and it ought not to unlock the gates which shuts the court out of review on the meritsâ??. particularly when the element

of speculation and uncertainty is inherent in that very concept. As cautioned in Attorney General for New South Wales case [Attorney

General for New South Wales case, the courts should restrain themselves and restrict such claims duly to the legal limitations. It is a well-

meant caution. Otherwise a resourceful litigant having vested interests in contracts, licences, etc. can successfully indulge in getting welfare

activities mandated by directive principles thwarted to further his own interests. The caution, particularly in the changing scenario, becomes

all the more important.â??

While observing as above, the Court observed that legitimacy of an expectation could be inferred only if it was founded on the sanction of

law or custom or an established procedure followed in regular and natural sequence. Every such legitimate expectation does not by itself

fructify into a right and, therefore, it does not amount to a right in the conventional sense.

188. It is not necessary to multiply the decisions of this Court. Suffice it to

observe that the following principles in relation to the doctrine of legitimate expectation are now well established:

188.1. The doctrine of legitimate expectation can be invoked as a substantive and enforceable right.

188.2. The doctrine of legitimate expectation is founded on the principle of reasonableness and fairness. The doctrine arises out of

principles of natural justice and there are parallels between the doctrine of legitimate expectation and promissory estoppel.

188.3. Where the decision of an authority is founded in public interest as per executive policy or law, the court would be reluctant to

interfere with such decision by invoking the doctrine of legitimate expectation. The legitimate expectation doctrine cannot be invoked to

fetter changes in administrative policy if it is in the public interest to do so.

188.4. The legitimate expectation is different from anticipation and an anticipation cannot amount to an assertable expectation. Such

expectation should be justifiable, legitimate and protectable.

188.5. The protection of legitimate expectation does not require the fulfillment of the expectation where an overriding public interest

requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be

invoked which could block public interest for private benefit.â??

59. From a consideration of the propositions laid down by the Supreme Court in the *Brahmaputra Mettatics Ltd., Ranchi and Another* (supra),

Confederation of Ex-Servicemen (supra) and *Monnet Ispat* (supra), what is discernible is that after the pronouncement of the Supreme Court in

Brahmaputra Mettatics Ltd., Ranchi and Another (supra), the earlier confusion of there being a doctrinal confusion as well as substantive conflation of

an overlapping between the doctrine of promissory estoppels and doctrine of legitimate expectation had been clarified to the extent that in order to

have the doctrine of legitimate expectation, a primary consideration would be reasonableness and fairness of the State action. From the said point of

view, the submission of Mr. D Saikia, learned senior counsel that in the instant case, there was no act or promise on the part of the Government of

Assam in the Elementary Education Department requiring the petitioners to change their position to their detriment would no longer be available and

we are not required to go to the question whether there was any such promise or act on the part of the authorities in the Government of Assam in the

Elementary Education Department.

60. It being so, a consideration that the Court is required to go into to arrive at its conclusion whether the doctrine of legitimate expectation was

applicable in the present case would now have to be confined to a conclusion as to whether the act on the part of the Government of Assam in the

Elementary Education Department to exclude the CTET qualified candidates from participating in the recruitment process for teachers in the

Elementary Education Department satisfies the test of reasonableness and fairness of State action. Considering the proposition laid down in paragraph

188.4 of *Monnet Ispat (supra)* we also have to look into whether what had happened to the petitioners was a legitimate expectation or it was an

anticipation. From the aforesaid conspectus, we look into the facts and circumstances of the present case whether the act on the part of the

Government of Assam in the Elementary Education Department do meet the test of reasonableness and fairness of State action and whether what

had happened with the petitioners was an anticipation or it was in the nature of a legitimate expectation.

61. The expression "reasonable" is defined in the Black's Law Dictionary in the manner as indicated below:-

"reasonable"-1. Fair, proper or moderate under the circumstances 2. According to reason."

62. In order to satisfy the test of reasonableness, we are required to go into the aspect whether the act on the part of the Government of Assam in the

Elementary Education Department to exclude the CTET qualified candidates from participating in the recruitment process to be fair, proper or

moderate under the circumstance. The expression "fair" has again been defined in the Black's Law Dictionary to mean impartial, just,

equitable or disinterested. Accordingly we look into the aspect whether the act on the part of the respondents in the Government of Assam in the

Elementary Education Department, to exclude the CTET candidates can be said to be not impartial, just, equitable and disinterested in favour of any

particular category of candidates. In order to arrive at any such conclusion, we are required to delve again into the factual circumstance which lead to

the act on the part of the State Government to exclude the CTET qualified candidates. Firstly, we take a look into the statutory provisions governing the concept, meaning thereby to take a look at the Minimum Qualifications prescribed by the NCTE notification dated 23.08.2010 read with Section 2(a) of the RTE Act, 2009. A conjoint reading of the statutory provisions, as already concluded in the earlier paragraphs, lead us to arrive at a conclusion that the statutory laws provide for the qualification of a CTET qualified candidate for appointment as teacher in the schools established, owned and controlled by the Central Government whereas a STET qualified candidate for the schools established, owned and controlled by the State Government. If any act on the part of the State Government authorities do remain in conformity with the provisions of the statutory laws, in our view, it cannot be said to be not impartial, unjust, inequitable or a biased in any manner. Hence, from the said point of view, we have to conclude that the act on the part of the Government of Assam in the Elementary Education Department was a fair act on its part and hence it cannot be said to be unreasonable from that point of view.

63. But, again Mr. KK Mahanta, learned senior counsel for the petitioners has raised a contention that because of the manner in which the CTET candidates were allowed to participate in the recruitment process in the earlier years, there was a belief in the mind of the petitioners that they would be so allowed even for the purpose of the advertisement dated 11.09.2020 and for the purpose, a reliance has also been placed in the stand of the Government of Assam in Elementary Education Department as stated in paragraph 6 of the affidavit filed by them in WP(C) 2280/2018, which has already been extracted hereinabove. The stand of the Government of Assam in paragraph 6 of the said affidavit would have to be construed from the point of view as to under what circumstance the said stand was depicted in the affidavit.

64. We have taken note of that WP(C) 2280/2018 was instituted by a set of aspiring candidates who did not have the qualification of TET i.e. neither STET nor CTET and they sought for a direction from the Court that as STET was not held prior to the advertisement of the year 2018, therefore, they should be allowed to participate in the process without having any qualification of TET. In the said circumstance, the State Government authorities

sought to oppose the aforesaid relief sought for by the petitioners in WP(C) 2280/2018 by taking a stand that as CTET qualified candidates were

available, therefore, the prayer of the writ petitioners in WP(C) 2280/2018 cannot be agreed upon that they be allowed to participate in the recruitment

process without having any kind of TET qualification. WP(C) 2280/2018 resulted in WA 32/2019, which was given a final consideration by the

Division Bench in its judgment dated 28.03.2019. For a fair adjudication, the stand of the Government of Assam in the Elementary Education

Department in the affidavit filed in WP(C) 2280/2018 would therefore have to be understood in the context of the judgment of the Division Bench in

WA 32/2019. The judgment dated 28.03.2019 in WA 32/2019 had arrived at a conclusion that in spite of the CTET qualified candidate being available,

the same by itself cannot be a reason for the Government of Assam in the Elementary Education Department not to hold STET, which was more so in

view of the provisions of Clause of the guidelines framed by the NCTE which requires that the TET examination be held every year.

65. In paragraph 12 of the judgment dated 28.09.2019, the stand put forth by the Government of Assam in the Elementary Education Department that

as the CTET qualified candidates were available, therefore, the State was not required to hold its TET examination and any such candidate who did

not have a TET qualification can always avail the benefit of being qualified in the CTET, was rejected. The rejection by the Division Bench of the said

stand of the Government of Assam in the Elementary Education Department would lead this Court to accept that the stand of the Government of

Assam in the Elementary Education Department in the affidavit in paragraph 6 in WP(C) 2280/2018 was rejected and found unacceptable. Once a

given stand in an affidavit is rejected and found unacceptable by the Court, the efficacy and validity of any such stand that may have been taken

stands obliterated as if the stand does not exist anymore. From the said point of view, we are unable to accept the contention of the petitioners that as

because of the stand in paragraph 6 in the affidavit filed by the Government of Assam in the Elementary Education Department in WP(C) 2280/2018,

the petitioners had believed that it is a professed stand and a policy decision of the Government of Assam in the Elementary Education Department

that the CTET qualified candidates all circumstance would continue to be acceptable for participating in a recruitment process for teachers in the

Elementary Education Department of the Government of Assam. If the writ petitioners were aware of the contents of paragraph 6 of the affidavit in

WP(C) 2280/2018, it cannot be accepted that they were unaware of the provisions of the judgment of the Division Bench dated 28.03.2019 in WA

32/2019, which had rendered the said stand to be ineffective any further. When we examine the claim of the petitioners from the aforesaid point of

view i.e. without the stand in paragraph 6 of the affidavit in WP(C) 2280/2018, what we are left with is the unfounded belief of the petitioners that

even the CTET qualified candidates would be acceptable for participating in a recruitment process for teachers in the Elementary Education

Department of the Government of Assam, which are essentially schools established, owned and controlled by the State Government.

66. From the aforesaid point of view, when we look into the further submissions of the petitioners that the minutes dated 01.09.2020 constituted a

decision not to allow the CTET candidates to participate in the recruitment process would have to be concluded to be unacceptable. The contents of

the minutes of 01.09.2020 cannot be called to be either a decision of its own and therefore, we do not find any requirement to examine whether that

was a decision in conformity with the requirement of Article of the Constitution of India. The contents of the minutes of 01.09.2020 is merely a

depiction of the situation in conformity with the statutory laws as well as the declaration of the judgment of the Division Bench dated 28.03.2019 in

WA 32/2019, where essentially the contention of the State Government in the Education Department that there is no requirement to hold the STET as

because the CTET candidates are also available was rejected. From the said point of view, we do not find the provision in the advertisement dated

11.09.2020 to be unreasonable or to be against the principle of fairness of State action in any manner. In the absence of any specific instance

supported by law as to why the petitioners believed that the CTET candidates would also be allowed to participate in the recruitment process, we

cannot but conclude that the same would have to be construed to be merely an anticipation rather than a legitimate expectation in any manner.

67. The Supreme Court in *Monnet Ispat and Energy Limited* (supra) had explicitly provided that anticipation cannot be the basis of a legitimate

expectation.

68. We also have to take note of another aspect of the matter as pointed out by the learned senior counsel for the Government of Assam in the

Elementary Education Department that even de-hors the statutory laws and other aspects, if the CTET qualified candidates are allowed to participate,

the same would create an analogous situation for the authorities inasmuch as the same would make it open for all such CTET qualified candidates to

come over and participate in the recruitment process and if the same is allowed to happen, there may be an issue where a teacher without having

appropriate knowledge of the local language and culture may also come into the system.

69. We further take note of that if the CTET qualified candidates are allowed to participate in the recruitment process, which otherwise is

compartmentalised by the statutory laws for the benefit of the STET qualified candidates, the field of operation of the STET qualified candidates, who

are protected by the statutory laws would be compromised and the scope of the CTET qualified candidates would be widened beyond what is

provided in their favour by the statutory laws.

Whether exclusion of the CTET candidates have created a class within the class so as to violate Article 14 of the Constitution of India:-

70. Although it has been argued that the basic requirement of being qualified for recruitment as a teacher in the Elementary Education Department is

the requirement of having a TET qualification and all TET qualifications are understood to be one and the same, whether conducted by the Central

Government or by the State Government and therefore, the entire genus of the TET qualified candidates form one class of its own and any exclusion

of a particular type of TET qualified candidates would make it a case of creating a class within a class, we are required to examine the said question

from the point of view whether the entire TET qualified candidates forms one class of its own or whether the provisions of the law itself classifies

them into different classes. If yes, whether the class comprising of the CTET qualified candidates forms a reasonable classification of its own.

71. Generally speaking the argument raised that a TET qualified candidate is one class from the point of view that all of them do meet the requirement

of being qualified to be eligible for a post of teacher in the Elementary Education has to be accepted. But at the same time, we also cannot be

oblivious to the provision in the statutory laws which clearly spells out that for a school established, owned and controlled by the Central Government, the appropriate Government to conduct the TET would be Central Government, whereas for schools established, owned and controlled by the State Government, the appropriate Government would be the State Government. The very classification by the provisions of the statutory laws that the appropriate Government to conduct the TET for the schools established, owned and controlled by the Central Government would be Central Government and that of the State Government to be the State Government itself results in a classification of its own that one class of TET qualified candidates would be ineligible for the other class of schools and vice-versa. Because of the statutory provisions creating two different classes of TET qualified candidates, it would be inappropriate to generalize and arrive at a conclusion that all TET qualified candidates form one class without any distinction between them.

72. In view of such conclusion that there is a distinction between the CTET qualified candidates and the STET qualified candidates from the point of view as to in which kind of schools they would be qualified to participate in a selection process, we have to accept that there is a reasonable classification between the CTET qualified candidates and the STET qualified candidates and such reasonable classification as a definite nexus with the object at hand meaning thereby that the class of CTET qualified candidates would be eligible only to participate in a recruitment process pertaining to a given class of schools established, owned and controlled by the Central Government and the STET qualified candidates would be eligible to participate in a given school established, owned and controlled by the State Government.

73. In view of such reasonable classification, we are unable to accept the contention that there is a creation of a class within a class by excluding the CTET qualified candidates from participating in the recruitment process in respect of the schools established, owned and controlled by the State Government.

74. In view of such conclusions, we do not find any merit in the writ petitions and accordingly the same are dismissed.