
(2021) 02 GAU CK 0012
In the Gauhati High Court
Case No : Writ Appeal No. 24 Of 2021

Binod Karmakar And Ors

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 03-02-2021

Acts Referred:

Right Of Children To Free And Compulsory Education Act, 2009 — Section 2(a), 23, 23(1), 23(a)
Constitution Of India, 1950 — Article 14, 21A

Citation : (2021) 02 GAU CK 0012

Hon'ble Judges : Sudhanshu Dhulia, CJ; Suman Shyam, J

Bench : Division Bench

Advocate : K.K. Mahanta, K.M. Mahanta, D. Saikia, K. Gogoi, I. Alam

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, CJ

1. Heard Mr. K.K. Mahanta, learned senior counsel, assisted by Mr. K.M. Mahanta, learned counsel for the writ appellants, and Mr. D. Saikia,

learned senior standing counsel, Government of Assam, appearing for the respondent Nos.1 & 2, Mr. K. Gogoi, learned Central Government counsel,

appearing for the respondent No.3 and Mr. I. Alam, learned standing counsel, NCTE, appearing for the respondent No.5.

2. Right to elementary education was made a fundamental right after the 86th amendment to the Constitution of India¹ in the year 2002 (w.e.f. 1.

04.2010), by incorporating Article 21A in Part III of the Constitution of India. This right, however, could not be made effective until the manner of

providing the compulsory education was determined. This was done by way of Parliamentary Enactment known as Right of Children to Free and

Compulsory Education Act, 2009 (from hereinafter referred to as the "Act"), which became effective on 26.08.2009. The Act is founded on the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all². The mandate of the Act is not just to make elementary education free and compulsory for children, but to make this education a meaningful education and not a mere formality. One of the areas, which the Act seeks to address, is that the teachers who impart training in the elementary schools (i.e. from Class- I to VIII) must be properly educated, and more importantly, properly trained with an aptitude for teaching.

3. One of the essential conditions for being eligible as an elementary school teacher is that a candidate must have successfully qualified a test known as Teachers Eligibility Test (TET). This test (i.e. TET) is conducted both by the State Governments, as well as by the Central Government. For the sake of convenience, we will call the TET conducted by the Central Government as "Central TET" and the TET conducted by the State Government (i.e. in the present case, Government of Assam) as "State TET". All the writ appellants before us are the ones, who had qualified the Central TET. The Government of Assam in the present recruitment process, where the existing vacancies of teachers in elementary school are to be filled, has excluded the candidates who have done their TET from Central, i.e. Central TET. In other words, only the candidates who have done State TET are qualified to appear in the present selection process, which started with the publication of advertisement on 11.09.2020.

4. The Central TET qualified candidates are the appellants before us as the writ petitions filed by the writ petitioners/writ appellants (wherein they sought parity with the State TET candidates), were dismissed by the learned Single Judge of this Court vide judgment & Order dated 18.12.2020. The present writ appeal is a challenge to the aforesaid judgment & order of the learned Single Judge, and against the action of the State which has kept them out from the selection process.

5. Before we examine the rival contentions of the parties, i.e. the candidates (Central TET candidates) and the State Government, which are represented before us by senior advocates, Mr. K.K. Mahanta, appearing for the

writ appellants and Mr. D. Saikia, appearing for the Government of

Assam, respectively, we must refer to the relevant provisions of law on which reliance has been placed by both the parties.

6. Section 23 of the Act prescribes qualifications for appointment and terms and conditions of service of teachers in an elementary school. Section 23

of the Act reads as follows:-

“23. Qualifications for appointment and terms and conditions of service of teachers” (1) Any person possessing such minimum

qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for

appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum

qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems

necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five

years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1),

shall acquire such minimum qualifications within a period of five years.

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

7. Sub-section (1) of Section 23 of the Act states that the minimum qualifications for appointment of a teacher for elementary school shall be the

qualification, which will be laid down by an “academic authority”, which is authorised by Central Government by way of a Notification.

8. There is no dispute regarding the fact that subsequent to the enforcement of the Act, the Central Government notified National Council for Teacher

Education (in short, “NCTE”) on 23.08.2010 as the “academic authority”. It was then the duty of the “academic authority”, i.e. NCTE to

lay down the qualifications. The first Notification in this regard, which came from NCTE is on 23. 08.2010, which prescribes the following

qualifications for appointment of a teacher:-

1. Minimum Qualifications.-

(i) Classes I-V

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

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2 year Diploma in Elementary Education (by whatever name known),

in accordance with the NCTE (Recognition Norms and Procedure), Regulations 2002.

OR

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

OR

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

AND

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

the NCTE for the purpose.

(ii) 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 B.A./

B.Sc. Ed. or B.A. Ed./B.Sc. Ed.

OR

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

AND

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

2. Diploma/Degree Course in Teacher Education.- For the purpose of this Notification, a diploma/degree course in teacher education recognized by the National council for Teacher Education (NCTE) only shall be considered.

However, in case of Diploma in Education (Special Education) and B.Ed. (Special Education), a course recognized by the Rehabilitation Council of India (RCI) only shall be considered.

9. We must also refer now to the provision of law by which the word 'Appropriate Government' has been defined. This is in Section 2(a) of the Act, which reads 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.

10. Since TET had to be conducted only in terms of the guidelines of NCTE, these Guidelines were issued by NCTE on 11.02.2011, which was known

as 'Guidelines for conducting Teacher Eligibility Test (TET)'. It, inter alia, prescribes Structure and Content of TET. In Paragraphs 6 & 7 of the

aforesaid Guidelines, it lays down as under:-

Structure and Content of TET

6. The structure and content of the TET is given in the following paragraphs. All

questions will be Multiple Choice Questions (MCQs), each carrying one mark, with four alternatives out of which one answer will be correct. There will be no negative marking. The examining body should strictly adhere to the structure and content of the TET specified below.

7. There will be two papers of the TET. Paper I will be for a person who intends to be a teacher for classes I to V. Paper II will be for a

person who intends to be a teacher for classes VI to VIII. A person who intends to be a teacher either for classes I to V or for classes VI to

VIII will have to appear in both papers (Paper I and Paper II)

Paper I (for classes I to V); No. of MCQs- 150;

Duration of examination: one-and-a-half hours

Structure and Content (All Compulsory)

(i) Child Development and30 MCQs 30 Marks

Pedagogy

(iii) Language II 30 30

(iv) Mathematics 30 30

(v) Environmental Studies 30 30

Nature and standard of questions

While designing and preparing the questions for Paper I, the examining body shall take the following factors into consideration:

• The test items on Child Development and Pedagogy will focus on educational psychology of teaching and learning relevant to the age

group of 6-11 years. They will focus on understanding the characteristics and needs of diverse learners, interaction with learners and the

attributes and qualities of a good facilitator of learning.

• The Test items for Language I will focus on the proficiencies related to the medium of instruction, (as chosen from list of prescribed

language options in the application form).

• The Language II will be from among the prescribed options other than Language I. A candidate may choose any one language from the

available language options and will be required to specify the same in the application form. The test items in Language II will also focus on

the elements of language, communication and comprehension abilities.

â?¢ The test items in Mathematics and Environmental Studies will focus on the concepts, problem solving abilities and pedagogical

understanding of the subjects. In all these subject areas, the test items shall be evenly distributed over different divisions of the syllabus of

that subject prescribed for classes Iâ?¢V by the appropriate Government.

â?¢ The questions in the test for Paper I will be based on the topics of the prescribed syllabus of the State for classes Iâ?¢V, but their

difficulty standard, as well as linkages, could be upto the secondary stage.

Paper II (for classes VI to VIII); No. of MCQs- 150;

Duration of examination: one-and-a-half hours

Structure and Content

(i) Child Development & Pedagogy (compulsory) 30 MCQs 30 Marks

(ii) Language I (compulsory) 30 â?? 30 â??

(iii) Language II (compulsory) 30 â?? 30 â??

(iv) (a) For Mathematics and Science teacher: Mathematics and Science â?" 60 MCQs of 1 mark each.

(b) For Social studies teacher : Social Studies â?" 60 MCQs of 1 mark each.

(c) For any other teacher â?" either 4(a) or 4(b)

While designing and preparing the questions for Paper II, the examining body shall take the following factors into consideration:

â?¢ The test items on Child Development and Pedagogy will focus on educational psychology of teaching and learning, relevant to the age

group 11-14 years. They will focus on understanding the characteristics, needs and psychology of diverse learners, interaction with

learners and the attributes and qualities of a good facilitator of learning.

â?¢ The Test items for Language I will focus on the proficiency related to the medium of instruction, as chosen from list of prescribed

options in the application form.

â?¢ The Language II will be a language other than Language I. The person may choose any one language from among the available

options and as in the specified list in the application form and attempt questions in the one indicated by the candidate in the application

form by him. The test items in Language II will also focus on the elements of

language, communication and comprehension abilities.

¶ The test items in Mathematics and Science, and Social Studies will focus on the concepts, problem solving abilities and pedagogical

understanding of these subjects. The test items of Mathematics and Science will be of 30 marks each. The test items shall be evenly

distributed over different divisions of the syllabus of that subject as prescribed for classes VI-VIII by the appropriate government.

¶ The questions in the test for Paper II will be based on the topics of the prescribed syllabus of the State for classes VI-VIII but their

difficulty standard as well as linkages could be upto the senior secondary stage.

The question paper shall be bilingual (i) in language(s) as decided by the appropriate Government; and (ii) English language.

11. A perusal of the Structure and Content of TET shows that whether TET is conducted by the State Government or the Central Government, the

Structure and Content of the paper or the test has to be under the prescribed norms where a candidate has to be evaluated in the field of Child

Development and Pedagogy, Mathematics and Environmental Studies for which each of them there is 30 marks each, and in language, there are two

papers of languages, i.e. Language I and Language II, for which there are 30 numbers each.

12. While elaborating as to what the question of language would be, it was referred as under:-

¶ The Test items for Language I will focus on the proficiencies related to the medium of instruction, (as chosen from list of prescribed

language options in the application form).

The Language II will be from among the prescribed options other than Language I. A candidate may choose any one language from the

available language options and will be required to specify the same in the application form. The test items in Language II will also focus on

the elements of language, communication and comprehension abilities.

13. The qualifying marks are 60% in the TET. The most important aspect is the applicability, which is in Paragraph 10 of the aforesaid Guidelines.

Paragraph 10 reads as under:-

¶ Applicability

(a) TET conducted by the Central Government shall apply to all schools referred to in sub-clause (i) of clause (a) of section 2 of the RTE

Act.

(b) TET conducted by a State Government/UT with legislature shall apply to:

(i) a school of the State Government/UT with legislature and local authority referred to in sub-clause (i) of clause (n) of section 2 of the RTE

Act; and

(ii) a school referred to in sub-clause (ii) of clause (n) of section 2 of the RTE Act in that State/UT.

A school at (i) and (ii) may also consider eligibility of a candidate who has obtained TET Certificate awarded by another State/UT with

legislature. In case a State Government/UT with legislature decides not to conduct a TET, a school at (i) and (ii) in that State/UT would

consider the TET conducted by the Central Government.

(c) A school referred to in sub-clause (iv) of clause (n) of section 2 of the RTE Act may exercise the option of considering either the TET

conducted by the Central Government or the TET conducted by the State Government/ UT with legislature.â??

14. Sub-section (a) and Sub-section (b) of Section 10 of the Guidelines makes it very clear that TET, which is conducted by Central Government will

apply to only schools which are covered under Clause 2(a)(i) of the Act, i.e. â??a school established, owned or controlled by the Central Government,

or the administrator of the Union territory, not having a legislature, and TET conducted by the State Government will apply to a school of the State

Government in that State. The schools which are referred to in Sub-clause (ii) of Clause (n) of Section 2 of the Act are as under:-

â??(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local

authority.â??

15. However, the applicability clause prescribed in the Guidelines for conducting Teacher Eligibility Test (TET) then states as under:-

â??A school at (i) and (ii) may also consider eligibility of a candidate who has obtained TET Certificate awarded by another State/UT with

legislature. In case a State Government/UT with legislature decides not to conduct a TET, a school at (i) and (ii) in that State/UT would

consider the TET conducted by the Central Government.â??

(emphasis provided)

16. A perusal of the aforesaid provision makes it absolutely clear that Central TET makes a candidate eligible for appointment in a school, which is run

by the Central Government or Union Territory having no legislature, and State TET is the qualification for schools, which are run by the State or which

comes under the jurisdiction of the State. But there is exception. A candidate, who has obtained Central TET, will also be considered for appointment

in a school under the State Government if the State Government â??decides not to conduct the TETâ?. Under these aforesaid provisions, let us now

evaluate the factual situation.

17. This Court has been informed that the first TET conducted by the State Government was in the year 2012 and thereafter no TET was conducted

by the State till 2019. For a long gap of six to seven years, the admitted position is that the Government of Assam did not conduct its TET examination.

It is not that during the years between 2012 to 2018, recruitment was not being made for the post of teachers in elementary school. Again the admitted

position is that the State Government continued to consider Central TET as a qualification for appointment to the post of teachers in elementary

schools all these years. A candidate, who had done his Central TET, was held eligible for appointment as a teacher in elementary school even in the

year 2012 when the State Government admittedly had conducted its own State TET examination. This is the admitted position. After 2012, TET was

only conducted by the State Government in 2019. Thereafter, the Government published an advertisement on 11.09.2020 inviting applications from

eligible candidates for the vacant posts of teachers where it laid down the eligibility condition in which candidates, who had done State TET were only

eligible. Whether Central TET candidates have been validly excluded, is the

question here.

18. Mr. D. Saikia, learned senior counsel appearing for the State of Assam would argue that making only State qualified TET as eligible candidates

was a conscious decision of the State Government, which was taken in a high level meeting held on 01.09.2020. The minutes of the meeting gives

reason for considering only State TET candidates, in Paragraphs 3 & 4 of the minutes, which is as under:-

â??3. Considering the fact that TET has already been conducted by Secondary Education Department for High Schools and Higher

Secondary schools and by the Elementary Education Department, for LP & UP schools and that there are sufficient number of TET

qualified candidates under Secondary and Elementary Education Department for filling up different categories of posts, the Govt.

Notification No-ASE.675/2013/38 dated 17/10/2015 and all other Govt. Notifications allowing MTET qualified candidates to apply for posts

in high Schools, High Madrassas, Higher Secondary Schools under Secondary Education and LP & UP schools under Elementary

Education Department need to be cancelled with immediate effect.

4. Similarly, as Assam TET has been held in 2019 and as there are sufficient number of Assam TET qualified candidates under Secondary

and Elementary Education Department for filling up different categories of posts, it was decided that in the upcoming advertisements only

Assam TET qualified candidates will be allowed to apply for filling up the vacant posts of schools. This was decided after discussing the

provisions of RTE Act and NCTE Gazette Notification dated 29/07/2011 regarding applicability of TET conducted by Central Govt. and

State Government. That apart, allowing CTET candidates also creates a major problem in appointment of teachers in the schools in Assam

by candidates who do not have any knowledge of the local vernacular language of Assam resulting in acute difficulty in imparting teaching.

In addition, the new National Education Policy also envisages that the students up to Class-V have to be taught in their respective mother

tongues and therefore adequate knowledge of mother tongue is necessary for the teachers generally not found in Central TET

candidates.â??

19. From perusal of the above minutes of the meeting, one reason given in Paragraph 3 is that since now the State has already conducted its examination of TET, inter alia, for elementary schools and there are enough number of State TET qualified candidates available, and the second reason assigned in Paragraph 4 was that a Central TET candidate may not be as efficient, inasmuch as in schools in Assam it is necessary to have knowledge of State language, i.e. Assamese, which Central TET candidates may not have, and hence they will have difficulty in imparting education in elementary schools. It was also stated in Paragraph 4 that as per the new National Education Policy, students upto Class-V have to be taught in their respective mother tongues and therefore adequate knowledge of mother tongue is necessary.

20. Moreover, Mr. Saikia, learned senior counsel for the State would also argue that the State is at liberty to set the qualifications, particularly, when these qualifications are in accordance with the statutory Guidelines framed by NCTE. Relying upon the Guidelines, he would argued that a candidate, who has done Central TET, is eligible for appointment in a School which is run by Central Government or by Union Territory without a legislature and the State TET qualified candidate can be appointed is the school run by that State or the schools which come under the jurisdiction of that State. As to the small window under the applicability clause of the Guidelines, a Central TET candidate can only be considered for a State Government school when State Government has decided not to conduct its TET. The learned senior counsel would argue that all these years when the State Government had decided not to conduct the TET, they had made Central TET eligible, but now since they have conducted State TET in 2019, the State Government is not bound to consider Central TET candidates as eligible qualification. In fact the law itself prohibits the State Government from making such candidates eligible as such candidates can be made eligible only in a given contingency (where the State Government is not conducting TET), but when this contingency does not exist, there is no occasion to make Central TET candidates eligible.

21. The petitioners, on the other hand, who are also writ appellants before this Court, have raised several grounds before us challenging their exclusion as violative of the law and the Constitution of India. But we are of the view that the only aspect which is liable to be considered here is whether there

is a violation of Article 14 of the Constitution of India and, more particularly, whether the action of the State Government, which excludes them from the recruitment drive, is violative of the broad principles of legitimate expectation and proportionality, which again is an aspect of Article 14 of the Constitution of India. The learned senior counsel Mr. K.K. Mahanta for the appellants has also focused his entire argument on this aspect alone.

22. Legitimate expectation is now an accepted tool used by the constitutional Courts in India who exercise their powers of judicial review, in

evaluating the action or inaction, of a State or its instrumentality. Legitimate expectation is not an enforceable right in itself but as the phrase itself

suggest it is an "expectation" an expectation which must be grounded in reason and logic, and should not be a mere fancy. This expectation

can validly arise, inter alia, from the existence of a regular practice.

23. The admitted position here is that a State TET qualified candidate normally is only qualified/eligible for the schools, which are in the State or under

the jurisdiction of that State, from where he had done his State TET. Central TET qualified candidates, under normal circumstances, are again only

eligible for appointment in schools which are under the Central Government or under the Union Territory, which do not have a legislature. But the

Notification dated 11. 02.2011 made by NCTE, which is statutory in nature, creates an exception where a Central TET qualified candidate will also be

eligible for appointment in State run schools in case the State decides not to hold its own TET.

24. Let us now revert back to the legal position as to the status of the two TETs, i.e. Central TET and State TET. The Act came in the year 2009 and

thereafter, after the Notification of the Nodal Agency in the form of NCTE, which was given the responsibility of framing the eligibility criteria of

teachers in elementary schools, the first regulation came on 23.08.2010 and thereafter, another elaborate regulation on 11.02.2011 giving details as to

how a TET is to be conducted and what is going to be the format of the TET examination, etc., was given. This we have already referred in the

preceding paragraphs.

25. The State of Assam held its first TET in the year 2012. Thereafter, in the year 2012 onwards it continued to make Central TET candidates eligible

in all recruitments which were made for the post of teachers in the elementary

schools in the State of Assam. In other words, for the post of elementary teachers in the State of Assam, both Central TET as well as State TET candidates were held to be eligible.

26. Evidently, a candidate who has done his TET and has qualified the same with 60% of marks has a TET certificate which is valid for a period of

seven years only. In other words, the State TET candidates who had appeared in the examination in the year 2012, for them the validity expired in the

year 2019. All the writ petitioners/writ appellants before this Court are the ones who have done their TET in the year 2019. In the same year, the

State also decided to hold its own TET after a gap of seven years and as the pleading suggest, we have no reason to doubt the contention of the State

authorities that such TET qualified candidates (those who have done State TET) are already enough in number who can be appointed as teachers in

the present available vacancies. But merely because the State now has its own State TET qualified candidates available, can that reason itself justify

the exclusion of Central TET qualified candidates. Year after year, they had been held to be qualified. True, in all these years the State did not have

its own TET, but merely because the State has now conducted its own State TET in the year 2019, is that sufficient reason for exclusion of candidates

who had all through been held to be qualified. The writ petitioners/writ appellants challenged their exclusion on the grounds of arbitrariness and being

violative of Article 14 of the Constitution of India. The State action does not meet their legitimate expectations, they would argue.

27. We also make it very clear that though this legitimate expectation is based on law inasmuch as in a given contingency, Central TET candidates are

liable to be considered as eligible in State schools, this legitimate expectancy will not be made applicable in case the State has a valid reason, made in

public interest, to shift the course, by making Central TET candidates ineligible. We have already referred to the high level meeting of the State held

on 01.09.2020, where primarily three reasons had been assigned. One is that now the State has conducted its own TET for elementary schools;

second is that the State TET candidates are available who are enough in number and can be appointed on the available posts; and the third is that the

Central TET qualified candidates may not have proper knowledge of Assamese, which is necessary for teaching in elementary schools. We will

evaluate whether these are valid grounds for excluding the Central TET candidates. For the moment, we may now refer to the law which have been placed before us by both the learned senior counsel appearing for the writ appellants/writ petitioners and State, respectively.

28. We may first refer to the law relied upon by the writ appellants/writ petitioners in the case of Food Corporation of India -Vs- M/s Kamdhenu

Cattle Feed Industries³ (1993) 1 SCC 71, wherein in Paragraph 8 it has been held by the Honâ??ble Apex Court as under:-

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

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

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

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

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

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

have been the legitimate expectation of the claimant. A 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??

29. In other words, legitimate expectations is enforceable, but not in all cases. The State may have a valid reason to ignore legitimate expectation

when public interest so demands. In other words, whether legitimate expectations were enforceable in a given case, will depend as the facts of that case.

30. The next case relied by the learned senior counsel for writ appellants/writ petitioners is Confederation of Ex-Servicemen Associations & Ors. -

Vs- Union of India & Ors. 4 (2006) 8 SCC 399 In this case, a Confederation of ex-servicemen was before the Honâ??ble Apex Court seeking

better medical facilities and treatment for their members. Their writ petition was

partly allowed by the Honâ??ble Apex Court. What is important to

us is to note the observations made by the Honâ??ble Apex Court while dealing with the doctrine of legitimate expectation. This has been done in

Paragraphs 33, 34 & 35, which is as under:-

â??33. We are also not impressed by the argument that all medical benefits and facilities must be provided to ex-servicemen under the

doctrine of â??legitimate expectationâ?. The doctrine of â??legitimate expectationâ? is a â??latest recruitâ? to a long list of concepts

fashioned by the courts for review of administrative actions. No doubt, the doctrine has an important place in the development of

administrative law and particularly law relating to â??judicial reviewâ?. Under the said doctrine, a person may have reasonable or

legitimate expectation of being treated in a certain way by an administrative authority even though he has no right in law to receive the

benefit. In such a situation, if a decision is taken by an administrative authority adversely affecting his interests, he may have justifiable

grievance in the light of the fact of continuous receipt of the benefit, legitimate expectation to receive the benefit or privilege which he has

enjoyed all throughout. Such expectation may arise either from the express promise or from consistent practice which the applicant may

reasonably expect to continue.

34. The expression â??legitimate expectationâ? appears to have been originated by Lord Denning, M.R. in the leading decision of Schmidt

v. Secy. of State [(1969) 1 All ER 904 : (1969) 2 WLR 337 : (1969) 2 Ch 149 (CA)] . In Attorney General of Hong Kong v. Ng Yuen Shiu

[(1983) 2 All ER 346 : (1983) 2 AC 629 : (1983) 2 WLR 735 (PC)] , Lord Fraser referring to Schmidt [(1969) 1 All ER 904 : (1969) 2 WLR

337 : (1969) 2 Ch 149 (CA)] stated: (All ER p. 350 h-j)

â??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??

(emphasis supplied)

35. In such cases, therefore, the Court may not insist an administrative authority to act judicially but may still insist it to act fairly. The

doctrine is based on the principle that good administration demands observance of reasonableness and where it has adopted a particular

practice for a long time even in the absence of a provision of law, it should adhere to such practice without depriving its citizens of the

benefit enjoyed or privilege exercised.â??

31. The third case relied upon by the learned senior counsel for the writ petitioners/writ appellants is State of Jharkhand & Ors. -Vs Brahmputra

Metallics Ltd., Ranchi & Anr.⁵ Although in its Industrial Policy, the State of Jharkhand gave certain exemptions and benefits to industries but this was

only prospective in nature. It was challenged before the High Court and then later before the Honâ??ble Apex Court, inter alia, on the grounds of

legitimate expectation and this is what the Honâ??ble Apex Court stated in Paragraph 45 of its judgment:-

â??45. It is one thing for the State to assert that the writ petitioner had no vested right but quite another for the State to assert that it is not

duty bound to disclose its reasons for not giving effect to the exemption notification within the period that was envisaged in the Industrial

Policy 2012. Both the accountability of the State and the solemn obligation which it undertook in terms of the policy document militate

against accepting such a notion of state power. The state must discard the colonial notion that it is a sovereign handing out doles at its will.

Its policies give rise to legitimate expectations that the state will act according to what it puts forth in the public domain realm. In all its

actions, the State is bound to act fairly, in a transparent manner. This is an elementary requirement of the guarantee against arbitrary state

action which Article 14 of the Constitution adopts. A deprivation of the entitlement of private citizens and private business must be

proportional to a requirement grounded in public interest. The conception of state power has been recognized by this Court in a consistent

line of decisions. As an illustration, we would like to extract this Courtâ??s observations in National Buildings Construction Corporation

(supra):

â??The Government and its department, 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.â??

32. Mr. Saikia, learned senior counsel appearing for the State has relied upon a decision of the Honâ??ble Apex Court in the case of Monnet Ispat &

Energy Limited -Vs- Union of India & Ors(2012) 11 SCC 1, where the Honâ??ble Apex Court had discussed the principle of legitimate expectation

in great detail, inter alia, by referring to a long line of earlier decisions. Broadly the issue before the Honâ??ble Apex Court related to withdrawal of

the recommendation of the State Government, which were earlier in favour of companies in relation to the mining activities. The mining companies

had invoked the doctrine of legitimate expectation in their favour. The principle of legitimate expectation was negated by the Honâ??ble Apex Court

in that particular case after discussing in details as to what are the principles of legitimate expectations. In Paragraph 184, it cited as under:-

â??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 35 observed as

follows : (SCC pp. 548-49)

â??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 recognised general principles of administrative law applicable to such facts and the

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

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

a particular case. It follows that the concept of legitimate expectation is 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 v. Quin, 1990 HCA 21 : (1990) 64 ALJR 327 (Aust)] 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.â??

33. In Paragraph 184 of the judgment in *Monnet Ispat & Energy Limited - Vs- Union of India & Ors.*, the Honâ??ble Apex Court relied upon a

landmark judgment of High Court of Australia⁷, which said as under:-

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??â??

34. A three Judge Bench decision of the Honâ??ble Apex Court in *PTR Exports (Madras) (P) Ltd. -Vs- Union of India*⁸ (1996) 5 SCC 268 was also

discussed by the Honâ??ble Apex Court in *Monnet Ispat & Energy Limited* (supra), while dealing with the principle of legitimate expectation. In the

said judgment, in Paragraphs 3, 4 & 5, it was observed by Honâ??ble Apex Court as under:-

â??3. â?| The doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by an

executive policy or under law. The court leaves the authority to decide its full range of choice within the executive or legislative power. In

matters of economic policy, it is a settled law that the court gives a large leeway to the executive and the legislature. Granting licences for

import or export is by executive or legislative policy. The Government would take diverse factors for formulating the policy for import or

export of the goods granting relatively greater priorities to various items in the overall larger interest of the economy of the country. It is,

therefore, by exercise of the power given to the executive or as the case may be, the legislature is at liberty to evolve such policies.

4. An applicant has no vested right to have export or import licences in terms of the policies in force at the date of his making application.

For obvious reasons, granting of licences depends upon the policy prevailing on the date of the grant of the licence or permit. The authority

concerned may be in a better position to have the overall picture of diverse factors to grant permit or refuse to grant permission to import or

export goods. The decision, therefore, would be taken from diverse economic

perspectives which the executive is in a better informed

position unless, as we have stated earlier, the refusal is mala fide or is an abuse of the power in which event it is for the applicant to plead

and prove to the satisfaction of the court that the refusal was vitiated by the above factors.

5. It would, therefore, be clear that grant of licence depends upon the policy prevailing as on the date of the grant of the licence. The court,

therefore, would not bind the Government with a policy which was existing on the date of application as per previous policy. A prior

decision would not bind the Government for all times to come. When the Government is satisfied that change in the policy was necessary in

the public interest, it would be entitled to revise the policy and lay down new policy. The court, therefore, would prefer to allow free play to

the Government to evolve fiscal policy in the public interest and to act upon the same. Equally, the Government is left free to determine

priorities in the matters of allocations or allotments or utilisation of its finances in the public interest. It is equally entitled, therefore, to issue

or withdraw or modify the export or import policy in accordance with the scheme evolved. We, therefore, hold that the petitioners have no

vested or accrued right for the issuance of permits on the MEE or NQE, nor is the Government bound by its previous policy. It would be

open to the Government to evolve the new schemes and the petitioners would get their legitimate expectations accomplished in accordance

with either of the two schemes subject to their satisfying the conditions required in the scheme. The High Court, therefore, was right in its

conclusion that the Government is not barred by the promises or legitimate expectations from evolving new policy in the impugned

notification.â??

35. The judgment in Monnet Ispat & Energy Limited (supra), finally summarises the concept of legitimate expectation in Paragraph 188 of its

judgment, which is as follows:-

â??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 fulfilment 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??

36. The learned senior counsel for the writ appellants/writ petitioners then relied upon the doctrine of proportionality and has placed reliance in the

case of Anuradha Bhasin -Vs- Union of India & Ors. 9 (2020) 3 SCC 637

37. The learned senior counsel appearing for the State Government, on the other hand, have rebutted the arguments of the writ petitioners/writ

appellants and he would argue that the principle of proportionality have absolutely no application in the present facts of the case. He would rely upon

the decision of the Honâ??ble Apex Court in Jitendra Kumar & Ors. -Vs- State of Haryana & Anr.10 (2008) 2 SCC 161

38. In the case relied upon by the State, i.e. Jitendra Kumar (supra), the appellant before the Honâ??ble Apex Court were the ones who are seeking

appointment in Haryana Civil Service on grounds that they had been duly selected and, therefore, letters of appointment be issued in their favour and

they further challenged the action of the State which had reduced the vacancies from 300 to 230. Their writ petition was dismissed by the High Court

and they were before the Honâ??ble Apex Court. One of the grounds raised by the appellant before the Apex Court was on proportionality alleging

that the action of the State is liable to be set aside on the principles of proportionality alone. This however was not accepted by the Honâ??ble Apex

Court, as the principle of proportionality was not applicable to the facts of the case. It was stated in Paragraphs 63 by the Honâ??ble Apex Court as

under:-

â??63. The fact that in some jurisdictions, doctrine of unreasonableness is giving way to doctrine of proportionality is beyond any dispute.

(See Indian Airlines Ltd. v. Prabha D. Kanan [(2006) 11 SCC 67 : (2007) 1 SCC (L&S) 359]and State of U.P. v. Sheo Shanker Lal

Srivastava [(2006) 3 SCC 276 : 2006 SCC (L&S) 521].) But, the development of law in this field could have been applied only if a case

was made out. If the State is right in its contention that the selection process being under a cloud, no appointment can be made, the court by

invoking any doctrine cannot ask the State to do so unless it arrives at a positive and definite finding that the State's stand is fraught with

arbitrariness. We do not find any arbitrariness in its act.â??

39. After going through all the submissions made by the respective counsels on legitimate expectations and proportionality and having gone through the

rulings placed before this Court in support of their contentions, this Court finds that principle of law laid down by the Honâ??ble Apex Court, inter

alia, following the law laid down by English and European Courts, has been consistent in its application to these principles. Even the cases relied upon

by the State do not suggest that the doctrine of legitimate expectation and proportionality are not a facet of administrative law and natural justice in

India, rather the accepted position is that Courts have been gradually but steadily applying these tools in evaluating State action. The case relied upon

by the State on doctrine of legitimate expectation, i.e. Monnet Ispat & Energy Limited (supra), in fact summarises the exact position as to the

implementation on application of legitimate expectation, which is in Paragraphs 188.1 to 188.5, which reiterates as further :-

â??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 fulfilment 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??

40. First and foremost the above judgment, on which reliance has been placed by the State, lays down very clearly that the doctrine of legitimate

expectation can be invoked when the occasion so requires, and that the principle is based on reasonableness and fairness. It is now a part of natural

justice. It emphasizes what is obvious â?" the duty of the State to act fairly. But then this principle cannot be invoked against the State and its authority

when the action of the State is in â??public interestâ?. In other words, the legitimate expectation of an individual or a group can be suppressed if the

larger public interest so demand and require. In other words, more important consideration of the State may outweigh the legitimate expectation of an

individual or group¹¹. It is for this reason that the principle of legitimate expectation and the principle of proportionality have to be seen together.

41. In Andhra Pradesh Industrial Infrastructure Corporation Limited & Ors. -Vs- S.N. Raj Kumar & Anr. 12 (2018) 6 SCC 41 the question, inter

alia, before the Apex Court was whether the demand of the State authority was excessive and was it hit by the principle of â??proportionalityâ?. It

was held that the principle was attracted. The principle of proportionality and its application in â??administrative lawâ?? was stated as under:-

â??20. In the realm of Administrative Law â??proportionalityâ?? is a principle where the court is concerned with the process,

method or manner in which the decision-maker has ordered his priorities and

reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of

proportionality thus steps in 11 Halsbury's Laws of India (Vol. 1), First Edition, Page 532. focus true nature of exercise " the

elaboration of a rule of permissible priorities [Union of India v. G. Ganayutham, (1997) 7 SCC 463 : 1997 SCC (L&S) 1806]. De Smith

[Judicial Review of Administrative Action (1995), para 13.085, pp. 601-605; see also, Wade: Administrative Law (2009), pp. 157-158, 306-

308.] also states that "proportionality" involves "balancing test" and "necessity test". The "balancing test" permits

scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations."

42. In Halsbury's Law of India (Vol. 1), in reference to the law laid down by the Hon'ble Apex Court as far back as in 1974, i.e. in E .P.

Royappa -Vs- State of Tamil Nadu¹³ AIR 1974 SC 555, "proportionality" was described as under:-

"The Principle of proportionality envisages that a public authority must maintain a sense of proportion between his particular goals and

the means he employs to achieve those goals, so that this action impinges on the individual rights to the minimum extent necessary to

preserve the public interest. Thus, administrative action must bear a reasonable relationship to the general purpose for which the power has

been conferred."

43. Doctrine of proportionality also called as "proportionality test" has been relied upon by the Hon'ble Apex Court in a number of cases, in

recent years. Two cases need a mention. The first case is Modern Dental College & Research Centre & Ors. -Vs- State of Madhya Pradesh & Ors.

14 (2016) 7 SCC 353 and the second is Anuradha Bhasin -Vs- Union of India & Ors. 15 (2020) 3 SCC 637

44. In Modern Dental College & Research Centre case, the Apex Court has said that the doctrine of proportionality is embedded in the Indian

Constitution under the "reasonable restrictions given in Clause (2) to Clause (6) of Article 19. In Paragraph 65 of the said judgment, it has been

stated by the Hon'ble Apex Court as under:-

65. We may unhesitatingly remark that this doctrine of proportionality, explained hereinabove in brief, is enshrined in Article 19 itself

when we read clause (1) along with clause (6) thereof. While defining as to what constitutes a reasonable restriction, this Court in a

plethora of judgments has held that the expression "[Ed.: The matter between two asterisks has been emphasised in original.] reasonable

restriction [Ed.: The matter between two asterisks has been emphasised in original.]" seeks to strike a balance between the freedom

guaranteed by any of the sub-clauses of clause (1) of Article 19 and the social control permitted by any of the clauses (2) to (6). It is held

that the expression "[Ed.: The matter between two asterisks has been emphasised in original.] reasonable [Ed.: The matter between two

asterisks has been emphasised in original.]" connotes that the limitation imposed on a person in the enjoyment of the right should not be

arbitrary or of an excessive nature beyond what is required in the interests of public. Further, in order to be reasonable, the restriction

must have a reasonable relation to the object which the legislation seeks to achieve, and must not go in excess of that object (see P.P.

Enterprises v. Union of India [P.P. Enterprises v. Union of India, (1982) 2 SCC 33 : 1982 SCC (Cri) 341] .) At the same time,

reasonableness of a restriction has to be determined in an objective manner and from the standpoint of the interests of the general public

and not from the point of view of the persons upon whom the restrictions are imposed or upon abstract considerations (see Mohd. Hanif

Quareshi v. State of Bihar [Mohd. Hanif Quareshi v. State of Bihar, AIR 1958 SC 731]).

(emphasis supplied)

45. The test of proportionality was again followed by the Hon'ble Apex Court in Anuradha Bhasin.

46. Whether the principles of legitimate expectation and proportionality are to be applied will depend upon the facts and circumstances of a case. The

case relied upon by the State, i.e. Jitendra Kumar (supra), states this position extremely well. In Paragraph 58 of the judgment, it describes as to what

a legitimate expectation is. The said paragraph reads as under:

58. Application of doctrine of legitimate expectation or promissory estoppel

must also be considered from the aforementioned viewpoint.

A legitimate expectation is not the same thing as an anticipation. It is distinct and different from a desire and hope. It is based on a right.

[See Chanchal Goyal (Dr.) v. State of Rajasthan [(2003) 3 SCC 485 : 2003 SCC (L&S) 322] and Union of India v. Hindustan Development

Corpn. [(1993) 3 SCC 499]] It is grounded in the rule of law as requiring regularity, predictability and certainty in the Government's

dealings with the public. We have no doubt that the doctrine of legitimate expectation operates both in procedural and substantive

matters.â??

(Emphasis provided)

47. Coming back to our case, we find that when year after year the Government has made Central TET candidates eligible, a pattern had set in.

There was a predictability which had given rise to a legitimate expectation, considering that the action of the State was grounded in law as the law

provides that the State Government can appoint Central TET candidates in a given contingency. In other words, it was not a mere fancy of these

candidates. True, in 2019 the State chose to do its own TET and it is also true that the State can make Central TET eligible only if it chooses not to

hold its own TET examination. But in all fairness, and as the learned senior counsel for the writ appellants Mr. Mahanta would submit, Stateâ??s

action would have been justified had it come with a notice forewarning, that henceforth Central TET candidates will not be considered. There was no

such notice in 2019 when State TET was held after a gap of seven years. On the contrary, the decision not to allow the Central TET candidates from

taking part in this recruitment process was announce only on 11-09-2020. Further, when it chose to do its recruitment for the year 2020 again in that

year, there is no State TET examination. In other words, a Central TET qualified candidate, who had all long been held to be eligible in this

examination were definitely caught unaware with the advertisement of the State dated 11. 09.2020, where they were left out.

48. We have also taken note of the fact that the respondents have for the first time made it clear in the advertisement dated 11.09.2020 that only State

TET qualified candidates will be eligible to participate in the selection process for filling up 3941 vacancies. However, after issuance of the

advertisement dated 11.09.2020, the State Government has not held any State TET examination. Notwithstanding the same, the State Government is

unwilling to allow the Central TET candidates to take part in the selection process.

49. The action of the State is, therefore, wrong when we judge it from the yardstick and from the principles of legitimate expectation. It is also wrong

when we evaluated it from doctrine of proportionality. The reasons given in its high level meeting dated 01.09.2020 for excluding the Central TET

candidate is that the State has enough candidates of State TET qualified. That may be so, but this is not good enough reason to exclude the Central

TET qualified candidates. It is hit by the doctrine of proportionality. As far as the other reason given by the State that there are Central TET

candidates who do not have proper understanding of Assamese or other languages (such as Bengali or Bodo) that could have been a good reason but

Mr. Mahanta, learned senior counsel for the writ petitioners/writ appellants has apprised this Court that each of the candidates who has qualified the

Central TET test has also qualified the language test, which is either Assamese or Bodo or Bengali, which are languages applicable in the State of

Assam for the present purposes. In any case, we make it very clear that if this is not the case, the State Government is always at liberty to evaluate

such candidates (Central TET candidates) to see whether they have enough language proficiency or not to be teachers in elementary school. All the

same, keeping them out altogether from the recruitment, particularly for this recruitment drive, is arbitrary and violative of Article 14 of the

Constitution of India and is hit by the doctrine of legitimate expectation and proportionality.

50. We must state that the learned Single Judge in its judgment & Order dated 18.12.2020 has discussed in detail the principle of legitimate

expectation. Finally, the learned Single Judge had come to the conclusion that the test of legitimate expectation will not be applicable to the facts of the

given case as the provisions of law only provided that a Central TET candidate can be appointed only in a school under the Central Government or

under Union Territory, not having a legislature. We are, however, of the opinion that this is not the correct position.

51. Consequently, we allow this writ appeal by setting aside the judgment & order dated 18.12.2020 passed by the learned Single Judge. This,

however, we do with certain clarifications.

52. It has been stated at the Bar by the learned senior counsel appearing for the State that since there was no interim order operating in the writ

petitions, the process of selection of candidates pursuant to the advertisement dated 11. 09.2020 involving only the State TET qualified candidates has

progressed and at present the same is at an advanced stage. Mr. Saikia, learned senior counsel for the State has also submitted that if the entire

selecting process is interfered with at this stage, the same would adversely impact a large number of schools facing acute shortage of teachers.

53. There can be no doubt about the fact that the ultimate beneficiary of this recruitment process would be the large number of children who may

suffer if there is undue delay in appointment of teachers. We are also conscious of the fact that there are 3941 vacancies advertised by the

department and the total number of writ petitioners who had approached this court is 916. We make it very clear that all these 916 candidates shall be

considered against the existing 3941 vacancies. But even if their candidature is ultimately accepted, all the writ petitioners including the present

appellants can at best fill up 916 vacancies and no further. Although, there are only 50 appellants before us who have assailed the impugned

judgement and order dated 18.12.2020 passed by the learned Single Judge, yet, since the impugned judgement has been set aside and in order to avoid

future litigations on the same issue, we deem it appropriate to grant similar relief to the appellants as the other writ petitioners who are not before us

but are similarly situated.

54. Considering the facts and circumstances of the case in its entirety and balancing the equities, we direct that the recruitment process initiated by the

department on the basis of advertisement dated 11.09.2020 be now processed in two phases. In the first phase, appointment orders for filling up 3025

out of 3941 vacancies may be issued from amongst State TET qualified candidates. The appointment orders in respect of the remaining 916 vacancies

be issued to the eligible candidates in the second phase after considering the candidatures of the 916 writ petitioners which includes the present

appellants, who are Central TET qualified candidates. It is, however, made clear that the appointment of the writ petitioners/appellants would be

subject to the condition that appellants have the State TET qualification and

other guidelines prescribed by NCTE and they fulfil all eligibility norms prescribed by the advertisement notice dated 11.09.2020, including necessary proficiency in the required language.