

(2015) 08 GUJ CK 0030

In the Gujarat High Court

Case No : Special Civil Application Nos. 4855, 6248 of 2015 and Civil Application No. 7156 of 2015 in Special Civil Application No. 4855 of 2015

Patel Amit Babulal and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 309, 32
Gujarat Secondary Education Act, 1972 — Section 35

Citation : (2015) LabIC 4479

Hon'ble Judges : J.B. Pardiwala, J

Bench : Single Bench

Advocate : Subramaniam Iyer and Vinod Pandya, for the Appellant

Final Decision : Allowed

Judgement

J.B. Pardiwala, J—Since the issues falling for my consideration in both the captioned writ-applications are the same those were heard analogously and are being disposed of by this common judgment and order.

2. By these writ-applications, the petitioners whose names have been deleted from the select list prepared for being appointed as teachers in the Government Schools, have prayed for the following reliefs:--

"(A) Your Lordships may be pleased to admit and allow this application.

(B) Your Lordships may be pleased to grant leave to amend the memo of Special Civil Application No. 4855 of 2015 as per the draft amendment Annexure-A annexed with this Civil Application.

(C) Any other relief deemed just and proper may pleased be granted in the interest of justice."

3. The facts giving rise to these two writ-application may be summarized as under:--

4. The State Government in exercise of the powers conferred by Section 35 of the Gujarat Secondary and Higher Secondary Education Act, 1972 (Guj. 1973), framed rules for the selection of teachers and Head Masters of the registered private secondary and higher secondary schools vide Notification dated 11th February, 2011. The rules are called "the Teachers and Head Masters of Registered Private Secondary and Higher Secondary Schools (Procedure for selection) rules, 2011. For the first time the concept of the Teachers Aptitude Test was introduced through such rules. The rule-11 of the rules 2011 provides for the preparation of the selection list and the weightage to be given to the marks secured by the concerned candidate in the TAT.

5. Rule-11 reads as under:--

"11. Preparation of select list:--

(1)(a) The selection committee shall prepare a list on the basis of weightage of 70% marks of the marks secured by the concerned candidate in Teacher's Aptitude Test to be conducted atleast once in a year by Gujarat Secondary and Higher Secondary Education Board, Gandhinagar.

(b) The marks secured by the concerned candidate in TAT will be valid for five years from the date of the result of the TAT.

(c) The candidate who has secured at least 50% marks in TAT shall be considered as qualified candidate for TAT weightage.

(d) A candidate shall be allowed maximum three attempts for TAT. If a candidate after availing the first attempt also avails second or third successive attempt within the period of five years from the date of the result of the first attempt, the average marks obtained by the candidate in such attempts shall be considered for preparation of the select list, as explained in Appendix II.

(2) The Weightage of 30% will be given, out of the marks secured in the prescribed educational qualification for the concerned post. (Please see the example in Appendix II)

(3) The maximum marks for the qualification for the purpose of weightage of 30% shall be as prescribed in Appendix I.

(4) The selection Committee shall prepare subject-wise and category-wise lists on the basis of marks secured by the concerned candidates as provided in sub-rules (a) and (b) above.

(5) The selection committee shall prepare a list of the successful candidates in the order of merit on the basis of aggregate marks finally awarded to each candidate as provided under sub-rule (d) above limited to the number of posts advertised by the selection committee.

6. The selection committee shall prepare a separate list of successful candidates belonging to the scheduled Castes, Scheduled Tribes, Socially and Educationally

Backward Classes and women to the extent of the number of vacancies reserved for such categories.

Provided that where the requisite number of candidates, belonging to Scheduled Casts, Scheduled Tribes, Socially and economically Backward Class or, as the case may be Nomedic Tribes and Denotified Tribes, could not qualify on the basis of the qualifying aggregate marks fixed for general category, the selection committee may relax the qualifying aggregate marks to make up the deficiency in these reserved posts.

(7) The selection committee shall prepare subject-wise and category-wise waiting lists, showing the names of the candidates of about 10% of the list of successful candidates so prepared under sub-rules (2) and (3) above.

(8) The waiting lists referred to in sub-rule (7) shall be operative for a period of two years from the date of publication of the result or till the date of publication of the result of the next examination, which ever is earlier."

(9) The waiting list may be operative in the following circumstances:--

(i) If the post of Headmaster or Secondary teacher or higher secondary teacher is not filled up due to non-joining of the selected candidate in the prescribed time limit.

(ii) If the selected candidate is disqualified for appointment for any of the reasons."

6. On 17th September, 2011, the Gujarat Secondary and Higher Secondary Board (for short the GSHSB) issued an advertisement for the TAT examinations for the appointment of the teachers and Head Masters in the private registered schools.

7. Pursuant to the advertisement dated 17th September, 2011, the TAT for the Head Master was conducted on 25th October, 2011, the TAT for the higher secondary teacher was conducted on 18th December, 2011 and the TAT for the secondary teacher was conducted on 7th May, 2012. All the petitioners had appeared for the TAT conducted on 7th May, 2012 for the secondary teacher.

8. The State Government vide its notification dated 18th April, 2012 framed rules in the exercise of its powers conferred by the proviso to Article 309 of the Constitution of India called the "teachers of government and secondary and higher secondary schools" (procedure for selection) rules, 2012. Under the said rules for the first time the TAT examination was introduced for the government secondary and higher secondary teacher. Rule-11 of the 2012 rules provides for the preparation of the select list and the weightage to be given and the marks secured by concerned candidate in the TAT. Rule-11 of the Rules, 2012 reads as under:--

"11. Select list:--

(1)(a) The selection committee shall prepare a list of successful candidates on the basis of weightage of 70% marks of the marks secured by concerned candidate in TAT.

(b) The marks secured by the concerned candidate in TAT shall be valid for five years from the date of the result of the TAT.

(c) The candidate who has secured at least 50% marks in TAT shall be considered as qualified candidate for TAT weightage.

(d) A candidate shall be allowed to appear in TAT for three times. A candidate who after availing the first attempt also avails second and third successive attempt within the period of five years from the date of the result of the first attempt, the average marks obtained by such candidate in such attempts shall be considered for preparation of the select list, as explained in Appendix-II.

(2) The weightage of 30% will be given, out of the marks secured in the prescribed educational qualification for the respective post as specified in appendix-II.

(3) The maximum marks for the qualification for the purpose of weightage of 30% shall be as prescribed in Appendix-I.

(4) The selection committee shall prepare subject-wise and category-wise lists on the basis of marks secured by the candidates as provided in clause (a) of sub-rule(1) and sub-rule(2).

(5) The selection Committee shall prepare a list of the successful candidates in the order of merit on the basis of aggregate marks finally awarded to each candidate as provided under clause(d) of the sub-rule(1) to the extent of posts advertised by the selection committee.

(6) The selection Committee shall prepare a separate list of successful candidates belonging to then Scheduled Castes, Scheduled tribes, Socially and Educationally Backward Classes and women to the extent of the number of vacancies reserved for such categories;

(7) The selection Committee shall prepare subject-wise and category-wise waiting lists, of about 10% candidates of the list of successful candidates so prepared under sub-rules (4) and (5).

(8) The waiting lists referred to in sub-rule (7) shall be operative for a period of two years from the date of publication of the result or till the date of publication of the result of the next examination, which ever is earlier;

(9) The waiting list may be operative in the following circumstances;

(i) If the post of Secondary Teacher or Higher Secondary Teacher is not filled up due to non-joining of the selected candidate in the prescribed time limit.

(ii) If the selected candidate is disqualified for appointment for any of the

reasons."

9. On 12th February, 2014, a common advertisement was issued for the TAT exam by the GSHSB for the appointment of teachers both in the grant in aid and government schools. Pursuant to the advertisement dated 12th February, 2014, the TAT for the post of Head Master was conducted on 20th December, 2014 the TAT for the post of the higher secondary teacher was conducted on 25th May 2014 and the TAT for the post of the secondary teacher was conducted on 27th July, 2014.

10. Thus, from the above it appears that two advertisements for the TAT were published.

11. On 17th July, 2014, the GSHSB issued an advertisement for the recruitment to the total post of 978 teachers in the secondary government schools. On the very same day an advertisement was also issued for the recruitment to the total posts of 327 teachers in the higher secondary government schools.

12. Thus, by way of two advertisements in all 1305 posts were to be filled up (978+327) in the government secondary and higher secondary schools.

13. On 14th November, 2014, two selection lists were published for the higher secondary and secondary teachers after considering the marks obtained in the TAT examinations conducted pursuant to the TAT advertisement published in the year 2011 and 2014 respectively.

14. Both the selection list were prepared according to the marks of the TAT calculated as under:--

(i) For Higher Secondary Teacher Selection list:

$\text{TAT 18.12.11} + \text{TAT 25.05.14} = \text{Average}$

(ii) For Secondary Teacher Selection list:

$\text{TAT 07.05.12} + \text{TAT 27.07.14} = \text{Average.}$

15. The two selection lists prepared by the GSHSB for the government schools was challenged before this Court by way of the Special Civil Application No. 17666 of 2014 with the Special Civil Application No. 18917 of 2014.

16. The following reliefs were prayed for in the afore-noted two writ-applications:--

"A. That the Hon"ble Court be pleased to admit and allow this petition.

B. That the Hon"ble Court be pleased to hold and declare that the impugned rules - The Teachers of Government Secondary and Higher Secondary Schools (Procedure for Selection) Rules, 2012, more particularly Rule-3, are unconstitutional and ultra-vires the provisions of the parent Act namely The Gujarat Secondary Education Act, 1972 and consequently quash and set aside all

the actions initiated in furtherance of the impugned rules and further holding that the marking system adopted under rule 11 of the impugned rule is absolutely arbitrary and discriminatory and consequently, quashing and setting aside the same.

C. Pending admission and final disposal of the petition, the Hon'ble Court be pleased to restrain the section committee constituted under rule 3 of the impugned rules from making any appointment of the candidates.

D. Any other relief deemed fit to meet the ends of justice may be granted."

17. A Division Bench of this Court vide judgment and order dated 2nd March, 2015 allowed both the writ-applications observing as under:--

"3. The petitioners have challenged the constitutional validity of the Teachers of Government Secondary and Higher Secondary Schools [Procedure for Selection] Rules, 2012 [the Rules for short], which were notified on 18.4.2012, which are still in force.

4. Under these Rules, a candidate is selected for Teacher Aptitude Test [TAT for short]. As this stage, we deem it essential to extract Rule 11[1] of the Rules, which is reproduced as under:

11. Select list.-

[1][a] The selection committee shall prepare a list of successful candidate on the basis of weightage of 70% marks of the marks secured by the concerned candidate in TAT.

[b] The marks secured by the concerned candidate in TAT shall be valid for five years from the date of the result of the TAT.

[c] The candidate who has secured at least 50% marks in TAT shall be considered as qualified candidate for TAT weightage.

[d] A candidate shall be allowed to appear in TAT for three times. A candidate who after availing the first attempt also avails second or third successive attempt within the period of five years from the date of the result of the first attempt, the average marks obtained by such candidate in such attempts shall be considered for preparation of the select list, as explained in Appendix-II.

5. From perusal of the aforesaid Rule 11[1], it becomes clear that it lays down the procedure for select list by the Selection Committee. Perusal of Rule 11[1][d] makes it clear that a candidate shall be allowed to appear in TAT examination thrice within the period of five years. 5 years period during which a candidate can appear thrice commenced from 18.4.2012, that is, when the Rules came into force and within these five years, three examinations can be taken by a candidate and if a candidate appears thrice in TAT, then his result would be declared treating the average marks obtained by him in all the three attempts for the purpose of preparation of the select list. It is not disputed that the petitioners

have appeared thrice in TAT. The petitioners appeared in the TAT for the first time in the year 2011, thereafter in 2012 and then in 2013. Since the Rules came into force on 18th April, 2012 and these Rules applied prospectively, they do not save the examination which had taken place prior to 18.4.2012 nor do they provide for counting for the purpose of Section 11[1][d] of the Rules. Therefore, in our opinion, the respondents have committed an error in counting the TAT attempts taken by the candidates in the year 2011. Similar mistake has been committed with regard to other candidates and, therefore, the same is required to be rectified by the respondents and fresh select list is required to be prepared in accordance with Rule 11[1][d] of the Rules. Reliance placed by Mr. Vandan Baxi, learned AGP on paragraphs 24 to 26 of the affidavit-in-reply filed by the respondent-State is of no help to him. Rule 11[1] may be providing a procedure for holding the TAT, but it cannot be given retrospective effect unless the rule making authority specifically declares its intention to make the Rules with retrospective effect. The Rules cannot be given retrospectivity and have to be treated to be with prospective effect. The respondents have illegally and arbitrarily considered TAT, 2011 for taking out average of the candidates. If they have appeared thrice in TAT, then, the mistake is required to be corrected by the respondents and fresh select list is required to be prepared by the respondents. Since the writ petition can be finally decided on this point alone, we do not deem it necessary to go into the validity of Rule 11[1][d] of the Rules.

6. In the result, both the writ petitions succeed and are allowed. The select list of TAT examination prepared by the respondents is quashed. Writ of mandamus be issued to the respondents, directing them to prepare fresh select list of TAT by excluding the result of TAT, 2011. The entire exercise of preparing fresh select list and submission thereof shall be done within the period of one month and thereafter, further action may be taken by the respondents on the basis of the select list in accordance with law."

18. Having regard to the judgment and order referred to above passed by the Division Bench of this Court, the GSHSB prepared a fresh/revised merit list of the secondary and higher secondary government teachers by excluding the marks of TAT, 2011 conducted pursuant to the advertisement dated 17th September, 2011.

19. Thus, only the marks obtained by the candidates in the TAT examination of 2014 were considered and only those candidates who had appeared in the TAT examination conducted in the year 2014 were included in the select list.

20. As a result of the above, the petitioners who had appeared in the TAT exam conducted pursuant to the advertisement of 2011 and had applied for the post of teachers in the secondary government schools were dropped. Their names were deleted from the select list.

21. The stance of the State-respondents is that if the petitioners herein had appeared in the TAT examination of 2014 then they would have been considered for being appointed as teachers in the secondary government schools.

22. In the meantime, one Misc. Civil Application (for review) No. 1359 of 2015 in Special Civil Application No. 17666 of 2014 was filed by third parties with the following prayer:--

"A. To review the order dated 02.03.2015 passed in Special Civil Application No. 17666 of 2014 and Special Civil Application No. 18917 of 2014 and be pleased to recall the same;

B. To direct the respondent State of Gujarat and other State respondent authorities to include the petitioners and other identically situated candidates who appeared in TAT in December 2011 in the select list and allow them to participate in the ongoing recruitment process for the post of teacher in secondary and/or higher secondary school;

C. During the pendency of admission, hearing and final disposal of this petition, be pleased to stay the judgment and order dated 02.03.2015 passed in Special Civil Application No. 17666 of 2014 and Special Civil Application No. 18917 of 2014;

D. To pass any other and further relief that may be deemed fit and proper and in the interest of justice."

23. One another Misc. Civil Application (for review) No. 1360 of 2015 in Special Civil Application No. 17666 of 2014 was filed with the following prayers:--

"A. To review the order dated 02.03.2015 passed in Special Civil Application No. 17666 of 2014 and Special Civil Application No. 18917 of 2014 and be pleased to recall the same;

B. To direct the respondent State of Gujarat and other respondent State authorities that the judgment and order dated 02.03.2015 passed in Special Civil Application No. 17666 of 2014 and Special Civil Application No. 18917 of 2014 is not applicable to petitioners and other candidates who appeared in TAT May, 2012.

C. To direct the respondent State of Gujarat and other State respondent authorities to include the petitioners and other identically situated candidates who appeared in TAT in May 2012 in the select list and allow them to participate in the ongoing recruitment process for the post of teacher in secondary and/or higher secondary school;

D. To pass any other and further relief that may be deemed fit and proper and in the interest of justice."

24. The Division Bench rejected both the review applications vide order dated 17th June, 2015. The order reads thus:--

"We have heard learned advocate Mr. A.J. Yagnik for learned advocate Mr. Riddhesh Trivedi for the applicants, learned advocate Mr. Subramaniam Iyer for the original petitioners and learned Additional Advocate General assisted by

learned AGP Mr. Vandan Baxi for respondent No. 13.

In this review petition, learned advocate Mr. Yagnik for learned advocate Mr. Riddhesh Trivedi for the applicants has vehemently urged that the judgment rendered by this Court on 2.3.2015 in Special Civil Application No. 17666 of 2014 with Special Civil Application No. 18917 of 2014 suffers from an error apparent on the face of record as TAT (Teacher Aptitude Test) Examination of 2011 was held under Rules which were notified on 11.2.2011 and therefore that attempt has to be counted in one of the attempts which is permissible under the Rules meaning thereby in five years, three attempts are allowed and 2011 attempt would be treated as one attempt. Learned advocate Mr. Subramainam Iyer who appears for original petitioners has urged that Rules which were notified on 11.2.2011 were with regard to Teachers and Headmasters of registered private Secondary and Higher Secondary Schools and were not applicable to the Government Schools. 2011 Rules are framed under Section 35 of the Gujarat Secondary and Higher Secondary Education Act, 1972 whereas 2012 Rules which are applicable to the Government teachers are framed in exercise of powers conferred by proviso to Article 309 of the Constitution of India by the Governor of Gujarat and the Rules are known as teachers of Government Secondary and Higher Secondary Schools. They have come into force with effect from 18.4.2012. Both Rules are different. The source of power of framing of Rules are different. Both the Rules apply to two different class of persons, one private school teachers and other Government school teachers. Therefore, it cannot be said that the Rules supplement each other. Therefore, we do not find that any error much less an error apparent on the face of the record has been committed by this Court in deciding the writ petitions by judgement dated 2.3.2015. Accordingly, these review petitions are dismissed. Parties shall bear their own costs."

25. The stance of the State Government is that as the relief prayed for in the present writ-applications are identical to the reliefs which were prayed for in the two review applications referred to above and as the review applications were rejected by the Division Bench, these two writ-applications should also fail.

26. It appears from the materials on record that all the petitioners were selected on the basis of the marks obtained by them in the TAT examination conducted in May, 2012 and the result thereof was declared on 28th June, 2012. The stance of the State Government is that they had also understood earlier what is sought to be contended on behalf of the petitioners but the Division Bench Judgment referred to above changed the entire scenario. To put it briefly it is the stance of the State respondents that the petitioners herein had appeared in the TAT examination pursuant to the advertisement issued for the appointment of the teachers in private registered schools whereas the TAT 2014 was conducted pursuant to the advertisement issued for the appointment of the teachers in the government schools. Since the petitioners applied for being appointed as teachers in the government schools they were obliged to appear in the TAT

examination conducted in 2014.

27. It is the case of the petitioners that while applying for being appointed as teachers in the Government schools the GSHSB should have considered the marks obtained by them in the TAT examination conducted in 2012 pursuant to the advertisement of 2011.

Submissions on behalf of the petitioners

28. Mr. M.C. Bhatt, the learned counsel appearing for the petitioners vehemently criticized the stance of the State Government submitting that there is complete misreading and misinterpretation of the Division Bench judgment referred to above by the State Government. Mr. Bhatt submitted that the exclusion of the petitioners from the select list which was already prepared and finalized because of the Division Bench judgment as submitted by the State Government has resulted in a serious miscarriage of justice. He submitted that the petitioners had also received the communication from the authority concerned in the month of February, 2015 informing them to remain present in the Office of the respective District Education Officers for selection of the school and for collecting the appointment letter.

29. Mr. Bhatt submitted that the entire recruitment had attained finality and only the appointment letters were to be issued. Although the petitioners could not have asserted any indefeasible right of being appointed yet they had a legitimate expectation that having being called to collect the appointment letter they were cleared.

30. Mr. Bhatt submitted that his clients were informed by way of a notice published on the website about the preparation of the new list excluding the petitioners as they had not appeared in the 2014 TAT examination.

31. Mr. Bhatt submitted that the TAT exam is not conducted recruitment-wise. Mr. Bhatt submitted that the authority all through out during the entire process till the preparation of the select list was of the view that the candidates having appeared in the TAT examination in May, 2012 were qualified to apply for the post of teacher in the government schools pursuant to the recruitment process of 2014.

32. Mr. Bhatt invited the attention of the Court towards the circular dated 4th March, 2014 (Annexure "A" page 90) providing that the candidates would have to exercise their own discretion whether to appear again in the TAT examination or not. This submission of Mr. Bhatt is based on the rules itself which provides that the TAT would be conducted at least once in a year by the Board and the marks secured by the concerned candidate in the TAT would be valid for a period of five years from the date of the result of the TAT. Mr. Bhatt laid much stress on the rule which further provides that a candidate would be allowed the maximum of three attempts for TAT. If a candidate availing the first attempt also avails the second or the third successive attempt within the period of five years from the

date of the result of the first attempt, the average marks obtained by the candidate in such attempts would be considered for the preparation of the select list.

33. Mr. Bhatt submitted that the circular referred to above also made it clear that the online application form would not govern the recruitment process but the recruitment process would be governed by the rules published on 18th April, 2012.

34. Mr. Bhatt submitted that the circular was issued in light of the inquiry made by the candidates time to time seeking employment as the teachers in the government schools whether they were required to appear in the year 2014 TAT examination although they had appeared in the 2012 TAT examination.

35. Mr. Bhatt submitted that the case in hand is one of complete misreading of the Division Bench Judgment. He submitted that the Division Bench judgment could not have been read as a statute. Mr. Bhatt submitted that the Division Bench judgment was rendered in the facts of that case.

36. Mr. Bhatt submitted that had the things been made clear at the right time then probably the petitioners would have again appeared in the TAT examination conducted in 2014 although in law they were not obliged to appear.

37. Mr. Bhatt submitted that some of the petitioners were in employment and had tendered resignation for the purpose of seeking employment as teachers in the government schools. Such petitioners have been put in great difficulty and now it is a question of their survival.

38. Mr. Bhatt submitted that in view of the above, the petitions deserve to be allowed and the State Government be directed to include the petitioners in the select list as they were earlier included.

Submissions on behalf of the State

39. Mr. P.K. Jani, the learned Additional Advocate General appearing for the State Government opposed the writ-applications and submitted that the government is absolutely helpless in view of the Division Bench Judgment of this Court. Mr. Jani submitted that his clients were also earlier of the same view that the petitioners were eligible to apply for the post of teachers in the government schools on the basis of the TAT examination which was conducted in the year 2012. Mr. Jani submitted that the petitioners herein had applied to appear in the TAT exam pursuant to the advertisement dated 17th September, 2011. At that point of time there were no rules governing the TAT exam for the government schools. On 18th April, 2012, the rules for the selection of teachers in the government schools (secondary and higher secondary) were framed under Article 309 of the Constitution. Mr. Jani submitted that on the strength of such rules, the TAT examination was introduced for the first time for the government schools. He submitted that the TAT exam for the secondary teachers in the grant in aid private school was conducted on 7th May, 2012 and such exam was pursuant to

the advertisement dated 17th September, 2011 and not under the rules of 2012.

40. Mr. Jani submitted that the State Government had already prepared a combined select list for both the grant in aid private schools and the government schools. However, such decision of the State Government was challenged before this Court and the challenge was upheld. He submitted that pursuant to the order passed by this Court dated 2nd March, 2015, the State Government had to prepare a fresh select list excluding the marks of the TAT 2011 for the government schools.

41. Mr. Jani laid much stress on the order passed by the Division Bench in the review applications wherein the Division Bench has observed that the 2011 rules had been framed under Section 35 of the Gujarat Secondary and Higher Secondary Education Act, 1972 whereas the 2012 rules applicable to the government teachers were framed in the exercise of powers conferred under Article 309 of the Constitution. Mr. Jani, submitted that the Division Bench has observed that the rules are different and source of power of framing the rules are also different. According to Mr. Jani both the rules apply to different class of the teachers i.e. private school teachers and government school teachers. Mr. Jani submitted that the rules do not supplement each other.

42. Mr. Jani submitted that the petitioners are entitled for the appointment as secondary teachers in the grant in aid private schools on the basis of their TAT 2012 examination but are not entitled for the appointment as the secondary teachers in the government school.

43. Mr. Jani also placed reliance on the following averments made in the reply filed on behalf of the respondent No. 2 duly affirmed by the Noddle Officer, Commissioner of Schools:--

"At the outset, it is submitted that there are three types of Secondary Educational Institutions running in Gujarat State. They are:

- (1). Government Schools,
- (2). Grant-in-aid Schools and,
- (3). Self-financed Schools.

It is humbly submitted that the Government Schools are being opened and run by State Government as per the norms prescribed by the State Government, whereas Grant-in-aid schools are being aided by the State Government as per different rules and provisions. And the self-financed schools are purely run by the private management after obtaining approval of the Gujarat Secondary and Higher Secondary Education Board, wherein Government role is regarding its administration is minimal. So far as the recruitment in the said institutions are concerned, it is clarified that except the self-financed Schools the different rules are being framed by the State Government for the recruitment of the Headmasters and Teachers in Secondary and Higher Secondary Government and

grant-in-aid Schools as mentioned below.

8. It is respectfully submitted that by issuance of the notification 11.2.11 under section Gujarat Secondary and Higher Secondary education act, 1972, the rules for the recruitment of Headmasters, Secondary education act, 1972, the rules for the recruitment of Headmasters, Secondary Teachers and Higher Secondary Teachers in Grant-in-aid Schools has been framed wherein committee for the recommendation for the appointment to those Headmasters and teachers in Grant-in-aid Schools is also constituted. A copy of the notification dated 11.2.2011 is annexed herewith and marked as Annexure R-1.

9. It is also clarified that by issuance of notification dated 18.04.2012 the rules under proviso of Article 309 of the Constitution of India for the recruitment of the Headmasters, Secondary Teachers and Higher Secondary Teachers in Government Schools has been framed wherein committee for the recruitment of the Headmasters and Teachers is also constituted. A copy of the notification dated 18.04.2012 is annexed herewith and marked as Annexure-A by the petitioner.

10. It is respectfully submitted that as per the selection rules for Grant-in-aid and Government Schools, it is decided to take the examination of TAT as eligibility criteria for the selection of teachers and headmasters in Secondary and Higher Secondary Grant-in-aid schools. The weightage of the TAT Exam marks is 70%, it is also decide that Gujarat Secondary and Higher Secondary Education Board, would conduct TAT exam, respondent No. 3 herein.

11. It is humbly submitted that it seems that the petitioner has not taken cognizance of the fact of the concerned advertisement of the TAT (Teachers Aptitude Test) dated 17.09.2011 wherein it is clearly mentioned that the TAT exam to be conducted was meant for recruitment of Headmasters, Secondary Teachers and Higher Secondary Teachers in Grant-in-aid schools only. The details of the same advertisement and dates of conduction of the examination is as under and also annexed herewith as Marked as Annexure R-2;

//Advertisement dated 17.09.2011 for TAT//

Examination of TAT for selection of Headmaster Teachers and Assistant Teachers of Secondary and Higher Secondary Grant-in-Aid Schools.

In the above premise it transpires from the above fact that the TAT examinations, though it was conducted on dated 7.5.2012, after issuance of the notification dated 18.04.2012 for the recruitment of Headmasters and Teachers in Government Schools, as it was conducted for Grant-in-aid teachers, it may not be made applicable to these petitioners.

12. It is respectfully stated and submitted that the present petitioners had given the examination of TAT pursuant advertisement dated 17.09.2011 which advertisement was issued pursuant the selection rules dated 11.12.11 for the Grant-in-aid schools only. Moreover it is pertinent to note that the probable

candidates have been provided an opportunity to appear into the TAT exam for the Headmasters, Secondary Teachers and Higher Secondary Teachers for the Government Schools pursuant to the notification dated 18.04.2012 which was advertised on dated 12.02.2014 and the details of the examination conducted pursuant to that advertisement is as under and also annexed herewith as Marked as Annexure R-3;

//Advertisement dated 12.02.2014 for TAT//

Examination of TAT for selection of Headmasters, Teachers and Assistant Teachers of Secondary and Higher Secondary Grant-in-Aid and Government Schools.

The above facts make it very clear that equal opportunity was given to all probable candidates for the post of Headmasters and Teachers in Government Schools.

13. It is respectfully submitted that Selection Committee get the information of vacant posts in Grant-in-aid and government schools from concerned division of the C.O.S. who has obtained it from the various districts and then after the selection committee initiate recruitment process. Details given below has shown that the selection committee has made several recruitment in Grant-in-aid and Government Schools.

14. It is submitted that because of the implementation of the Right to Education Act, 2008 the 8th Standard had been shifted to upper primary section from the Secondary Section, the question for accommodation of the surplus Secondary Teachers recruited earlier had been arisen and more than 11,000 (Eleven Thousand) surplus teachers had been accommodated in different schools of the State. Hence, there was no requirement as such was arisen for the recruitment of Secondary teachers so recruitment process for the secondary teachers was not initiated.

15. At the outset, it is respectfully submitted that as prayers of the petitioners in this petition earlier, Selection Committee had considered the mark of TAT in Government recruitment which were conducted under the advertisement dated 17.09.2011 i.e. TAT, 2011 with the 12.12.2014 i.e. TAT, 2014 and prepared the individual selection lists for Secondary and Higher Secondary teachers on dated 14.11.2014, but same was challenged before the Hon''ble Gujarat High Court bearing Special Civil Application No. 17666/14 and 18917/14. In the said matter the Hon''ble High Court of Gujarat has passed Judgment on dated 2.3.2015 (Annexure-F) and quashed the selection list prepared by the selection committee. And further to direct the respondent to prepares fresh list and exclude the marks of examination of TAT-2011.

16. It is submitted that looking to the said Judgment of the Hon''ble High Court, Selection Committee has prepared fresh merits lists on dated 27.03.2015 for Secondary and Higher Secondary Government School's candidates, excluding

the TAT exams conducted as per advertisement dated 17.09.2011 (Higher Secondary) and 7.5.2012 (Secondary).

17. It is humbly submitted that the contention of the petitioner regarding para number 3.6 is not tenable in the eye of law as though it is fact that the TAT examination was conducted on May-2012, but the real fact is it was as per the advertisement dated 17.09.2011 when the rules regarding TAT for the recruitment of Government Teachers were not existing since the rules for the recruitment of the Government Teacher was issued on 18.04.12. So it can not be made applicable to the advertisement prior to its issuance. Hence, the revised merit list has been prepared in compliance of the Hon"ble Court's order dated 2.3.2015.

18. It is respectfully submitted that the revised merit list is declared only in compliance of Hon"ble Court's order dated 02.03.2015 in Special Civil Application No. 17666/14 and 18917/14 wherein merit list dated 14.11.2014 has been quashed by the Hon"ble Court. Therefore this petition is not tenable."

44. Mr. Jani submitted that there being no merit in both the petitions they may be rejected.

Analysis

45. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration is whether the Division Bench decision of this Court in any manner goes against the petitioners herein so far as their claim of being appointed as teachers in the government schools is concerned.

46. As the pivotal question hinges around the Teachers Aptitude Test, it is necessary for me to understand what is actually this test and how the same came to be introduced.

47. What is the effect of the "Teacher Aptitude Test" on the recruitment process of the permanent teachers in the government schools? Following the implementation of the right to free and compulsory education, TAT has been described as a step in the right direction in portraying the government's known and compromising attitude towards the quality of the government school teachers. The same would apply even in the registered private schools. What are the benefits of a standardized test like Teacher Aptitude Test on the recruitment of teachers? The hypothesis being that the "Teacher Aptitude Test" leads to better quality teachers in the government schools and registered private aided schools as compared to the past when TAT was not implemented.

48. As observed above, the genesis of the TAT lays in the implementation of the right of children to Free and Compulsory Education Act, 2009 which requires the recruitment of large number of teachers across the country in a time bound manner. To ensure the recruitment of quality teachers, the Nation Council for Teacher Education (NCTE) laid down the minimum qualifications for a person to

be eligible for an appointment as a teacher in the primary and elementary classes. One of these minimum qualifications is to pass the TAT conducted by the appropriate government. While the school owned and managed by the State Government/local bodies consider the TAT conducted by the State Government, CTET conducted by the CBSE applies only to the schools of Central Government, school under the administrative control of the Union Territories and the NCT of Delhi. The rationale as one of the essential qualifications for a person to be eligible for the appointment as a teacher are;

"(i) it would bring national standards and benchmark of teacher quality in the recruitment process.

(ii) It would induce teacher education institutions and students from these institutions to further improve there performance standards.

(iii) It would send a positive signal to the stakeholders that the government lays special emphasis on teaching quality. Hence the objective of TAT is to act essentially as a screening process whereby the focus is more on ensuring that those who become eligible to apply as teachers should possess the basic threshold level of knowledge so that the quality of education imparted does not diminish to a low level."

49. An aptitude test is designed as a psychologically based series of questions and answers that gives the hiring school a better understanding of how a teacher thinks, or how they will behave in any contextual situation. These tests are not designed to "trick" those who take them, but rather as truly investigative procedures used before hiring someone in such an influential role.

50. I am sure that the State Government would not adopt a stance that the TAT is more important for the recruitment of teachers in the Government Schools rather than the recruitment of the teachers in the private registered aided schools. The value of quality education cannot be undermined on the basis of the government schools and private schools. Therefore, it is the TAT as a whole which is important. All the citizens are equal for the state government in all respects.

51. Keeping the aforesaid in mind I am not able to appreciate the argument of Mr. Jani that the TAT would be conducted according to the recruitment. There is nothing to show that the TAT conducted for the appointment of teachers in the private aided schools would differ in any manner with the TAT conducted for the recruitment of the teachers in the government schools. There is nothing to show that the syllabus would differ in any manner. This is exactly what the Government also understood, and in my view very rightly and correctly.

52. The Division Bench decision has been thoroughly misunderstood and misinterpreted by the State Government. The issue before the Division Bench was with regard to the constitutional validity of the rules 2012. In that case the petitioners had appeared in the TAT for the first time in the year 2011, thereafter

in 2012 and then in 2013. since the rules came into force on 18th April, 2012 and were to be applied prospectively, they could not have saved the examination which had taken place prior to 18th April, 2012. This was the only issue before the Division Bench. I would put it in other words that the issue was more with regard to the applicability of the rules retrospectively or prospectively.

53. It is well established that a judgment is a precedent for what it decides and not what may appear to logically flow from it. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Court. It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment.

54. Reference could be made to a decision of the Supreme Court in the case of Ashwani Kumar Singh Vs. U.P. Public Service Commission and Others, AIR 2003 SC 2661 : (2003) 96 CLT 545 : (2003) 6 JT 184 : (2003) 5 SCALE 255 : (2003) 11 SCC 584 : (2004) SCC(L&S) 95 : (2003) 1 SCR 528 Supp : (2004) 1 SLJ 28 : (2003) AIRSCW 3387 : (2003) 4 Supreme 573 , in which the Supreme Court has explained as to how courts should place reliance on precedents. Observations made in paragraphs 10, 11, 12 and 13 are referred to hereinbelow:--

"10. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.

Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton, 1951 AC 737 at p.761), Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

"11. In Home Office v. Dorset Yacht Co. 1970 2 All ER 294) Lord Reid said, "Lord Atkin's speech is not to be treated as if it was a statute definition. It will require qualification in new circumstances."

Megarry, J. in Shepherd Homes Ltd. V. Sandham, 1971 1 WLR 1062) observed:

"One must not, of course, construe even a reserved judgment of Russell, L. J. as

if it were an Act of Parliament."

In *Herrington v. British Railways Board*, 1972 2 WLR 537) Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

12. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

13. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

xxx xxx xxx xxx

"Precedent would be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches, else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

55. The Division Bench had no occasion to consider the larger issues which have cropped up in these writ-applications and neither the Division Bench could have contemplated or envisaged at that point of time that the judgment would be understood in a different context.

56. If I accept the argument of Mr. Jani, then the rules of 2011 and the rules of 2012 would become unworkable. Rule-11 of the rules 2011 and rule-11 of the rules 2012 are para materia. The only difference is that the rules of 2011 are framed under Section 35 of the Gujarat Secondary and Higher Secondary Education Act, 1972, whereas the rules of 2012 have been framed by the Government in exercise of powers under Article 309 of the Constitution.

57. However, the concept of TAT remains the same, the object of conducting TAT in both the cases remain the same, the importance of TAT in both the cases also remain the same.

58. In both the cases, if the marks secured by the concerned candidate in TAT would hold valid for five years from the date of the result and further if a candidate is permitted to appear in TAT for three times then how could it lie in the mouth of the State Government that the TAT examination of 2012 would not be applicable for the recruitment of teachers in the government schools pursuant

to the advertisement issued in 2014. The Mark-sheet of the TAT examination on record also indicates that 2012 was considered as the first attempt and 2014 TAT exam was considered as the second attempt. It appears that the recruitment of teachers in the government secondary schools had not been undertaken since the year 2007. For the first time the recruitment process was undertaken in the year 2014. Even in the grant in aid schools after 2011 not a single recruitment has been made. I find substance in the submission of Mr. Bhatt that once the TAT exam is considered valid for a period of five years and three attempts are also permissible and if the candidate chooses to appear more than once and the average marks are to be considered then in such circumstances a candidate is eligible to apply for the post of teacher be it a private school or government school whenever any recruitment is undertaken within a period of five years. If the TAT is to be understood as recruitment-wise, the question of three attempts would also not arise.

59. Let me consider whether the petitioners are entitled to any relief on the basis of the doctrine of "legitimate expectation".

60. "Legitimate" in legal parlance means that which is lawful, legally recognized by law or according to law "Expectation" means the act or the instance of expecting or looking forward something expected or hoped for probability of an event and "expectation" is most often relatable to one's prospects. In Halsbury's Laws of England, Fourth Edition, Volume-I(I) 151 "legitimate expectations" finds mention of the following:

"A person may have a legitimate expectation of being treated in a certain way of an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. The existence of a legitimate expectation may have a number of different consequences; it may give locus standi to seek leave to apply for judicial review; it may mean that the authority ought not to act so as to defeat the expectation without some overriding reason of public policy to justify its doing so; or it may mean that, if the authority proposes to defeat persons's legitimate expectation, it must afford him an opportunity to make representations on the matter. The Courts also distinguish, for example in licensing cases, between original applications, applications to renew and revocations; a party who has been granted a licence may have a legitimate expectation that it will be renewed unless there is some good reason not to do so, and may therefore be entitled to greater procedural protection than a mere applicant for grant."

61. The Supreme Court in the case of Union of India and others Vs. Hindustan Development Corpn. and others, AIR 1994 SC 988 : (1993) 3 JT 15 : (1993) 2 SCALE 506 : (1993) 1 SCALE 56 : (1993) 3 SCC 499 has pointed out that the concept of legitimate expectation first stepped into the English Law in Schmidt v. Secretary of State for Home Affairs, (1969) 2 Ch 149, wherein it was observed

that an alien who had been given leave to enter the United Kingdom for a limited period had a legitimate expectation of being allowed to stay for the permitted time and if that permission was revoked before the time expires, that alien ought to be given an opportunity of making representations. Thereafter the concept has been considered in a number of cases. In *A.G. of Hong Kong v. Ng Yuen Shiu*, (1983) 2 AC 629, Lord Fraser said that "the principle that a public authority is bound by its undertakings as to the procedure it will follow, provided they do not conflict with its duty, is applicable to the undertaking given by the Government of Hong Kong to the respondent that each case would be considered on its merits." In *Council of Civil Services Union v. Minister for the Civil Service*, (1984) 3 All ER 935, a question arose whether the decision of the Minister withdrawing the right to Trade Union membership without consulting the staff which according to the appellant was his legitimate expectation arising from the existence of a regular practice of consultation, was valid. It was contended that the Minister had a duty to consult the staff as per the existing practice and that though the employee did not have a legal right, he had a legitimate expectation that the existing practice and that though the employee did not have a legal right, he had a legitimate expectation that the existing practice would be followed. On behalf of the Minister on the basis of the evidence produced, it was contended that the decision not to consult was taken for reasons of national security. The Court held as under:--

"An aggrieved person was entitled to invoke judicial review if he showed that a decision of a public authority affected him by depriving him of some benefit or advantage which in the past he had been permitted to enjoy and which he could legitimately expect to be permitted to continue to enjoy either until he was given reasons for its withdrawal and the opportunity to comment on those reasons or because he had received an assurance that it would not be withdrawn before he had been given the opportunity of making representations against the withdrawal."

Noticing, however,

"Of late the doctrine of legitimate expectation is being pressed into service in many cases particularly in contractual sphere while canvassing the implications underlying the administrative law,"

The Supreme Court has proceed to add,

"Since we have not come across any pronouncement of this Court on this subject explaining the meaning and scope of the doctrine of legitimate expectation, we would like to examine the same a little more elaborately at this stage,"

and put the questions,

"who is the expectant and what is the nature of the expectation? When does such an expectation become a legitimate one and what is the foundation for the same? What are the duties of the administrative authorities while taking a

decision in cases attracting the doctrine of legitimate expectation.

The Supreme Court has thereafter answered the above as follows:--

"28. Time is a three fold present: the present as we experience it, the past as a present memory and future as a present expectation. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law of custom or an establishment procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. 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."

"29. It has to be noticed that the concept of legitimate expectation in administrative law has now, undoubtedly, gained sufficient importance. It is stated that "Legitimate expectation" is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action and this creation takes it place beside such principles as the rules of natural justice, unreasonableness, the fiduciary duty of local authorities and "in future, perhaps, the principle of proportionately." A passage in Administrative Law, Sixth Edition by H.W.R. Wade page 424 reads thus:--

"These are revealing decisions. They show that the courts now expect Government department to honour their published statements or else to treat the citizen with the fullest personal consideration. Unfairness in the form of unreasonableness here comes close to unfairness in the form of violation of natural justice, and the doctrine of legitimate expectation can operate in both contexts. It is obvious, furthermore, that this principle of substantive, as opposed to procedural, fairness may undermine some of the established rules about estoppel and misleading advice, which tend to operate unfairly. Lord Scarman has stated emphatically that unfairness in the purported exercise of a power can amount to an abuse or excess of power, and this seems likely to develop into an important general doctrine."

"Another passage at page 522 in the above book reads thus:

It was in fact for the purpose of restricting the right to be heard that "legitimate expectation" was introduced into the law. It made its first appearance in a case where alien students of "scientology" were refused extension of their entry permits as an act of policy by the Home Secretary, who had announced that no discretionary benefits would be granted to this sect. The court of Appeal held

that they had no legitimate expectation of extension beyond the permitted time and so no right to a hearing, though revocation of their permits within that time would have been contrary to legitimate expectation. Official statements of policy, therefore, may cancel legitimate expectation, just as they may create it, as seen above. In a different context, where car-hire drivers had habitually offended against Airport Bye-laws, with many convictions and unpaid fines, it was held that they had no legitimate expectation of being heard before being banned by the Airport authority.

There is some ambiguity in the dicta about legitimate expectation, which may mean either expectation of a fair hearing or expectation of the licence or other benefit which is being sought. But the result is the same in either case; absence of legitimate expectation will absolve the public authority from affording a hearing."

62. In some cases a question arose whether the concept of the legitimate expectations is an impact only on the procedure or whether it also can have a substantive impact and if so to what extent. *Att. Gen. for New South Wales v. Quin*, (1990) 64 Australian Law Journal** Reports 327 is a case from Australia in which this aspect is dealt with. In that case the Local Courts Act abolished Courts of Petty Sessions and replaced them by Local Courts. S. 12 of the Act empowered the Governor to appoint any qualified person to be a Magistrate in the new Courts system. Mr. Quin, who had been a Stipendiary Magistrate in charge of a Court of Petty Sessions under the old system applied for, but was refused, an appointment under the new System. That was challenged. The challenge was upheld by the appellate Court on the ground that the Selection Committee had taken into account an adverse report on him without giving a notice to him of the contents of the same. In the appeal by the Attorney General against that order before the High Court, it was argued on behalf of Mr. Quin that he had a legitimate expectation that he would be treated in the same way as his former colleagues considering his application on its own merits. Coming to the nature of the substantive impact of the doctrine, Brennan, J. observed that the doctrine of legitimate expectations ought not to "unlock the gate which shuts the Court out of review on the merits." and that the Courts should not trespass "into the forbidden field of the merits" by striking down administrative acts or decisions which failed to fulfill the expectations. In the same case Mason, C.J., was of the view that if substantive protection is to be accorded to legitimate expectations that would encounter the objection of entailing "crucial interference with administrative decisions on the merits by precluding the decision-maker from ultimately making the decision which he or she considers most appropriate in the circumstances."

63. In *R.V. Secretary of State for the Home Department, ex parte Reddock*, (1987) 2 All ER 518, Taylor, J. after referring to the ration laid down in some of the above cases held thus:--

"On these authorities I conclude that the doctrine of legitimate expectation in

essence imposes a duty to act fairly. Whilst most of the cases are concerned, as Lord Roskill said, with a right to be heard, I do not think the doctrine is so confined. Indeed, in a case where *ex hypothesi* there is no right to be heard, it may be thought the more important to fair dealing that a promise or undertaking given by a Minister as to how he will proceed should be kept. Of course such promise or undertaking must not conflict with his statutory duty or his duty, as here, in the exercise of a prerogative power. I accept the submission of counsel for the secretary of State that the respondent cannot fetter his discretion. By declaring a policy he does not preclude any possible need to change it. But then if the practice has been to publish the current policy, it could be incumbent on him in dealing fairly to publish the new policy, unless again that would conflict with his duties. Had the criteria here needed changing for national security reasons, no doubt the respondent could have changed them. Had those reasons prevented him also from publishing the new criteria, no doubt he could have refrain from doing so. He had even decided to keep the criteria but depart from them in this single case for national security reasons, no doubt those reasons would have afforded him a defence to judicial review as in the GCHQ case."

64. In *Breen v. Amalgamated Engineering Union*, (1971) 2 Queen Bench Division 175, Lord Denning observed as under:

"If a man seeks a privilege to which he has no particular claim - such as an appointment to some post or other - then he can be turned away without a word. He need not to be heard. No explanation need be given; see the cases cited in *Schmidt v. Secretary of State for Home Affairs* (1969) 2 Ch 149, 170-171. But if he is a man whose property is at stake, or who is being deprived of his livelihood, then reasons should be given why he is being turned down, and he should be given a chance to be heard. I go further. If he is man who has some right or interest, or some legitimate expectation of which it would not be fair to deprive him without a hearing, or reasons given, then these should be afforded him, according as the case may demand."

65. When a challenge is made on the basis of the doctrine of legitimate expectation, the Supreme Court pointed out, that the same would not give scope to claim relief straight way from the administrative authorities in the absence of any crystallized right. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise or the position changes at the last minute e.g. change in the policy, amendment in the rules and regulations etc. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision then the decision-maker should justify the denial of such expectation by showing some overriding public interest. In the present case no public interest is being projected for the purpose of deleting the names of the petitioners from the select list but the decision rendered by the Division Bench of this Court is being made the basis for denial of such expectation.

66. A person who puts forward his claim on the doctrine of legitimate

expectation, in the first instance, must satisfy that there is a foundation and thus has the locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of the policy, the Court may refuse to interfere with such decision. In a given case whether there are such facts and circumstances, giving rise to the legitimate expectation, would be primarily a question of fact. If these tests are satisfied and if the Court is satisfied that a case of legitimate expectation is made out then the next question would be whether the failure to give an opportunity of hearing before the decision of affecting such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what should be the relief is again a matter which would be dependent on the several factors.

67. The Supreme Court in the case of Union of India (supra) has quoted from Schmidt's case (1969(2) Ch 149):--

"..... If a denial of legitimate expectation in a given case amounts to denial of rights guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse 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 of 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 "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 merits," particularly when the element of speculation and uncertainty is inherent in that very concept. As cautioned in 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 a directive principles thwarted to further his own interest. The caution, particularly in the changing scenario, becomes all the more important."

68. A Constitution Bench of the Supreme Court in the Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 referred

to the circumstances in which the doctrine of legitimate expectation can be invoked thus:

"The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn."

69. Another Constitution Bench, referring to the doctrine, observed thus in the *Confederation of Ex-Servicemen Associations and Others Vs. Union of India (UOI) and Others*, AIR 2006 SC 2945 : (2006) 8 JT 547 : (2006) 8 SCALE 399 : (2006) SCC(L&S) 2002 : (2006) 4 SCR 872 Supp : (2006) AIRSCW 4209 : (2006) 8 Supreme 390 :

"No doubt, the doctrine has an important place in the development of Administrative Law and particularly law relating to "judicial review". 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 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."

"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 absence of a provision of law, it should adhere to such practice without depriving its citizens of the benefit enjoyed or privilege exercised."

70. Thus, from the above at least one thing is clear that no relief should be granted solely on the basis of the doctrine of legitimate expectation. The doctrine of legitimate expectation can be brought in aid with the other circumstances emerging from the record of the case including some right if not a indefeasible right.

71. There is no doubt that the impugned decision was taken abruptly in the wake of the Division Bench Judgment referred to above and in such a manner that it has dashed the hopes and the expectations of the petitioners altogether. First, the State respondents have misconstrued and misinterpreted the Division Bench Judgment, secondly, the decision has not been taken in the public interest and

thirdly, there is no change as such in the policy. Even at the cost of repetition I may state that the state government was ready to issue the appointment letters but according to the state the scenario changed due to the judicial verdict. Once the judicial verdict is put aside as explained by me then in such circumstances the petitioners are entitled to the reliefs as prayed for.

72. Let me consider the matter from a different angle a little.

73. In the present case the petitioners were already selected for the post. As observed earlier they were also informed to remain present on a particular date to collect the appointment letters. Even at that stage, the authorities could have denied the appointment if public interest demanded as against the individual interest of the candidates or in the wake of the change of policy. However, who is to be held responsible for the situation which has been created. The State Government says that it is the judgment of the High Court that created the confusion and on the other hand, the say of the petitioners is that if they would have been told in advance that they would have to appear in the TAT conducted in 2014 then probably they would have surely appeared and this problem would not have cropped up. The petitioners entirely relied on the authorities as they were made to understand that the result of the TAT 2012 would hold good for the appointment as the secondary teacher in the government school. Therefore, I am of the view that although it may not be said that the State Government misguided or mislead the petitioners yet at the same time it goes without saying that they were also not told that they would not be eligible to be appointed as the secondary teacher in the government schools on the basis of the TAT 2012 and considering the confusion created for no fault on the part of the petitioners, are they not entitled to the equitable relief in exercise of the power under Article 226 of the Constitution. It could also not be argued that if the petitioners are appointed as the secondary teachers in the government schools the same would be against the public interest. I can understand if they had not at all cleared the TAT then probably they would have had no case for grant of any relief. However the only objection as on today is even if the judgment is to be interpreted in the manner as suggested by the state government that they had not appeared in the TAT conducted in 2014 as provided under the rules. That by itself would not render their selection in the peculiar facts of the case as contrary to the 2012 rules framed by the state government in the exercise of the power under Article 309 of the Constitution.

74. It must be borne in mind that the power of this Court under Article 226 of the Constitution is not limited to only that class of cases where a fundamental right has been infringed. There is in that sense a distinction between Article 32 of the Constitution which gives power to the Supreme Court to intervene where there is an allegation that the fundamental rights have been violated and Article 226 where the Court can give relief not only in case where the fundamental rights have been violated but also in those where in any other reason, it may be just and expedient for this Court to interfere for doing substantial justice.

75. In the result, having regard to all the circumstances referred to above these petitions succeed and are allowed. The respondents are directed to prepare a fresh select list taking into consideration the marks obtained by the petitioners in the TAT held in the year 2012. After the fresh select list is prepared the respondents shall proceed further in accordance with law so far as the actual appointment is concerned.

76. Rule is made absolute in both the petitions to the aforesaid extent. In view of the order passed in the main matters, the Civil application if any, is also disposed of.

77. After the judgment is pronounced Mr. Rohan Yagnik, the learned AGP prays for stay of the operation of the order for a period of four weeks. In the facts and circumstances of the case the order pronounced today shall remain stayed for a period of two weeks on the condition that the interim order passed earlier shall continue for a period of two weeks.