

(2016) 08 MAD CK 0143

In the Madras High Court

Case No : W.A. Nos. 213 & 572 of 2016, W.P. Nos. 11983, 17799, 17800, 17941 to 17944, 18885, 20929 to 20931, 21076, 21078, 21080, 21229, 21388, 21400, 21677, 21678, 21914, 21989, 22166, 22178, 22208, 22209, 22210, 22211, 22364, 22368, 22612 to 22615, 22797, 22831,

Secretary to Government

APPELLANT

Vs

S. Jeyalakshmi

RESPONDENT

Date of Decision : 24-08-2016

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Right of Children to Free and Compulsory Education Act, 2009 — Section 23

Citation : (2016) 5 CTC 639 : (2016) 7 MLJ 155

Hon'ble Judges : Mr. Huluvadi G. Ramesh And Mr. M.V.Muralidaran, JJ.

Bench : Division Bench

Advocate : Mr. P.H. Arvind Pandian Addl. Advocate General Assisted by, Mr. T.N. Rajagopalan, Spl.G.P, Mr. K. Karthikeyan, G.A, for the Appellants; Dr. Fr. A. Xavier Arulraj, S.c. for Ms. A. Arul Mary, Mr. M. Ajmal Khan, S.C. for M/s. Ajmal Associates, Mr. K.H. Ravik

Final Decision : Dismissed

Judgement

Mr. Huluvadi G. Ramesh, J.—The writ appeals have been filed by the Government challenging the interim direction of a learned single Judge directing the respondents therein/educational authorities to grant temporary approval to the writ petitioners for a period of five years to pay the salary for the teachers employed by them.

2. The writ petitions, including the writ petitions before the Madurai Bench, have been filed

(i) challenging the rejection of approval of appointment of Teachers who did not qualify themselves with Teacher Eligibility Test and consequently, to accord approval of their appointment;

- (ii) seeking approval of Teachers who had not qualified themselves with Teacher Eligibility Test and whose appointments were made prior to the prescription of Teacher Eligibility Test;
- (iii) challenging the order of stoppage of salary and termination and obtained an interim direction to pay salary till five years;
- (iv) challenging G.O.Ms.No.181, School Education, dated 15.11.2011 and the consequential order refusing to grant approval;
- (v) challenging G.O.Ms.No.181, School Education, dated 15.11.2011 and also challenging the order of the educational authority refusing to grant approval by persons who passed Teachers Eligibility Test;
- (vi) challenging G.O.Ms.No.181, School Education, dated 15.11.2011 and seeking approval of appointment of Teachers;
- (vii) challenging G.O.Ms.No.181, School Education, dated 15.11.2011 and the consequential order directing the Teachers whose appointments were already approved, to complete Teachers Eligibility Test before 31.3.2015;
- (viii) challenging G.O.Ms.No.181, School Education, dated 15.11.2011 as not applicable to the Minority Educational Institutions; and
- (ix) challenging G.O.Ms.No.76 dated 18.3.2015 issued by the Puducherry Government.

3. The contesting respondents in the writ appeals and the writ petitioners are Teachers employed in the minority aided Schools. The writ petitioners and the contesting respondents in the appeals are working as Teachers in the minority schools, appointed as against the sanctioned posts. When the minority Schools sought approval of such appointment of Teachers, the authorities rejected the same on the ground that the Teachers who were appointed did not qualify themselves with Teacher Eligibility Test (in short "TET"). However, appointment of some of the Teachers who were not qualified with TET, was approved and they are receiving salary. Thereafter, the authorities cancelled the approval of some of the teachers. Some of the appointments were pending approval for long time, without any order of rejection. In some cases, they are receiving salary after obtaining an order of interim direction directing to pay salary to them and to qualify themselves with TET within five years. In three cases, approval of the appointment of Teachers in the Union Territory of Puducherry was not granted pursuant to G.O.Ms.No.76 dated 18.3.2015.

4. In the above backdrop, writ petitions are filed by the Teachers and minority Schools, either challenging the order of rejection of approval or challenging G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011, or challenging the order directing stoppage of salary or seeking approval of appointment, or challenging G.O.Ms.No.76 dated 18.3.2015, etc. and the present writ appeals are filed by the Government challenging the interim direction to

grant temporary approval and to release the salary.

5. The main contention of Dr. Fr.A. Xavier Arulraj, learned senior counsel appearing for some of the writ petitioners is that any order emanated from the RTE Act, 2009 is not applicable to the minority Schools, both aided and unaided, as per the judgment of the Apex Court in *Pramati Educational & Cultural Trust v. Union of India* [(2014) 8 SCC 1] and therefore, G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 prescribing the minimum qualification of TET for appointment to the post of Teachers, which was passed pursuant to the RTE Act, 2009 and the notification issued by the NCTE, will not apply to the minority Schools.

6. The learned senior counsel contended that the State Government has no power to prescribe minimum qualification of TET in G.O.Ms.No.181 dated 15.11.2011, pursuant to the NCTE notification, when Section 23(1) of the RTE Act, 2009, states that only an Academic Authority authorised by the Central Government can lay down minimum qualifications, since the field is occupied by the Central Government.

7. It is also contended by the learned senior counsel that the Teachers are appointed in the aided minority Schools only if they possess the minimum qualifications prescribed under Section 19 read with Rule 15 and Annexure V of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and Rules, 1974. Therefore, there is no necessity for the said Teachers to undergo TET.

8. The learned senior counsel contended that when G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011 will not be applicable to the minority Schools, the rejection of approval of the appointments made by the minority Schools, as against the sanctioned and regular posts and stopping of payment of salary to those appointed persons, on the ground that they did not qualify themselves with TET, is arbitrary and is in violation of natural justice.

9. The learned senior counsel further contended that even assuming without admitting that G.O.Ms.No.181, School Department dated 15.11.2011 is applicable to the minority Schools, the action of the educational authorities in cancelling the approval already granted to some of the Teachers appointed in the minority Schools on the ground that they were not qualified with TET, is erroneous, particularly when the G.O. itself provides for five years time to those who are in employment, to qualify themselves with TET and in view of the fact that TET has not been conducted after 2013.

10. In respect of G.O.Ms.No.76 dated 18.3.2015 issued by the Union Territory of Puducherry is concerned, it is contended that when the RTE Act itself was held to be unconstitutional in respect of minority Schools, the consequential G.O. is also unconstitutional and therefore, the same has to be quashed.

11. In support of his contentions, the learned senior counsel relied upon the decisions of Jharkhand High Court in *Anjum Firdaisi v. The State of Jharkhand*

[WP (S) No.6549 of 2013 dated 14.10.2014] and Aurangabad Bench of Bombay High Court in Anjuman Ishaat E Taleem Trust v. The State of Maharashtra [926 WP No.1164 of 2015 dated 08.5.2015].

12. The above arguments were adopted by the learned senior counsel and learned counsel appearing for the petitioners in the other writ petitions. They also relied upon the following decisions:

- (i) State of Rajasthan v. R.S. Sharma & Co. [(1988) 4 SCC 353];
- (ii) Harbhajan Singh v. State of Punjab [(2009) 13 SCC 608];
- (iii) The Forum of Minority Institutions & Associations v. The State of Tamil Nadu [(2011) 1 CTC 162];
- (iv) Pramati Educational & Cultural Trust v. Union of India [(2014) 8 SCC 1]; and
- (v) Ashwini Thanappan v. Director of Education [(2014) 8 SCC 272].

13. In response to the above contentions, the learned Additional Advocate General contended that though it is held by the Apex Court in Pramati Educational & Cultural Trust v. Union of India [(2014) 8 SCC 1], that RTE Act, 2009 is not applicable to the minority Schools, the said decision will not take away the right of the Government to have uniformity in the minimum qualification to all the institutions in the State, in order to maintain the quality of education imparted to the students.

14. The learned Additional Advocate General further contended that Section 23(1) of the RTE Act, 2009, stipulates that all the State Governments have to recruit Secondary Grade and B.T. Assistants only by conducting Teacher Eligibility Test and prescribes TET as the minimum qualification. Since G.O. Ms. No.181 dated 15.11.2011 is a sequel to Section 23(1) of the RTE Act, 2009, the educational authorities have to conform to the same and therefore, the action of the educational authorities in rejecting the request for approval of the appointments cannot be said to be arbitrary and in violation of principles of natural justice.

15. The learned Additional Advocate General also contended that there is no quarrel as to the minimum qualifications prescribed by the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973, and Rules, 1976, as contended on behalf of the petitioners. The Government issued G.O.Ms.No.181 dated 15.11.2011 only to ensure that the education imparted to the children is qualitative one. Therefore, it cannot be said that the Government has no power to issue such order when the said Act and Rules are in force.

16. It is the contention of the learned Additional Advocate General that the decision in Pramati Educational & Cultural Trust v. Union of India [(2014) 8 SCC 1] relied upon by the learned senior counsel for the petitioners cannot be applied to the case on hand, since the said case has been referred to the Bench of appropriate strength for further examination, in the case of Ashwini Thanappan

v. Director of Education [(2014) 8 SCC 272] and therefore, the interim direction given by the learned single Judge is contrary to the decision of the Supreme Court.

17. It is the further contention of the learned Additional Advocate General that granting of interim order directing to release salary to the Teachers and granting time till 31.3.2015 to qualify themselves with TET tantamount to allowing the writ petition itself and therefore, the order of the learned single Judge granting interim direction has to be set aside.

18. As regards G.O.Ms.No.76 dated 18.3.2015 issued by the Government of Puducherry, the learned Additional Advocate General contended that the decision of the Union Territory of Puducherry to recognise only CTET conducted by the CBSE for the appointment of Teachers is only to have a uniform syllabus and therefore, the same cannot be termed as illegal and arbitrary.

19. In support of his contentions, he relied upon the following decisions:

- (i) State of West Bengal v. Alpana Roy [(2005) 8 SCC 296];
- (ii) Government of Andhra Pradesh v. K.Brahmanandam [(2008) 5 SCC 241];
- (iii) Pramod Kumar v. UP Secondary Education Services Commission [(2008) 7 SCC 153];
- (iv) Bhartiya Seva Samaj Trust v. Yogeshbhai Ambalal Patel [(2012) 9 SCC 310];
- (v) State of Punjab v. Anita [(2015) 2 SCC 170];
- (vi) Society for Unaided Private Schools v. Union of India [(2012) 6 SCC 1] and [(2012) 6 SCC 102];
- (vii) Balwant Rai Saluja v. Air India Limited [(2014) 9 SCC 407]; and
- (viii) Sindhudurg Zilla Shikshan Sanstha Chalak Mandal v. The Union of India, LNIND 2015 BOM 853].

20. Before delving into the issues on hand, it is necessary to have a look at the background of G.O.

21. To provide free and compulsory education for all children up to the age of fourteen years is a constitutional dream. Article 45 of the Constitution, originally mandated the State to endeavour to provide, within a period of 10 years from the commencement of the Constitution, free and compulsory education for all children until they complete the age of 14 years. Article 45 was amended by the 86th Constitution Amendment Act, 2002. It reads as follows:

"The State shall endeavour to provide early childhood care and education for all children until they complete the age of fourteen years."

22. By the very same amendment, Article 21-A of the Constitution was inserted declaring that right to education of children from the age of six to fourteen is a

fundamental right. Article 21A reads as under:

"Right to education.-

21A. The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.".

23. Thus, the Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009), (for brevity "RTE Act") with the object of providing free and compulsory education to all children of the age of 6 to 14 years. The said Act came into force with effect from 01.04.2010. Section 23 of the RTE Act makes it compulsory for a person, who seek appointment in the schools covered under the RTE Act, to possess minimum qualification as laid down by the academic authority. Section 23 of the RTE Act reads as under:

"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."

24. As per Section 23(1) of the RTE Act, National Council for Teachers Education (in short "NCTE") was authorised as academic authority by the Government of India in the notification dated 31.03.2010.

25. The Academic Authority, NCTE, has indicated that all the States in which teachers are recruited in future for the elementary segment should have passed the Teacher Eligibility Test to be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE for this purpose. Accordingly, it issued a notification dated 23.08.2010 in terms of Section 23(1) of the RTE Act, laying down the minimum qualifications for a person to be eligible for appointment as a teacher in Classes I to VIII. Clause 1 of the said Notification prescribed the minimum qualifications for appointment to the post of teacher, both for Classes I to V and for Classes VI to VIII. A pass in the Teacher Eligibility Test, to be conducted by the appropriate Government, in accordance with the guidelines framed by the NCTE, was made as an essential condition for

appointment as a teacher, both for Classes I to V and for Classes VI to VIII.

26. Thereafter, NCTE also issued a set of guidelines, by their Memorandum, dated 11.02.2011, for the conduct of the Teacher Eligibility Test. Paragraph 9 of the said guidelines issued on 11.02.2011 stipulated that a person who scores 60% and more in Teacher Eligibility Test will be considered as having passed the examination. Paragraph 9 also contained a small leverage for the grant of concession and it reads as follows:

"9. A person who scores 60% or more in the TET exam will be considered as TET pass. School managements (Government, local bodies, Government aided and unaided)

(a) may consider giving concessions to persons belonging to SC/ST, OBC, differently abled persons, etc. In accordance with their extant reservation policy; (b) should give weightage to the TET scores in the recruitment process; however, qualifying the TET would not confer a right on any person for recruitment/employment as it is only one of the eligibility criteria for appointment."

27. Accepting the recommendation and the Notification issued by the National Council for Teacher Education, the Government of Tamil Nadu have also issued G.O. Ms.No.181, School Education (C2) Department, dated 15.11.2011.

28. G.O. Ms.No.181, School Education (C2) Department, dated 15.11.2011 reads as follows:-

"The Right of Children to Free and Compulsory Education Act, 2009 was enacted by the Parliament in 2009 to provide for free and compulsory education to all children of the age of 6-14 years. The Act was published in the Gazette of India on 27th August 2009. Subsequently, the said Act was republished by the Government of Tamil Nadu in the Tamil Nadu Government Gazette on 24th February 2010. The said Act came into force with effect from 1st April 2010.

2. As per sub-section (1) of section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (RTE) the National Council for Teacher Education (NCTE) has been appointed as the Academic Authority by Government of India. The said Academic Authority has indicated to all the States that the teachers to be recruited in future for the elementary segment should have passed the "Teacher Eligibility Test"(TET) to be conducted by the appropriate Government in accordance with the guidelines framed by the National Council for Teacher Education for the purpose.

3. The said section clearly specifies that teachers who at the commencement of this Act, do not possess minimum qualifications as prescribed by the Academic Authority authorised by the Central Government shall acquire such minimum qualifications within a period of 5 years. Hence, the "Teacher Eligibility Test (TET)" would have to be conducted for recruiting teachers for the primary and upper primary classes. The teachers working in unaided private schools are required to pass Teacher Eligibility Test within 5 years. In the State of Tamil

Nadu, Secondary Grade Teachers (those teaching classes I to V) are required to have minimum qualifications of D.T.Ed. and Graduate Assistants (BT Assistant) (those teaching classes VI to VIII) are required to have minimum qualification of B.Ed. They should also pass Teacher Eligibility Test forthwith.

4. However, with the passing of the RTE Act, it is now mandatory for all the State Governments to recruit Secondary Grade and BT teachers only by conducting a Teacher Eligibility Test.

5. In the G.O.1st read above, orders have been issued as directed by the Hon'ble Supreme Court of India on 20.8.2008 in SLP (c) No.18227 - 18228/2008 that the State Government should followed the Statewide seniority in employment registration while appointing Secondary Grade Teachers by calling for the list of eligible persons from all the District Employment Exchanges and by newspaper Public Advertisements throughout the State. The Supreme Court has further directed that the aforesaid arrangement will apply for any recruitment to be made pending disposal of these appeals.

6. In the Government letter 2nd read above, the Government changed the recruitment policy in 2006-07 for recruiting Graduate Assistants, from written examination to Statewide registration seniority in Employment Exchange.

7. The Government carefully examined on the lines of the orders of Supreme Court of India in SLP(c) No.18227-18228 dated 20.8.2008 and National Council for Teacher Education guidelines and issue the following orders in respect of change of policy for recruitment of Secondary Grade and B.T Teachers.

i. In respect of Secondary Grade Teachers, the statewide seniority in Employment Exchange Registration will continue to be followed till the disposal of the SLP filed in the Supreme Court of India.

ii. In respect of Graduate Assistants (B.T.Teachers recruited by TRB for the Classes VI to X) in all middle schools, High/Higher Secondary Schools, selection through written examinations ("Teacher Eligibility Test") in accordance with the guidelines framed by National Council for Teacher Education and certificate verification, will be followed.

iii The Teachers Recruitment Board is designate as the Nodal Agency for conducting of Teacher Eligibility Test and recruitment of Teachers.

8. Guidelines for conducting Teacher Eligibility Test is enclosed in the Annexure to the Government Order."

29. A bare reading of the G.O. extracted above would make it clear that Teacher Eligibility Test shall be conducted by the Teachers Recruitment Board in accordance with the guidelines framed by the National Council for Teacher Education. It also prescribed a set of guidelines for the conduct of Teacher Eligibility Test in the Annexure. It is also specified that teachers who do not have minimum qualification will be given five years time to acquire the minimum

qualification.

30. G.O. Ms.No.181 dated 15.11.2011 was a sequel to Section 23(1) of the RTE Act, 2009. The said Act was under challenge before the Supreme Court in Society for Unaided Private Schools of Rajasthan v. Union of India [(2012) 6 SCC 1]. The Apex Court after considering the submissions made on both sides, held that RTE Act is constitutionally valid and applicable to all Schools, except unaided minority Schools, as the right of children is not only to receive education, but also to receive qualitative education.

31. The Teachers Recruitment Board conducted TET on 12.7.2012. The details of candidates appeared for the exam and the percentage of pass are presented in a tabular form.

Sl. No.

TET Paper

No. of candidates appeared

No. of candidates passed

Percentage

1

Paper I

305405

1735

0.57%

2

Paper II

409121

713

0.17%

Total

714526

2448

0.34%

32. In view of the fact that the percentage of pass was very low, the Board conducted a supplementary examination on 14.10.2012. The details of candidates appeared and the percentage of pass are as under:

Sl. No.

TET Paper

No. of candidates appeared

No. of candidates passed

Percentage

1

Paper I

278725

10397

3.70%

2

Paper II

364370

8864

2.40%

Total

643095

19261

2.90%

33. Taking note of the fact that even the supplementary examination conducted showed only marginal improvement, the Government thought to relax the minimum marks prescribed for pass. Accordingly, the Government issued G.O.Ms. No.25, School Education (TRB) Department, dated 06.02.2014, giving 5% relaxation of the marks from 60% to 55% to all categories of candidates, except General candidates, making it applicable to the test conducted during 2013. The relevant portion of the G.O. reads as follows:

"3. In continuation of the announcement made by the Hon"ble Chief Minister, the Government orders as follows:

a) relaxing 5% marks from the present pass mark of 60% and fix the pass mark at 55% for candidates belonging to Scheduled Caste, Scheduled Tribes, Backward Classes, Backward Classes (Muslim), Most Backward Classes, Denotified Communities and Persons with Disability (PWD) as given below. The Candidates are required to obtain the following minimum marks in Paper I for Secondary Grade Teachers and Paper II for Graduate Assistants:-

Category

Maximum marks

Minimum marks (%) to be obtained in TNTET

Paper I

Paper II

General

150

60% or 90 marks

60% or 90 marks

SC, ST, BC, BC(M), MBC, DNC and Persons with disability (PWD)

150

55% or 82.5 marks rounded off to 82 marks

55% or 82.5 marks rounded off to 82 marks

b) relaxing 5% marks from the 60% marks prescribed for clearing of the Tamil Nadu Teacher Eligibility Test, 2013 held on 17.8.2013 and 18.8.2013 for Scheduled Caste, Scheduled Tribes, Backward Classes, Backward Classes (Muslims), Most Backward Classes, De-notified Communities and Persons with Disability (PWD) and fixed at 55% or 82 marks.

c) For all future Teacher Eligibility Tests, to fix the minimum marks for candidates belonging to General Category at 90 marks (60% of 150) and for candidates belonging to Scheduled Caste, Scheduled Tribes, Backward Classes, Backward Classes (Muslims), Most Backward Classes, De-notified Communities, and Persons with Disability (PWD) at 82 marks (55% of 150)."

34. The above G.O.Ms.No.25 dated 06.02.2014 was quashed by a Division Bench of this Court. Hence, the Government filed an appeal before the Supreme Court and the same is pending.

35. In the meantime, the Government of Puducherry, by G.O.Ms.No.65 dated 09.7.2012, decided to recognise TET for the purpose of appointment of Teacher in the Union Territory of Puducherry. After the Supreme Court held that RTE Act, 2009 is not applicable to the minority Schools, the Government of Puducherry issued G.O.Ms.No.76 dated 18.3.2015 making CTET conducted by the Central Board of Secondary Education applicable to the Union Territory of Puducherry, for appointment of Teachers from Class I to VIII, making it clear that certificate obtained by those who have completed TNTET will be valid for seven years.

36. With the above background, let us now refer to the legal principles laid down in this regard.

37. Strong reliance was placed on behalf of the writ petitioners on the decision of the Apex Court in *Pramati Educational and Cultural Trust v. Union of India* [(2014) 4 MLJ 486]. The relevant portions read as follows:

"45. Under Article 30(1) of the Constitution, all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. Religious and linguistic minorities, therefore, have a special constitutional right to establish and administer educational schools of their choice and this Court has repeatedly held that the State has no power to interfere with the administration of minority institutions and can make only regulatory measures and has no power to force admission of students from amongst non-minority communities, particularly in minority schools, so as to affect the minority character of the institutions. Moreover, in *Kesavananda Bharati Sripadagalvaru v. State of Kerala & Anr.* (supra) Sikri, CJ., has even gone to the extent of saying that Parliament cannot in exercise of its amending power abrogate the rights of minorities. To quote the observations of Sikri, CJ. in *Kesavananda Bharati Sripadagalvaru v. State of Kerala & Anr.* (supra):

"178. The above brief summary of the work of the Advisory Committee and the Minorities Sub-committee shows that no one ever contemplated that fundamental rights appertaining to the minorities would be liable to be abrogated by an amendment of the Constitution. The same is true about the proceedings in the Constituent Assembly. There is no hint anywhere that abrogation of minorities' rights was ever in the contemplation of the important members of the Constituent Assembly. It seems to me that in the context of the British plan, the setting up of Minorities Sub-committee, the Advisory Committee and the proceedings of these Committees, as well as the proceedings in the Constituent Assembly mentioned above, it is impossible to read the expression "Amendment of the Constitution" as empowering Parliament to abrogate the rights of minorities."

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

46. When we look at the 2009 Act, we find that Section 12(1)(b) read with Section 2(n) (iii) provides that an aided school receiving aid and grants, whole or part, of its expenses from the appropriate Government or the local authority has to provide free and compulsory education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent. Thus, a minority aided school is put under a legal obligation to provide free and compulsory elementary education to children who need not be children of members of the minority community which has established the school. We also find that under Section 12(1)(c) read with Section 2(n)(iv), an unaided school has to admit into twenty-five per cent of the strength of class I children belonging to weaker sections and disadvantaged groups in the neighbourhood.

Hence, unaided minority schools will have a legal obligation to admit children belonging to weaker sections and disadvantaged groups in the neighbourhood who need not be children of the members of the minority community which has established the school. While discussing the validity of clause (5) of Article 15 of the Constitution, we have held that members of communities other than the minority community which has established the school cannot be forced upon a minority institution because that may destroy the minority character of the school. In our view, if the 2009 Act is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Therefore, the 2009 Act insofar it is made applicable to minority schools referred in clause (1) of Article 30 of the Constitution is ultra virus the Constitution. We are thus of the view that the majority judgment of this Court in *Society for Unaided Private Schools of Rajasthan v. Union of India & Anr.* (supra) insofar as it holds that the 2009 Act is applicable to aided minority schools is not correct."

(emphasis supplied)

38. A plain reading of the above would make it clear that the Apex Court observing that if RTE Act, 2009 is made applicable to the minority Schools, it will abrogate the right of the minorities conferred under Article 30(1) of the Constitution, held that RTE Act, 2009 insofar as it is made applicable to the minority Schools is ultra vires the Constitution and also held that the judgment rendered by the Apex Court in *Society for Unaided Private Schools* with respect to the applicability of RTE Act 2009 to the aided minority Schools is not correct. Thus, it is made clear that the RTE Act, 2009 is not applicable to the aided or unaided minority Schools.

39. In the decision relied upon by the learned senior counsel for the petitioners in *Ashwini Thanappan v. Director of Education* [(2014) 8 SCC 272], the issue that arose for consideration related to the interpretation of Article 27. The matter was referred to the Bench of appropriate strength for further examination, since the learned counsel submitted that the judgment in *Pramati Educational & Cultural Trust* is inconsistent with the judgment of the Constitution Bench in *P.A. Inamdar v. State of Maharashtra* [(2005) 6 SCC 537]. The matter is pending consideration.

40. In view of the above, the contention of the learned Additional Advocate General that the order of the learned single Judge directing the release of salary is not sustainable, in view of the reference of *Ashwini Thanappan* case to the Bench of appropriate strength, cannot be accepted, since the issue in *P.A. Inamdar* is with respect to quota of admission of students in the unaided professional institutions, entrance test and fee structure. Therefore, the outcome of *Ashwini Thanappan* has nothing to do with the case on hand.

41. The Jharkhand High Court, in *Anjum Firdaisi v. The State of Jharkhand* [WP (S) No.6549 of 2013 dated 14.10.2014], taking note of the submission made by the learned counsel for the State that the applicability of the Act 2009 on the

aided/unaided minority School is no longer res integra in view of the judgment in Pramati Educational & Cultural Trust, directed the respondent to take an appropriate decision for recognising the service of the petitioners and also approval of their proposition statements.

42. The Bombay Bench at Aurangabad, in Anjuman Ishaat E Taleem Trust v. The State of Maharashtra [926 WP No.1164 of 2015 dated 08.5.2015], where the approval of appointment of Assistant Teacher was rejected on the ground that the said Teacher had not passed TET examination, held that the order rejecting approval is not legally sustainable in view of the judgment of the Apex Court in Pramati Educational & Cultural Trust.

43. Though in the light of the decisions of High Courts of Jharkhand and Bombay, we are bound by the ratio laid down by the decision of the Apex Court in Pramati Educational and Cultural Trust, one important aspect should be borne in mind, namely, the purpose for which the RTE Act, 2009 was enacted. Hence, it is necessary to refer to the object of the Act, which reads as follows:

"An Act to provide for free and compulsory education to all children of the age of six to fourteen years."

44. It goes without saying that the RTE Act itself was enacted only to provide free and compulsory education and by such enactment, the constitutional dream to provide free and compulsory education to the children between the age of six to fourteen, was fulfilled nearly after fifty years. Providing free and compulsory education to children would not only mean education, but it should be a qualitative one. Of course, there is no dispute about it.

45. The issue now left to be decided by us is whether G.O.Ms.No.181 dated 15.11.2011 issued by the Government prescribing a pass in TET as minimum qualification for Teachers will be binding on the minority institutions, in view of Article 30 and the decision of the Supreme Court in Pramati Educational and Cultural Trust. In this regard, it would be apposite to refer to the law laid down by the Apex Court.

46. The Supreme Court, in Rev. Sidhajibhai Sabhai v. State of Bombay [AIR 1963 SC 540], pointed out the limits of reasonable restrictions that could be imposed by the State, though Article 30 is couched in unrestricted terms. It observed, while interpreting Article 30, as follows:

"Regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may be undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed.

....

Such regulation must satisfy a dual test - the test of reasonableness, and the test that it is regulative of the educational character of the institution and is

conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it."

47. In *St. Stephen's College v. University of Delhi* [(1992) 1 SCC 558], the Supreme Court held that so long as the basic right of minorities to manage educational institution is not taken away, the State is competent to make regulatory legislation.

48. In *TMA Pai Foundation v. State of Karnataka* [(2002) 8 SCC 481], the Constitution Bench of the Apex Court held that the right under Article 30(1) is not so absolute as to prevent the Government from making any regulation whatsoever. Any regulation framed in the national interest must necessarily apply to all educational institutions whether run by the majority or the minority and such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. While concluding the position regarding minority rights under Article 30, it held in paragraphs 137 and 138 as follows:

"137. The right under Article 30(1) has, therefore, not been held to be absolute or above other provisions of the law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere, as such provisions do not in any way interfere with the right of administration or management under Article 30(1).

138. In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavoured or, for that matter, receive more favourable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do."

49. With respect to the question whether the statutory Provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of state employees, teachers and Principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities, the Constitution Bench in *T.M.A. Pai Foundation*, answered as follows:

"So far as the statutory provisions regulating the facets administration is concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as conditions of affiliation to an University or Board have to be complied with, but in the matter of day-to-day Management, like appointment of staff, teaching and non-teaching and administrative control over them, the Management should have

the freedom and there should not be any external controlling agency. However, a rational procedure for selection of teaching staff and for taking disciplinary action has to be evolved by the Management itself. For redressing the grievances of such employees who are subjected to punishment or termination from service, a mechanism will have to be evolved and in our opinion, appropriate tribunals could be constituted, and till then, such tribunal could be presided over by a Judicial officer of the rank of District Judge. The state or other controlling authorities, however, can always prescribe the minimum qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State without interfering with overall administrative control of Management over the staff, Government/University representative can be associated with the selection committee and the guidelines for selection can be laid down. In regard to un-aided minority educational institutions such regulations, which will ensure a check over unfair practices and general welfare, of teachers could be framed.

There could be appropriate mechanism to ensure that no capitation fee is charged and profiteering is not restored to.

The extent of regulations will not be the same for aided and un-aided institutions.

(emphasis supplied)"

50. In the light of the above discussed cases, it is clear that the State can impose reasonable regulations on the minority institutions for protecting the larger interest of the State and the nation, but it should not destroy the minority character of the institutions. It is also not in dispute that the management of the minority Schools should be given freedom in the appointments of Teachers and there should not be any external controlling agency and the procedure for selection of Teachers should be evolved by the Management itself.

51. Now, we shall look at the intention of the Government while issuing G.O.Ms.No.181, School Education (C2) Department, dated 15.11.2011. The intention is to ensure the quality of education imparted to the children and to maintain uniformity in teaching. In other words, G.O.Ms.No.181 has been issued only to standardise the quality education imparted to children across the various types of institutions. Thus, it is evident that the policy decision of the Government is not to compromise on the quality of Teachers, but to appoint quality Teachers and therefore, the same cannot be found fault with.

52. However, the Government, before issuing G.O.Ms.No.181 dated 15.11.2011, lost sight of one important fact, namely imposition of a condition on the Teachers, who were appointed prior to the issue of G.O., in non minority and minority Schools, both aided and unaided, to qualify themselves with TET within a period of five years, in order to continue in service, would cause great hardship

to them. Moreover, if the Teachers who have put in more number of years of service, could not pass TET within five years, their continuation in service would be in jeopardy. Further, it is seen that the percentage of pass in the TET examination conducted in 2012 and 2013 was very minimal.

53. At this juncture, it is would be apt to refer to the qualifications prescribed for appointment as Teachers in Private Schools under Annexure V of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. The name of the post and the qualification that is relevant to the case on hand reads as follows:

Name of the Post

Qualifications

B.T. Assistant

B.A. or B.Sc. or its equivalent

and

B.T. or B.Ed. or L.T.

And

Trained Teachers Certificate to Collegiate Grade

Secondary Grade Teacher

(1) S.S.L.C.

(2) T.S.L.C. of Secondary Grade or its equivalent

54. In Annexure III to the Tamil Nadu Minority Schools (Recognition & Payment of Grant) Rules, the qualifications for appointment as teachers in minority Schools are prescribed as under:

B.T. Assistant

(i) B.A. or B.Sc. or its equivalent

(ii) B.T. or B.Ed., or L.T. and

(iii) Trained Teachers' Certificate or Collegiate Grade

Secondary Grade Teacher

(i) S.S.L.C.

(ii) T.S.L.C. of Secondary Grade or its equivalent provided that the teachers who have passed the Nursery, Montessori and Kindergarten School Leaving Certificate Examination of Secondary Grade shall be employed to handle standards I to II only.

55. A reading of the qualifications extracted above would clearly show that the B.T. Assistants are being appointed only if they are qualified and possessed with

Teachers Training Certificate. As per G.O.Ms.No.181 dated 18.11.2011, Secondary Grade Teachers are being appointed only if they are qualified and possessed with Diploma in Teachers Education. Thus, it is evident that the persons who underwent either Teachers Training course or Diploma in Teachers Education alone are eligible for appointment either as B.T. Assistants or Secondary Grade Teachers as the case may be. Therefore, there cannot be an iota of doubt as to their eligibility for appointment as Teachers. Once they are appointed as Teachers after having been found eligible as on the said date of their appointment, they cannot be expected to write an examination and to qualify in such examination at a much later point of time.

56. We are, therefore, of the considered view that the Government may seek a clarification from the NCTE, in the light of what is stated in the preceding paragraph, whether the prescription of minimum qualification of TET can be made applicable prospectively for the Teachers who were appointed subsequent to the date of the issue of G.O., in both non minority and minority institutions and not retrospectively as the same would cause undue hardship to the Teachers who have been serving for a quite a long time.

57. In case of NCTE clarifying that G.O. can be given prospective effect, the Government, in its wisdom, may think of conducting refresher course for the Teachers who were appointed prior to the issue of G.O., during the annual vacation, instead of insisting for qualifying in TET, since the Teachers have already undergone either Teachers Training Course or Diploma in Teachers Education, as the case may be, as per the Education Act of the State. Moreover, we are of the opinion that asking the Teachers who have been appointed after having found eligible and working for quite a long time, to undergo TET examination and to pass the same at this stage, would be nothing but imposing upon them a task, which they have already achieved by passing the requisite tests for getting appointed. Further, an uncertainty also would get created in the minds of the Teachers that lest they pass the TET examination, their career would be hanging in balance as the Damocles Sword. Keeping the above in mind, the Government may, in consultation with NCTE, formulate a scheme for conducting refresher course for those Teachers who were appointed prior to the issue of G.O., as this would set at rest the uncertainty that would otherwise get created in the minds of the persons already in employment.

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

59. Insofar as minority institutions are concerned, the contention of the learned senior counsel appearing for the minority Schools is that when Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 received the assent of the President of India and it is still in force, it cannot be supplanted by an Executive

Order, namely by G.O.Ms.No.181 dated 15.11.2011. Further, the Apex Court has clearly held in *Pramati Educational & Cultural Trust* that RTE Act, 2009 is not applicable to the minority institutions. Therefore, we have no hesitation to hold that the right conferred under Article 30(1) of the Constitution cannot be abrogated. Consequently, G.O.Ms.No.181 dated 15.11.2011, which was issued pursuant to the directions of NCTE, cannot be made applicable to the minority institutions.

60. In the light of the above, we are of the view that the Government cannot insist upon the minority institution, both aided or unaided, to abide by any Regulation framed under the provisions of the RTE Act. Therefore, we hold that G.O.Ms.No.181, School Education (C2) Department dated 15.11.2011 issued by the Government of Tamil Nadu, is not applicable to the minority institutions. Similarly, G.O.Ms.No.76 dated 18.3.2015 issued by the Government of Puducherry, is also not applicable to the minority institutions.

61. Though the intention of the Government is that there should not be any discrimination among the Teachers working in non-minority Schools and minority Schools with respect to qualification and that there should be uniformity in the teaching imparted to the children, in view of the decision of the Apex Court in *Pramati Educational & Cultural Trust*, the Government cannot take shelter under the guise of discrimination to impose restrictions on minority institutions.

62. However, keeping in mind the larger interest in which the Government has issued the above G.Os., this Court feels that the minority institutions may also consider conducting a refresher course and also some interactive sessions to all the Teachers during annual vacation, in order to ensure and improve the quality of Teachers.

63. In the result, the writ petitions are allowed and the writ appeals are dismissed with a direction to the Government to release the salary of the Teachers and also to pay the arrears of salary within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected M.Ps. are closed.