

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.9.2014

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Writ Petition (MD)Nos.2677 and 4558 of 2014
and
M.P.(MD)Nos.1 of 2014 in W.P.(MD)No.2677 of 2014
and
2 of 2014 in W.P.(MD)No.4558 of 2014

W.P.(MD)No.2677/2014:

S.Vincent ... Petitioner

Vs.

1.State of Tamil Nadu,
rep.by its Secretary to Government,
School Education (TRB) Department,
Secretariat, Chennai-600 009.

2.The Chairman,
Teachers Recruitment Board, Chennai-600 006.

3.The Director of Elementary Education,
Chennai-600006. ... Respondents

W.P.(MD)No.4558/2014:

K.K.Ramakrishnan ... Petitioner

Vs.

1.The Union of India, rep.by its
Ministry of Human Resource Development,
Department of Women and Child Development,
New Delhi.

2.The Principal Secretary to Government,
School Education Department,
Chennai.

3.The Chairman,
Teachers Recruitment Board,
College Road,
Chennai-600 006.

4.The Member Secretary,
National Council for Teachers Education,
New Delhi.

... Respondents

W.P.(MD)No.2677/2014:

Writ petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, calling for the records pertaining to the order passed by the 1st respondent in G.O.Ms.No.25, School Education (TRB) Department, dated 06.02.2014, quashing the same, insofar as it denies relaxation of 5% to the candidates who appeared in the Teacher Eligibility Test conducted by the 2nd respondent in 2012 is concerned and consequently to direct the respondents to extend the benefit of 5% relaxation to the petitioner and to issue Teacher Eligibility Test Certificate so as to enable the petitioner to get appointment to the post of Secondary Grade Teacher in any one of the Government Schools.

W.P.(MD)No.No.4558/2014:

Writ petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, calling for the records pertaining to the impugned clause 9 (a) of the communication of the 4th respondent in No.76-4/2010/NCTC/Acad, dated 11.02.2011 and the impugned notification of the 2nd respondent in G.O.Ms.No.25, School Education (TRB) Department, dated 06.02.2014, quashing the same and consequently directing the respondents not to give appointment to the candidates, without securing 60% marks in the qualifying test, namely Teacher Eligibility Test, conducted , as requirement of Section 23 of the Right of

Children to Free and Compulsory Education Act, 2009.

For Petitioner in
WP 4558/2014 : Party-in-person.

For Petitioner
in WP 2677/2014 : Mr.V.Panneerselvam

For Respondents-1
to 3 in WP 4558/2014 : Mr.V.R.Shanmuganathan,
& RR 1 to 3 in 2677/2014 : Spl.Govt.Pleader.

For Respondent-4
in WP 4558/2014 : Mr.A.Sivaji

Reserved on : 24.06.2014
Pronounced on : 25.09.2014

COMMON ORDER

V.RAMASUBRAMANIAN,J.

The petitioner in W.P.(MD)No.4558 of 2014, who is practising as an Advocate, has come up with the above writ petition, as a public interest litigation, challenging a particular clause in the Guidelines issued by the National Council for Teacher Education (NCTE) for conducting Teacher Eligibility Test and a Notification issued by the Government of Tamil Nadu, reducing the pass percentage marks in the Teacher Eligibility Test for the candidates

belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes, Most Backward Classes and persons with disability.

2. The petitioner in W.P.(MD)No.2677 of 2014 has come up with the said writ petition seeking to quash the order passed by the 1st respondent in G.O.Ms.No.25, School Education (TRB) Department, dated 06.02.2014, insofar as it denies relaxation of 5% to the candidates who appeared in the Teacher Eligibility Test, conducted by the 2nd respondent in 2012 and consequently to direct the respondents to extend the benefit of 5% relaxation to the petitioner.

3. We have heard Mr.K.K.Ramakrishnan, the petitioner in W.P.(MD)No.4558 of 2014 appearing in person, Mr.V.Panneerselvam, learned counsel appearing for the petitioner in W.P.(MD)No.2677 of 2014, Mr.V.R.Shanmuganathan, learned Special Government Pleader, appearing for the State Government as well as the Teachers Recruitment Board and Mr.A.Sivaji, learned counsel appearing for the National Council for Teacher Education.

4. Article 45 of the Constitution, as it originally stood, mandated the State to endeavour to provide, within a period of 10 years from the commencement of the Constitution, for free and

compulsory education for all children until they complete the age of 14 years. By Constitution (86th Amendment) Act, 2002, Article 45 was amended to read as follows:

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

By the very same amendment, Article 21-A was inserted, making the right to elementary education as a fundamental right.

5. Therefore, Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009), with the object of providing for free and compulsory education to all children of the age of 6 to 14 years.

6. Chapter-IV of the Act, which contains Sections 12 to 28, lists out the responsibilities of schools and teachers. Section 23 of the Act prescribes the qualifications for appointment and terms and conditions of service of teachers. Section 23 reads as follows:

"23. Qualifications for appointment and terms and conditions of service of teachers.-- (1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

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

or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for

appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.

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

7. It is seen from Section 23 of the Act that after the Act came into force, only a 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. If the State does not have adequate institutions offering courses or training in teacher education or if a State does not have teachers possessing minimum qualifications available in sufficient numbers, the Central Government may, by Notification, relax the minimum qualifications but, only for a period

of five years. The proviso to sub-section (2) of Section 23 makes it clear that a teacher who does not possess the minimum qualifications, at the commencement of the Act, shall acquire the qualifications within a period of five years.

8. The Act came into force on 01.04.2010. But, even on 31.03.2010, the Government of India had issued an order in S.O. 750(E), New Delhi, dated 31.03.2010, authorising the National Council for Teacher Education as the academic authority to lay down the minimum qualifications for a person to be eligible for appointment as a teacher.

9. In exercise of the powers conferred by Section 23(1) of the Act, NCTE issued a Notification on 23.08.2010, 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.

10. 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. However, paragraph 9 of the Guidelines, dated 11.02.2011, contained a small leverage for the grant of concession. Paragraph 9 of the Guidelines, dated 11.02.2011, 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."

11. In pursuance of the Notification, dated 11.02.2011, issued by NCTE, the Government of Tamil Nadu passed an order in G.O.Ms.No.181, School Education Department, dated 15.11.2011,

prescribing a set of guidelines for the conduct of Teacher Eligibility Test. It was nothing but a reproduction of the guidelines contained in the Notification of NCTE, dated 11.02.2011.

12. After the issue of the aforesaid order G.O.Ms.No.181, School Education Department, dated 15.11.2011, the Government of Tamil Nadu conducted a Teacher Eligibility Test for the first time on 12.07.2012, as per the notification bearing No.4/2012 dated 07.03.2012. The results of the said examination disclosed the shocking state of affairs in the State of Tamil Nadu, in so far as Teacher Education is concerned. The results were as follows:-

<i>Exam</i>	<i>No. of candidates who appeared</i>	<i>No. of candidates who passed</i>	<i>% of pass</i>
Paper I	3,05,405	1,735	0.57%
Paper II	4,09,121	713	0.17%
Total	7,14,526	2,448	0.34%

13. Since the percentage of pass was so low, the Government conducted a supplementary examination on 14.10.2012, for Papers I and II. The results showed a very marginal improvement. The results are as follows:-

<i>Exam</i>	<i>No. of candidates who appeared</i>	<i>No. of candidates who passed</i>	<i>% of pass</i>
Paper I	2,78,725	10,397	3.7%
Paper II	3,64,370	8,864	2.4%

<i>Exam</i>	<i>No. of candidates who appeared</i>	<i>No. of candidates who passed</i>	<i>% of pass</i>
Total	6,43,095	19,261	2.9%

14. Finding that the going was tough and that the Degrees obtained by them had proved to be not worthy of even the paper on which they were printed, some of the candidates came up with a batch of writ petitions in W.P.Nos.30426 of 2012 batch of cases, seeking relaxation or concession in the qualifying marks up to 5%. All these writ petitions were dismissed by K.Chandru, J, by a common order dated 23.01.2013. It should be pointed out here that an argument was advanced before K.Chandru, J, that the Government of Andhra Pradesh had already relaxed the minimum percentage of marks by 5%. But the said argument was rejected by the learned Judge, not only on the basis of the legal position, but also on the basis of the specific stand taken by the Government of Tamil Nadu in a counter affidavit filed before the learned Judge. In para 8 of the counter affidavit, the Government of Tamil Nadu specifically pleaded that the qualifying marks had been fixed in order to get quality teachers and that as a policy, the State Government had taken a decision not to compromise on the quality of teachers and not to grant relaxation.

15. As against the order of K.Chandru, J, dated 23.01.2013, in the aforesaid batch of writ petitions, two Writ Appeals were filed before the Division Bench. By a common judgment dated 19.04.2013, passed in W.A.Nos.819 and 820 of 2013, the writ appeals were dismissed, accepting the stand taken by the State Government.

16. But within a few months of the dismissal of the writ appeals by the Division Bench, the Government took a 'U' turn, perhaps

keeping an eye on many things other than providing quality education and issued G.O.Ms.No.25, School Education Department, dated 06.02.2014. By the said order, relaxation of 5% has been granted in the pass mark, for candidates belonging to Scheduled Caste, Scheduled Tribes, Backward Community, Most Backward Community and persons with disability. The order requires to be extracted, to see whether it contains any reason worth consideration by this Court. Hence G.O.Ms.No.25, School Education Department, dated 06.02.2014 is extracted as follows:-

"In the G.O 1st read above, the Government have issued orders, designating the Teachers Recruitment Board as the nodal agency for conducting the Tamil Nadu Teacher Eligibility Test. In the Government letter second read above, criteria for conducting the Teacher Eligibility Test has been prescribed. In the said letter among other things the number of questions and maximum marks has been fixed at 150 Multiple Choice Questions of 1 mark each for a total of 150 marks for Paper I and Paper II respectively. The pass percentage for clearing the Teacher Eligibility Test was at 60% of the 150 marks (90 marks out of 150) marks).

2. The Hon'ble Chief Minister in her reply to the Governor's Address on 3.2.2004 announced on the Floor of the Assembly that a 5% relaxation will be given from the present 60% marks for passing the Teacher Eligibility Test. She further added that the candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes, Backward Classes (Muslims), Most Backward Classes, Denotified Communities and Differently Abled persons will be declared as pass in the Teacher Eligibility Test on obtaining 55% marks instead of the present 60% marks. This relaxation of marks will also be applicable to the Teacher Eligibility Test conducted in August, 2013.

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, De-

notified 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)."

17. The aforesaid Government Order was followed by another order in G.O.Ms.No.29, School Education Department,

dated 14.02.2014, granting weightage of marks to certain categories. Thereafter a batch of writ petitions were filed on the file of the Principal Bench of this Court, some of which challenged G.O.Ms.No.25, School Education Department, dated 06.02.2014. By a final order dated 29.04.2014, a learned Judge of this Court dismissed the writ petitions challenging G.O.Ms.No.25 dated 06.02.2014.

18. On the basis of the above factual matrix, we are constrained to test, in the first instance, as to whether the Government Order G.O.Ms.No.25 dated 06.02.2014 as well as Clause 9(a) of the guidelines of the National Council for Teacher Education dated 11.02.2011 are contrary to law or not.

Challenge to Clause 9 (a) of the Notification of National Council for Teacher Education dated 11.02.2011:

19. As stated earlier, the National Council for Teacher Education was appointed by the Central Government, as the Academic Authority, in terms of Section 23(1) of the Right of Children to Free and Compulsory Education Act, 2009. The Notification so appointing the National Council for Teacher Education

as the Academic Authority was published in the Government Gazette on 05.04.2010. Thereafter, the National Council for Teachers Education issued a Notification on 23.08.2010 prescribing the qualifications for appointment to the post of teachers. This Notification prescribed a pass in the Teacher Eligibility Test to be conducted by the appropriate Government in accordance with the guidelines framed by National Council for Teachers Education.

20. Thereafter the National Council for Teachers Education issued a set of guidelines on 11.02.2011 for conducting Teacher Eligibility Test. Clause 9 of the guidelines reads as follows:-

" Qualifying marks

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 extent 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."

21. As seen from Clause 9 extracted above, it is only an enabling provision. The provision is intended to be used by some States in the country, where the emancipation of the socially

Backward Classes, Scheduled Castes and Scheduled Tribes, has not been, as it ought to have been. This enabling provision cannot be struck down, since the same may have far reaching implications for the people of some States like Bihar, Orissa etc. Hence we do not think that Clause 9 (a) of the guidelines issued by the National Council for Teacher Education on 11.02.2011 can be questioned, especially when it is only an enabling provision.

Challenge to G.O.Ms.No.25 dated 06.02.2014:

22. The Government Order dated 06.02.2014 reducing the percentage of marks to be secured by BCs/MBCs/SC & STs for a pass in Teacher Eligibility Test, is challenged by the petitioner in W.P. (MD) No.4558 of 2014 on the following grounds:-

(i) that it strikes at the root of the object of the parent Legislation to provide quality education to students by qualified teachers;

(ii) that the only power conferred by Section 23(2) of the Act is not to reduce the minimum qualifying marks but only to postpone the date of acquisition of the qualification;

(iii) that the right of children to receive quality education is of paramount importance, especially after the introduction of

Article 21A of Constitution;

(iv) that as per the Convention on the Rights of the Child 1989, ratified by India, children have right to receive quality education and the same was recognized by the National Charter for Children, 2003 and the Riyadh Guidelines; and

(v) that having taken a policy decision before this Court in the previous round of litigation by individuals who could not secure 60% marks, it is not open to the Government to take a 'U' turn.

23. The Government have filed a counter affidavit to W.P. (MD)No.4558 of 2014. Up to paragraph 10 of the counter affidavit, the Government merely dwelt at length, the Constitutional framework, the issue of RTE Act 2009 and the issue of guidelines by National Council for Teacher Education. The justification for issuing G.O.Ms.No.25 dated 06.02.2014 is indicated only from paragraph 11 onwards. It is stated in paragraph 11 of the counter affidavit that the impugned order was issued, after considering the request received from various stakeholders and in the light of the guidelines issued by National Council for Teacher Education in Clause 9(a) of the Notification dated 11.02.2011. In paragraph 12, the Government had claimed that the impugned order is the outcome of a policy decision of the State Government and hence the same

cannot be questioned. At the same time it is admitted in paragraph 13 that a person can take Teacher Eligibility Test examination any number of times, in order to pass the test.

24. Therefore in essence, the Government seeks to justify the issue of the impugned order only on two grounds namely:

(i) that there were many representations from the stakeholders; and

(ii) that it is a policy decision taken by the Government in terms of Clause 9(a) of the guidelines issued by the National Council for Teacher Education.

25. We do not know who are the "stakeholders", on whose representations the impugned Government order was passed. The expression "stakeholders" mentioned in para 11 of the counter affidavit of the Government, is a very vague term and we do not know how a policy decision could have been taken on the basis of the representations from such "stakeholders", whose identity is not known.

26. It is equally perplexing that the Government has defended the impugned order as being a policy decision. The policy of the very same Government just one year before the issue of the impugned Government Order was actually to the contrary. As we

have indicated earlier, the Government filed a counter affidavit before K.Chandru, J, in the batch of writ petitions W.P.Nos.30426 of 2012, contending that it is a policy decision not to grant any relaxation in the matter of pass mark. Paragraph 8 of the counter affidavit filed before K.Chandru, J in the batch of writ petitions, reads as follows:-

"8. I submit that the Teacher Eligibility Test and qualifying marks is fixed in order to get quality teachers to teach the children all over country. As a policy State Government has taken a decision not to compromise on quality of Teachers and relaxation need not be given to any category of candidates."

27. As seen from the counter affidavit filed by the Government in January, 2013 before K.Chandru, J, the operative portion of which is extracted above, the policy of the Government just one year ago, was not to compromise on quality but to appoint quality teachers. If that policy has now shifted 180 degrees to the other end of the spectrum, especially within a year, we do not know how the Court can affix its seal of approval. This Court affixed the seal of approval on the policy of the Government in January 2013, not to compromise on quality. Therefore the Government

cannot now expect the Court again to affix a seal of approval on the policy to compromise on the quality of teachers and to dilute the standards.

28. In ***Murugan v. Union of India [W.P.(MD) No.4478 of 2012]***, a challenge was made before one of us (VRSJ) to the validity of G.O.Ms.No.181, School Education Department, dated 15.11.2011. In the order dated 14.12.2012 rejecting the challenge, this Court had an occasion to point out how the field of teacher education got perverted by several stakeholders. A reproduction of the same may be essential for deciding whether this Court should be mere a rubber stamp to affix its seal of approval, to diametrically opposite policies, taken within a span of 12 months. A passage from the said decision reads as follows:-

*"(a) During the period 1991-1992, hundred of Teacher Training Institutes cropped up, with no infrastructural facilities, both tangible and intangible. There were single room institutions and pavement or veranda institutions, about 600 of which were ordered to be closed down by a Division Bench of this Court in **P.M.Joseph vs. State of Tamil Nadu (1993 Writ L.R. 604)**. The establishment of such institutions by fly-by-night operators signalled the de-valuation of the stream of Teacher Education. The employment opportunities thrown*

open by the State merely on the basis of seniority of registration in the Employment Exchange led to the multiple organ failure of the body of Teacher Education and virtually put teacher education in the Intensive Care Unit. The fall in the standards of teaching in Government Schools actually led to an exodus of children to Private Schools, accelerating the process of commercialisation of education.

(b) About 15 years thereafter, the Government of Tamil Nadu enacted the Tamil Nadu Teachers Education University Act under Act No.33 of 2008 and a University was established. The website of the University discloses that, as on date, there are 685 Teacher Education Colleges in the State of Tamil Nadu with a total permitted annual intake of about 73,000 students. It means that about 70,000 Graduates are turned out of the State of Tamil Nadu with a B.Ed., Degree every year. There were already lakhs and lakhs of persons with degrees in Teacher education waiting on the rolls of the employment exchange. But the quality of such persons got really exposed when the Teacher Eligibility Test was conducted.

(c) Persons who hold degrees but who are not employable, can not provide quality service to the schools and children. Quality education has now become the sine quo non for the exercise of the fundamental right to education. In paragraph 297 of his dissenting opinion in Society for Unaided Private Schools of Rajasthan, K.S.Radhakrishnan, J., incorporated some statistics. Paragraphs 297, 298, 301 and 302 read as follows:-

"297. According to the Indian Human Development Survey (IHDS), 2005 about 67% of students

attend government schools, about 5% attend government-aided schools, and 24% attend private schools. Convents and Madrasas account for about 1-2%. The survey conducted by IHDS indicates that in 2005 about 21% of rural and 51% of urban children were enrolled in private schools. Part of this increase in private school enrolment has come about through a decline in enrolment in government-aided schools. In 1994, nearly 22% of rural children were enrolled in government-aided schools. By 2005, this declined to a bare 7% in rural areas and 5% in urban areas. At an all India level, 72% of children are enrolled in government schools, and about 28% are in private schools. The survey further indicates that the children between 6-14 years old, about 40% participated in private sector education either through enrolment in private school (20%), through private tuition (13%), or both (7%).

298. The growing preference for private schooling and the reliance on private tutoring, has to be seen in the context of differences in admission of children in government and private schools. The quality of education in government schools, due to various reasons, has gone down considerably. The Act is also envisaged on the belief that the schools run by the appropriate Government, local authorities, aided and unaided, minority and non-minority, would provide satisfactory quality education to the children, especially children from disadvantaged and weaker sections.

301. The statistics would indicate that out of the 12,50,775 schools imparting elementary education in the country in 2007-2008, 80.2% were all types of government schools, 5.8 % private aided schools and

13.1% private unaided schools. Almost 87.2% of the schools are located in the rural areas. In the rural areas the proportion of private unaided schools is only 9.3% and that of aided schools is 4.7%. However, in the urban areas, the percentage of private unaided and aided schools are as high as 38.6% and 13.4% respectively.

302. Out of the total students enrolled in primary classes in 2007-2008 about 75.4%, 6.7% and 17.8% are enrolled in government, aided and unaided schools. The total number of teachers working in these schools in 2007-2008 was 56,34,589 of which 69.3%, 10.4% and 20.7% are teaching in government, aided and private schools, the average number of teachers per school being 3.9%, 8.3% and 6.7% respectively. The statistics would indicate that the Government schools have the highest percentage of teachers who are professionally trained at 43.4%, followed by aided school (27.8%) and unaided private schools (only 2.3%). However, the learning achievements are higher in private schools compared to Government schools."

(d) After extracting the statistics, even the dissenting opinion in the aforesaid decision, highlighted the importance of quality education in paragraphs 303 and 304 as follows:-

"303. Going through the objects and reasons of the Act, the private unaided educational institutions are roped in not due to lack of sufficient number of schools run by the appropriate Government, local authorities or aided educational institutions, but basically on the principle of social inclusiveness so as to provide satisfactory quality education. Some of the unaided educational institutions provide superior quality education, a fact conceded and it is a constitutional

obligation of the appropriate Government, local authority and aided schools not only to provide free and compulsory education, but also quality education.

304. Positive steps should be taken by the State Governments and the Central Government to supervise and monitor how the schools which are functioning and providing quality education to the children function. Responsibility is much more on the State, especially when the Statute is against holding back or detaining any child from standard I to VIII." "

29. Way back in 1989, the Supreme Court cautioned, in ***Andhra Kesari Educational Society v. Director of School Education [1989(1) SCC 392]*** that "ill trained or sub-standard teachers would be detrimental to our educational system; if not a punishment on our children".

30. Again in ***St.Johns Teacher Training Institute v. State of Tamil Nadu [1993(3) SCC 595]***, the Supreme Court pointed out that the future teachers of the country must pass through the institutions which have maintained standards of excellence at all levels.

31. After referring to the decision of this Court in

P.M. Joseph and after quoting with approval the decisions in *Andhra Kesari* and *St.Johns*, the Supreme Court again highlighted in ***C.Muthukumar v. State of Tamil Nadu [2000 (7) SCC 618]*** as follows:-

"Allowing ill-trained teachers coming out of de-recognised or unrecognised institutes or licensing them to teach children of an impressionable age, contrary to the norms prescribed, will be detrimental to the interest of the nation itself in the sense that in the process of building a great nation, teachers and educational institutions also play a vital role. In cases like these, interest of individuals cannot be placed above or preferred to the larger public interest."

32. ***In State of UP v. Bhupendra Nath Tripathi [AIR 2011 SC 63]***, the Supreme Court cautioned that the "right of education guaranteed by Article 21-A would remain illusory in the absence of State taking adequate steps to have required number of schools manned by efficient and qualified teachers."

33. In ***Bharatiya Seva Samaj Trust v. Yogeshbhai Ambalal Patel [AIR 2012 SC 3285]***, the Supreme Court, quoting from the decision in *Andhra Kesari*, indicated that "the quality of teacher should be such as could inspire and motivate into action the

benefiter." The Court also pointed out in paragraph 18 of the report that "education and particularly that of elementary/basic education has to be qualitative and for that the trained teachers are required".

34. Even in the ***State of Tamil Nadu v. K.Shyam Sundar [2011 (4) CTC 874]***, the Supreme Court pointed out that ***"the right of a child should not be restricted only to free and compulsory education, but should be extended to have quality education....."***

35. As a matter of fact, the contention of the Government that the impugned order reducing the pass mark in the Teacher Eligibility Test is a policy decision of the Government, has to be rejected on the very same ground on which the Supreme Court held as ultra virus, the Tamil Nadu Uniform System of School Education (Amendment) Act 2011 in *State of Tamil Nadu v. K.Shyam Sundar*. What happened in that case was that the State of Tamil Nadu took a policy decision on 29.08.2009 to implement Uniform System of School Education in the State. An Ordinance was issued on 27.11.2009 and it was later passed into an Act known as Tamil Nadu Uniform System of School Education Act, 2010. The validity of the

Act was challenged before a Division Bench of this Court. By a judgment dated 30.04.2010, a Division Bench of this Court struck down Sections 11, 12 and 14 as unconstitutional. But after a change of Government following the General Elections to the Assembly, an amendment was issued to the Act under Amendment Act of 2011. This amendment was held by the Supreme Court as ultra vires in *State of Tamil Nadu v. K.Shyam Sundar*, on the ground that the Amendment Act 2011 had the effect of bringing back the old Section 14 of the 2010 Act that was declared ultra virus by the High Court. The Supreme Court held that the enactment of Amendment Act 2011 amounted to nullifying the effect of the judgments of the High Court and the Supreme Court.

36. The same logic, though not as a ratio, would apply to the case on hand. This is due to the fact that a batch of writ petitions came to be filed on the file of this Court in W.P.Nos.22407 of 2013 batch, challenging the prescription of 60% marks as the pass mark in the Teacher Eligibility Test, as offending Articles 14, 15(4) and 16(4) of the Constitution of India and in these writ petitions, the Government of Tamil Nadu took a categorical stand that they would not compromise on the quality. The State

Government actually placed reliance upon the decision of the Supreme Court in ***Andhra Pradesh Public Service Commission v. Bolaj Badhavath [2009 (5) SCC 1]***. In the said case, the Supreme Court pointed out that "Judging on merit may be at several tiers and that it may undergo several filtrations. Ultimately, the Constitutional scheme is to have the candidates who would be able to serve the society and discharge the functions attached to the office." Paragraph 32 of the decision of the Supreme Court in ***Andhra Pradesh Public Service Commission***, which was followed by the Division Bench of this Court in its decision dated 05.02.2014 reads as follows:-

"32. Judging on merit may be at several tiers and that it may undergo several filtrations. Ultimately, the Constitutional scheme is to have the candidates who would be able to serve the society and discharge the functions attached to the office. Vacancies are not filled up by way of charity. Emphasis has all along been made, times without number, to select candidates and/or students based upon their merit in each category. The disadvantaged group or the socially backward people may not be able to compete with the open category people but that would not mean that they would not be able to pass the basic minimum criteria laid down therefor."

37. Therefore the Division Bench of this Court rejected the

challenge made by the Central and State Government Scheduled Caste and Scheduled Tribes Employees Federation, pointing out that the lowering of marks for the candidates belonging to reserved categories, is not a Constitutional mandate and that a pass is a must in Teacher Eligibility Test.

38. The specific stand taken by the State of Tamil Nadu in their counter affidavit before the Division Bench was also extracted in paragraphs 33 of the judgment dated 05.02.2014 as follows:-

"The Government of Tamil Nadu in its counter took a specific and categorical stand that it do not want to compromise the standard of quality education and therefore, stick on to the stand that 60% marks in TET examination is a must and no relaxation can be given to any candidate".

39. Again in para 37 the Division Bench pointed out as follows:-

"37. The underlying object and rationale for including Teacher Eligibility Test (TET) as a minimum qualification for a person to be eligible for appointment as a teacher is,

(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 three institutions to further improve their performance standards;

(iii) It would send a positive signal to all stakeholders that the Government lays special emphasis on teacher quality.

The State Government has taken a policy decision not to compromise on the quality of teachers and took a decision in the interest of the students, not to grant relaxation to any of the categories."

40. It is quite unfortunate that after getting a seal of approval from this Court on 05.02.2014 to their policy not to dilute standards, the State Government did a volte-face on the very next day namely 06.02.2014 by issuing the impugned Government Order. If we now put a seal of approval to the present policy also, we would just be converting ourselves into mere rubber stamps, when even the ink on the signatures of the learned Judges of the Division Bench who passed the previous order had not dried up.

41. The contention that the socially backward and deprived Sections of the society, have to be treated differently, loses sight of one important fact. The Teacher Eligibility Test is not a competitive

examination. It is a qualifying examination. It is only in competitive examinations that different yardsticks could be provided, on the principle of affirmative action for achieving social justice. If 40 out of 100 happens to be a pass mark in school final examination, the same has to be taken by all candidates without exception, as the same is only a qualifying examination and not a competitive examination.

42. Unfortunately, the distinction between the qualifying examination and competitive examination has been lost sight of. This is due to the fact that due to the extremely low percentage of candidates who passed in the Teacher Eligibility Test, a qualifying examination itself has been magnified to appear as a competitive examination.

43. For every teacher there are at least 40 students in a class. Therefore, the contention based upon social justice does not actually take note of those at the receiving end. If the reduction in the pass mark benefits hundreds of individuals belonging to the socially backward segment of the society, by the very same logic, it will deprive lakhs of children belonging to the very same segment of society to have quality teachers imparting training to them.

Therefore the contention of the respondents based upon the theory of social justice is actually destructive of the very fabric of the social justice.

44. Interestingly, the impugned Government Order is not even based upon any statistics. As we have pointed out earlier, about 2448 candidates passed Teacher Eligibility Test conducted on 12.07.2012. Another set of 19,261 candidates passed the supplementary examination held on 14.10.2012. The cry, either of the individuals who made representations or of the State Government which had succumbed to their pressures, that the prescription of 60 marks as the pass mark was destructive of the fabric of social justice, was not based upon any statistics. The impugned order is not even based upon an analysis as to whether out of about 22000 candidates who passed in the Teacher Eligibility Test held in July and October 2012, very few people belonged to the socially deprived sections of society. The impugned order is based only upon a statement made on the Floor of the Assembly, to reduce the pass mark. Therefore in the absence of any statistics to prove that the prescription of 60% as pass mark resulted in fewer number of candidates belonging to BC/MBC/SC/ST getting appointed, it is not possible to uphold the Government Order, as

something based upon any rationale worth consideration.

45. The necessity to look into statistics is very vital and important in cases of this nature, before coming to the conclusion that any relaxation in the criteria is necessary to advance social justice. This can be illustrated easily by referring to the outcome of a selection conducted by the High Court itself for direct recruitment of 23 District Judges in the year 2013. The written examinations were conducted in two papers and a total of 2688 candidates took part in the examination. Out of these 2688 candidates, only 165 candidates who had secured 35% and above in the written examination were invited for viva voce. Despite the fact that what was conducted was a competitive examination, no relaxation in the eligibility criteria was adopted insofar as the written examinations were concerned. All the 23 vacancies were filled up as against Roster Points as per the 200 Point Roster provided in the Schedule III to the General Rules for Tamil Nadu State and Subordinate Services. Interestingly, though 8 vacancies were left open to be filled up by General Category candidates, 6 out of those 8 vacancies went in favour of meritorious candidates belonging to Backward Community. All vacancies could be filled up as per the Roster Point, as seen from the tables below.

VACANCIES NOTIFIED			
CATEGORY	MEN	WOMEN	TOTAL
GENERAL TURN	4	4	8
BC	4	2	6
BC MUSLIMS	0	1	1
MBC	3	1	4
SC	2	1	3
SC(A)			1
TOTAL			23

CATEGORYWISE PARTICIPATION AND DISTRIBUTION			
CATEGORY	NO. OF CANDIDATES WHO WROTE THE EXAMS	NO. OF CANDIDATES WHO PASSED THE EXAM (SAME PASS MARK FOR ALL)	CANDIDATES EVENTUALLY SELECTED
GENERAL TURN	132	16	2
BC	1221	97	11
BC MUSLIMS	63	6	2
MBC	735	34	4
SC/ST/SC(A)	537	12	4
TOTAL	2688	165	23

46. Therefore, the argument that relaxation was necessary to advance social justice, is nothing but a myth and is not based on facts and figures. The Government ought to have looked into the statistics, before taking a decision to relax the criteria. A decision of the nature impugned in the writ petition cannot be taken merely on popular demand without being backed up by actual statistics.

47. The General Rules for Tamil Nadu State Subordinate Services stipulate a 200 point roster for filling up the vacancies in all State and Subordinate Services. The vacancies reserved for BC/MBC/SC/ST cannot be filled up by candidates belonging to the general category. There is also a provision for carrying forward, unfilled vacancies reserved for SC/STs. Since there is no restriction regarding the number of times a candidate can appear for Teacher Eligibility Test and since vacancies reserved for SC/STs can be carried forward, prescription of 60% as pass percentage, may only postpone the chances of getting appointment for the members belonging to SC/STs. The prescription of 60% as a pass mark will not destroy their chances of appointment. These aspects have not been taken note of by the Government, while passing the impugned order.

48. In ***Union of India v. Shah Goverdhan Kabra Teachers College [(2002) 8 SCC 228]***, the Supreme Court pointed out that "***education is the backbone of every democracy and that any deterioration in the standard of teaching in the B.Ed. Course would ultimately produce substandard prospective teachers who would be teaching in***

schools and colleges throughout the country and on whose efficiency the future of the country depends". The Court further held that if the teacher himself was of substandard education, it is difficult to expect from him, a higher standard of teaching to the students. Every appointment made by relaxing the eligibility criteria, may benefit one individual. But, it would do injustice to hundreds of students who join the school every year, for a continuous period of about 30 years. The damage would become irreparable in course of time.

49. Hence, W.P.(MD) No.4558 of 2014 is liable to be allowed, accordingly it is allowed. The Government order G.O.Ms.No.25, School Education (TRB) Department, dated 6.2.2014 is set aside. There will be no order as to costs. However, if any selection has already been made on the basis of this Government order, persons who were selected for appointment on the basis of the impugned Government order shall not be affected. In other words, this order will have prospective application, in view of the fact that those who have reaped the benefit of the impugned order were not parties to this writ petition.

50. Consequent to the order passed in W.P.(MD) No.4558 of 2014, the other writ petition W.P.No.2667 of 2014 deserves to be

dismissed. Accordingly, it is dismissed. No costs. Consequently, connected Miscellaneous Petitions in both the writ petitions are closed.

Index : Yes
Internet : Yes

(V.R.S.J.) (V.M.V.J.)
25.9.2014.

gb/gr/kpl

Note to Office:
Issue order copy
on 26.09.2014.
B/o.
gb

To

1. The Secretary to Government,
School Education (TRB) Department,
Secretariat, Chennai-600 009.
2. The Director of Elementary Education,
Chennai-600006.
3. The Principal Secretary to Government,
School Education Department, Chennai.

V.RAMASUBRAMANIAN,J,
and
V.M.VELUMANI,J.

gb/gr/kpl

order in
W.P.(MD)Nos.2677 & 4558 of 2014.

25.9.2014.