BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.03.2025

PRONOUNCED ON : 02.04.2025

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.A(MD)No.429 of 2025
and
C.M.P.(MD)No.3278 of 2025

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.

2.The Director of School Education,
College Road, Chennai-600 006.

3.The Chief Educational Officer,
Madurai, Madurai District.

4.The District Educational Officer,
Melur, Madurai District. ... Appellants

Vs.

1.K.Bashiri

2.The Correspondent,
Melur Al-Ameen Urudu Tamil Muslim
High School,
Melur, Madurai District. ... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.9299 of 2024, dated 16.04.2024.

For Appellants :Mr.J.Ashok
Additional Government Pleader
For R1 :Mr.J.Lawrance

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JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

The present writ appeal is filed by the respondents in the writ petition against the order dated 16.04.2024 passed in W.P.(MD)No.9299 of 2024.

2. The writ petition was filed for issuance of a writ of Certiorarified Mandamus, to quash the order, dated 01.02.2024, passed by the 3rd respondent and consequently, to direct the 3rd respondent to approve forthwith the petitioner's promotion as B.T. Assistant (Tamil) in the 5th respondent school with effect from the date of promotion on 13.06.2022 with all attendant benefits including the arrears of salary and allowance and the retirement benefits including pension from the date of retirement, dated 30.04.2023.

3. The writ petitioner was appointed in the school namely, Al Ameen Urudu Tamil Muslim High School as a Secondary Grade Teacher in the promoted

vacancy on 22.03.1996 in the scale of pay of Rs.1200-30-1560-40-2040. The said school was a private aided minority school governed by Tamil Nadu Recognized Private Schools (Regulation Act), 1974 and rules made thereunder and the Tamil Nadu Minority School (Recognition and Payments of Grant) Rules, 1977. The writ petitioner was promoted as BT Assistant (Tamil) on 13.06.2022. Thereafter, she attained superannuation on 30.04.2023.

4. The management, 2nd respondent herein, has submitted the proposal through the District Educational Officer on 02.08.2023 requesting to approve the promotion of the writ petitioner. The appellants sought clarification and particulars. The school has resubmitted the proposal with clarification along with particulars. The Chief Educational Officer has returned the proposal, vide proceedings, dated 01.02.2024 directing to enclose the Teachers Eligibility Test Paper II (TET) certificate. The writ petitioner was not possessing the said certificate. However, the writ petitioner claimed that she is working in a private aided minority school and the Right of Children to Free and Compulsory Education Act, 2009, is not applicable to the minority schools and hence TET is not applicable to the minority schools.

5. The further contention of the writ petitioner is that the said Central

Act is not applicable, since the State Government has issued G.O.(Ms)No.181, (School Education-C2), dated 15.11.2011 and has granted 5 years of time to complete the TET qualification. Further, it was made compulsory from the date of G.O.(Ms)No.181, (School Education-C2), dated 15.11.2011. In the meanwhile, the writ petitioner had attained superannuation and retired from service. Therefore, the said period for acquiring pass in Teachers Eligibility Test was available, hence the petitioner cannot be compelled to complete the Teachers Eligibility Test for the promotion of B.T. Assistant.

6. After considering the rival contentions, the Writ Court has relied on the judgment rendered in W.A.(MD)No.313 of 2022 and batch in the case of the ***Director of School Education and Others Vs. M. Velayutham and Another,*** dated 02.06.2023, wherein it is held that the TET qualification was not required for appointment of teachers in minority institutions. The Division Bench in turn had relied on the Constitutional Bench of the Hon'ble Supreme Court in the case of ***Pramati Educational and Cultural Trust and Others Vs. Union of India*** reported in ***(2014) 8 SCC 1***. Following the aforesaid judgments, the Writ Court held that it is not mandatory to possess TET qualification in a minority institution, consequently the Writ Court allowed the writ petition and directed to pay the consequential monetary benefits to the writ petitioner. Aggrieved over the same,

the present writ appeal is filed by the State.

7. The contention of the State is that in ***Pramati's case*** "whether TET is necessary for minority institution" was not the issue raised and was not dealt with by the Hon'ble Supreme Court at all. Therefore, the State had preferred SLP (C) No.2691 of 2022 and the same is pending. Further, stated that the judgment rendered in W.A.(MD)No.313 of 2022, dated 02.06.2023 is placing reliance on the judgment of Pramati's case. But the said Pramati's case is referred to a Larger Bench in Ashwini Thanappan -vs- Director of Education reported in (2014) 8 SCC 272. Since the issue was sub judice before the Hon'ble Apex Court, the appellants stated that the writ petitioner is not entitled to claim the monetary benefits. However, the writ petitioner submitted that following Pramati's case several judgements were rendered by Courts and had consistently held TET is not necessary for minority institution. Especially the judgment dated 02.06.2023 rendered in W.A.No.313 of 2022 in the case of ***Director of School Education and Others Vs. M. Velayutham and Another,*** has held that as per judgment in Pramati's case, the RTE Act, 2009 is not applicable to minority institution. When TET which is prescribed under RTE Act, 2009, then TET is not applicable to minority institution. In order to consider the rival submissions, it is necessary to

refer to relevant provisions and the aforesaid judgments.

8. The Right of Children to Free and Compulsory Education Act, 2009 (in short RTE Act, 2009) direct the schools to impart free education to children in the age group from 6 to 14 years in schools run by government, local body, private aided minority and non-minority, private unaided minority and non-minority and school belonging to specified category. The Act has various provisions regarding the duties of parents, schools, government and has dealt with qualifications and other aspects covering the education to children.

9. The validity / vires of the Act was challenged and considered in the case of ***Society for Unaided Private Schools of Rajasthan Vs. Union of India and Another*** reported in ***(2012) 6 SCC 102*** by a Three-Judges Bench of Hon'ble Supreme Court, wherein by majority two Learned Judges S.H. Kapadia C.J. and Swatanter Kumar J. held that the RTE Act, 2009 Act is constitutionally valid and shall apply to the following schools:

> (i) a school established, owned or controlled by the appropriate **Government or a local authority**;
> (ii) an **aided** school **including aided minority** school receiving aid or grants to meet whole or part of its expenses from the appropriate

Government or the local authority;

(iii) a school belonging to **specified category**; and

(iv) an **unaided non-minority** school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.

But held Sections 12(1)(c) and Section 18(3) of the RTE Act, 2009 infringe the fundamental rights guaranteed to **unaided minority** schools under Article 30(1) of the Constitution and therefore the RTE Act, 2009 shall not apply to such **unaided minority** schools. Differing from the majority opinion, the Learned Judge Radhakrishnan J. held that Article 21A casts an obligation on the State and not on unaided non-minority and unaided minority schools to provide free and compulsory education to children of the age of six to fourteen years. After the aforesaid judgment the RTE Act, 2009 was amended by the Right of Children to Free and Compulsory Education Act 2009 (Amendment Act, 2012) and it was provided in Section 1(4) of the RTE Act, 2009, that subject to the provisions of Articles 29 and 30 of the Constitution, the provisions of the RTE 2009 Act shall apply to conferment of rights on children to free and compulsory education. Therefore, the effect of the judgment and the said amendment, 2012 is that the section 12(1)(c) and Section 18(3) of the RTE Act, 2009 is not applicable **unaided minority** institutions since the same infringe the fundamental rights as per the

judgment. The Act 2009 is applicable to minority institutions however when the provisions affect the rights guaranteed under Article 29 and 30 alone would not be applicable.

10. It is pertinent to state that the test which are the provisions would affect the fundamental rights was dealt with and there was divergent opinion in various judgments, hence a reference was made in ***Pramati's case*** reported in ***(2014) 8 SCC 1.***

11. The brief background of the case is that the constitutional amendment in Article 15(5) and Article 21A of Constitution of India was challenged. Based on the constitutional amendment under Article 15(5) and Article 21A, Sections 12(1)(b) and 12(1)(c) of RTE Act, 2009 was incorporated, wherein it mandates all schools to grant admission at least 25% of its strength to the children belonging to "weaker section and disadvantaged group in the neighbourhood" to provide free and compulsory elementary education till its completion and the government would bear the entire cost for the said education. The said mandate is applicable to all schools namely,

i. Schools run by government, local body,

ii. private aided minority and non-minority,
iii. private unaided minority and non-minority and
iv. school belonging to specified category.

12. The private unaided minority schools, the private aided minority schools and the private unaided non-minority schools feeling aggrieved by the 25% compulsory admission, challenged the constitutional amendment under Article 15(5) and Article 21A. Because of two divergent views, a constitutional reference to Five Judges Bench was made in ***Pramati's case*** and the reference is extracted hereunder:

> *"i) Whether by inserting clause (5) in Article 15 of the Constitution by the Constitution (Ninety-Third Amendment) Act, 2005, Parliament has altered the basic structure or framework of the Constitution.*
>
> *ii) Whether by inserting Article 21A of the Constitution by the Constitution (Eighty-Sixth Amendment) Act, 2002, Parliament has altered the basic structure or framework of the Constitution."*

The Constitutional Bench has answered the reference. The contention of the minority schools and teachers working thereunder is that the entire RTE Act, 2009 itself was held as not applicable to the minority schools, hence the TET

qualification prescribed under the RTE Act, 2009 is not applicable to minority schools. On the other hand, the State submitted that the only two sections were held as not applicable to minority schools and not the entire RTE Act, 2009.

13. In order to consider the rival contentions and the issue raised before this Court, it is necessary to refer to Article 15(5) which reads as under:

> *"Article 15(5). Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30."*

14. The Constitutional Bench of Five Judges in ***Pramati's case*** had considered the Article 15(5) and has held as under:

> *"16. We have considered the submissions of learned counsel for the parties and we find that the object of clause (5) of Article 15 is to enable the State to give equal opportunity to socially and educationally backward classes of citizens or to the Scheduled Castes and the*

Scheduled Tribes to study in all educational institutions other than minority educational institutions referred in clause (1) of Article 30 of the Constitution.

...

21. The reasoning adopted by this Court in P.A.Inamdar (2005) 6 SCC 537, therefore, is that the ***appropriation of seats by the State for enforcing a reservation policy*** *was not a regulatory measure and not reasonable restriction within the meaning of clause (6) of Article 19 of the Constitution. As there was no provision other than clause (6) of Article 19 of the Constitution under which the State could in any way restrict the fundamental right under Article 19(1)(g) of the Constitution, Parliament made the Constitution (Ninety-Third Amendment), 2005 to insert clause (5) in Article 15 of the Constitution to provide that nothing in Article 19(1)(g) of the Constitution shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State. Clause (5) in Article 15 of the Constitution, thus, vests a power on the State, independent of and different from, the regulatory power under clause (6) of Article 19, and we have to examine whether this new power vested in the State which enables the State to force the charitable element on a private educational institution destroys the right under Article 19(1)(g) of the Constitution."*

15. Finally, the Constitutional Bench held that the **minority educational institutions**, by themselves, are a separate class and their rights are protected under Article 30 of the Constitution, and, therefore, the exclusion of minority educational institutions from Article 15(5) is not violative of Article 14 of the Constitution, thereby affirmed the judgment of another Constitution Bench judgement rendered in ***Ashoka Kumar Thakur v Union of India*** reported in ***(2008) 6 SCC 1.***

16. As far as the **unaided institutions** are concerned, it was held that none of the rights under Articles 14, 19(1)(g) and 21 of the Constitution have been abrogated by clause (5) of Article 15 of the Constitution, hence the (Ninety-Third Amendment, 2005 of the Constitution inserting clause (5) of Article 15 of the Constitution is valid. And also held that the view taken by Bhandari, J. in ***Ashoka Kumar Vs. Union of India*** that the imposition of reservation on unaided institutions by the Ninety-Third Amendment has abrogated Article 19(1)(g), a basic feature of the Constitution is not correct. Thereby upheld that the Article 15(5) is applicable to **unaided non-minority institutions** are concerned.

17. In effect the Article 15(5) is not applicable to **unaided minority**

institutions as per ***Society for Unaided Private Schools of Rajasthan Vs. Union of India and Another*** reported in ***(2012) 6 SCC 102***. Likewise, Article 15(5) is not applicable to **aided minority institutions** as per Pramati's case. Both the judgments had affirmed that Article 15(5) is applicable to **unaided non-minority institutions** and also to **aided non-minority institutions.**

18. Thereafter in Pramati's case the Article 21A was considered and the said Article reads as under:

> *"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."*

19. The Constitutional Bench after considering various submissions of the contesting parties had held as under:

> *"44. When we examine the 2009 Act, we find that under Section 12(1)(c) read with Section 2(n)(iv) of the Act, an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority is required to admit in class I, to the extent of at least **twenty-five per cent** of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education*

till its completion. We further find that under Section 12(2) of the 2009 Act such a school shall be reimbursed expenditure so incurred by it to the extent of per- child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed. Thus, ultimately it is the State which is funding the expenses of free and compulsory education of the children belonging to weaker sections and several groups in the neighbourhood, which are admitted to a private unaided school. These provisions of the 2009 Act, in our view, are for the purpose of providing free and compulsory education to children between the age group of 6 to 14 years and are consistent with the right under Article 19(1)(g) of the Constitution, as interpreted by this Court in T.M.A.Pai Foundation case reported in (2002) 8 SCC 481 and are meant to achieve the constitutional goals of equality of opportunity in elementary education to children of weaker sections and disadvantaged groups in our society. We, therefore, do not find any merit in the submissions made on behalf of the non-minority private schools that Article 21A of the Constitution and the 2009 Act violate their right under Article 19(1)(g) of the Constitution.

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. (1973) 4 SCC 225 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.:

"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 vires the Constitution. We are thus of the view that the majority judgment of this Court in Society for Unaided Private Schools of Rajasthan Vs. Union of India and Another reported in (2012) 6 SCC 102 insofar as it holds that the 2009 Act is applicable to aided minority schools is not correct.

47. In the result, we hold that the Constitution by the Constitution

(Ninety-Third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution by the Constitution (Eighty-Sixth Amendment) Act, 2002 inserting Article 21A of the Constitution do not alter the basic structure or framework of the Constitution and are constitutionally valid. We also hold that the 2009 Act is not ultra vires Article 19(1)(g) of the Constitution. We, however, hold that the 2009 Act insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution."

20. In effect the Article 21A is not applicable to **unaided minority institutions** as per ***Society for Unaided Private Schools of Rajasthan Vs. Union of India and Another*** reported in ***(2012) 6 SCC 102.*** Likewise, Article 21A is not applicable to **aided minority institutions** as per ***Pramati's case***. Both the judgments had affirmed that Article 21A is applicable to **unaided non-minority institutions** and also to **aided non-minority institutions.**

21. Therefore, the conclusion is that the Article 15(5) wherein it prescribes reservation for admission to educational institutions is valid. The Article 21A wherein it grants free and compulsory education to all children of the age of six to fourteen years is valid. The sections 12(1)(b), 12(1)(c) read with sections 2(n)(iii) and 2(n)(iv) enacted based on the power under Article 15(5) and

Article 21A are valid. However, the same is applicable to educational institutions based on the minority and non-minority status, which in nut shell are as under:

i. Both Article 15(5) and Article 21A read with sections 12(1)(b), 12(1)(c) and read with sections 2(n)(iii) and 2(n)(iv) of RTE Act, 2009 are **applicable** to private **aided non-minority** institutions.

ii. Both Article 15(5) and Article 21A read with sections 12(1)(b), 12(1)(c) and read with sections 2(n)(iii) and 2(n)(iv) of RTE Act, 2009 are **applicable** to private **unaided non-minority** institutions.

iii. Both Article 15(5) and Article 21A read with sections 12(1)(b), 12(1)(c) and read with sections 2(n)(iii) and 2(n)(iv) of RTE Act, 2009 are **not applicable** to private **aided minority** institutions.

iv. Both Article 15(5) and Article 21A read with sections 12(1)(b), 12(1)(c) and read with sections 2(n)(iii) and 2(n)(iv) of RTE Act, 2009 are **not applicable** to private **unaided minority** institutions.

22. **From the above discussions, it is evident that the Pramati's case had never dealt with the section 23 of RTE Act, 2009 at all.** It is under section 23 of RTE Act, 2009 the qualifications for teachers are prescribed, wherein it states the Central Government is the Appropriate Authority to prescribe minimum qualifications for teachers which is extracted hereunder:

> *"Section 23: Qualifications for appointments 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."*

23. The Central Government has notified National Council for Teachers Education (NCTE) as the "Academic Authority" for prescribing teacher qualifications. The NCTE has laid down the requisite qualifications for teachers as per its notification dated 23.08.2010, wherein it is stated that along with other educational qualifications, the teacher should possess Teacher Eligibility Test (TET) qualification and the same is extracted hereunder:

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

24. It is seen that the NCTE had granted five-years for the serving teachers to qualify themselves with TET qualification and extended for further four years, thereby nine years were granted. Thereafter, the appointments ought to be made only based on the TET qualification alone and promotion ought to be granted to teachers who are possessing TET qualification alone.

25. Further, the validity of the RTE Act, 2009 was upheld by majority judgment in Society for ***Unaided Private Schools of Rajasthan Vs. Union of India and Another*** reported in ***(2012) 6 SCC 102***, wherein it is held Sections 12(1)(c) and Section 18(3) of the RTE Act, 2009 infringe the fundamental rights guaranteed to **aided and unaided minority** schools under Article 30(1) of the Constitution and therefore Sections 12(1)(c) and Section 18(3) of RTE Act, 2009 alone shall not apply to such **aided and unaided minority** schools. And as far as **other provisions** of RTE Act, 2009 is concerned the same is upheld even for aided minority schools. Infact in W.A.No.76 of 2019 dated 31.03.2021, the Division Bench has held that the staff fixation shall be based as per RTE, Act 2009 read with G.O. passed in this regard and the said portion of the order is extracted hereunder:

"(a) For the purpose of fixing the students-teacher ratio, the provisions

*of **RTE, Act** followed by the G.O. passed in this regard shall be taken the basis and the student pupil ratio shall be either 1:30 of 1:25 as the case may be as per the provisions of RTE, Act."*

The Government has passed G.O.Ms.No.231 School Education Department, dated 11.08.2010 following RTE Act, 2009. Therefore, it is further evident that for staff fixation the State shall follow the RTE Act, 2009 and the same is applicable for minority institutions also. In such circumstances, the other provisions of the RTE Act, 2009 is applicable for all the schools. Hence this Court is of the considered opinion that the argument that the entire RTE Act, 2009 is not applicable to minority institutions and hence TET prescribed under RTE Act, 2009 is absolutely incorrect.

26. When the Constitutional Bench in ***Pramati's case*** had specifically dealt with Article 15(5) and Article 21A read with sections 12(1)(b), 12(1)(c) and sections 2(n)(iii) and 2(n)(iv) of RTE Act, 2009, wherein it speaks of 25% reservation for the weaker section and downtrodden children and when the Constitutional Bench in ***Pramati's case*** **had never dealt with section 23 of RTE Act, 2009**, wherein the said section prescribe qualifications for teachers to be appointed in Secondary Grade Teacher and B.T. Assistant, then it is absolutely

incorrect to say that in ***Pramati's case*** it has been held that "TET is not applicable to minority institution".

27. Even if for argument sake, it is taken that TET is not applicable for minority institution, then such argument is affront to the judgment of Constitutional Bench of Eleven Judges Bench in ***T.M.A.Pai Foundation case,*** wherein it has been held that the State or other controlling authorities 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. The relevant portion is culled out hereunder:

> *"Q 5 (c) 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 staff, employees, teachers and principals including their service conditions and regulation of fees etc. would interfere with the right of administration of minorities?*
>
> *A. So far as the statutory provisions regulating the facets of administration are 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 a university or board have to be complied with, but not 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."***

28. When the Constitutional Bench of Eleven Judges had held that the government is empowered to prescribe educational qualifications to teachers to be appointed in any schools including minority institutions and the same still holds good, then the TET qualifications prescribed for teachers is applicable to all schools including minority institutions. In nut shell, the TET is applicable for the following schools,

i. Schools run by government, local body,
ii. private aided and unaided minority institutions
iii. private aided and unaided non-minority institutions
iv. school belonging to specified category.

29. Therefore, this is Court is of the considered opinion there cannot be any contra opinion regarding educational qualifications prescribed for teachers and no institution is exempted from such prescription of qualification to teachers.

30. At this point it is relevant to state that, if the TET is mandated to non-minority schools alone and TET is dispensed with minority schools, then a clear discrimination prevails over teachers working in minority school and teachers working in non-minority institutions. Infact the teachers in non-minority institutions are either losing job or losing their promotion without TET. But the teachers in minority institutions are granted appointments, salary, incentive increments, other service benefits and promotion without TET, thereby it is clear discrimination and the same is against Article 14.

31. It is also pertinent to state that such discrimination has become one of the reasons that the surplus teacher issue could not be resolved by the Education Department. Whenever the surplus teacher ought to be transferred or posted under deputation, the minority school teacher without TET could not be accommodated in non-minority or government school. Therefore, the Education Department is facing several problems in handling the surplus teachers,

transferring the surplus teachers etc.

32. In fact, the State Government had preferred SLP in Civil Appeal No. 1384 of 2025 and eight appeals batch regarding the issue of applicability of TET in minority institutions, but unfortunately the said appeals were withdrawn and the same was dismissed as withdrawn. Now the question that arises whether the withdrawal of the appeals by the State would lead a conclusion that the TET is not necessary to minority institutions, then the answer is a big "No". Since the validity of RTE Act, 2009 is upheld in ***Society for Unaided Private Schools of Rajasthan Vs. Union of India and Another*** reported in ***(2012) 6 SCC 102*** by a Three-Judges Bench of Hon'ble Supreme Court except Sections 12(1)(c) and Section 18(3) of the RTE Act, 2009 which infringes the fundamental rights guaranteed to **unaided minority**. In ***Pramati's case*** the Constitutional Bench had concurred with the order passed in ***2012 6 SCC 102*** as far as **unaided minority** and further held 12(1)(b) and 12(1)(c) of RTE Act, 2009 infringes the fundamental rights of **aided minority** institutions. When both the judgments is not dealing with Section 23 of RTE Act, 2009 under which the TET is prescribed as qualifications coupled with the fact that the ***TMA Pai Foundation case*** had upheld that the educational qualifications shall be prescribed for **aided minority**

institutions, then the withdrawal of the case by State will not lead to a conclusion that the TET is not applicable to minority institutions.

33. The next question that arises is that whether by withdrawing the appeal the State can confer any benefits to minorities institutions that TET is not applicable to them, again the answer is big "No". Since the RTE Act, 2009 is a Central Act, the State has no power to grant any benefits. If granted it is directly against the RTE Act, 2009, besides being affront to the judgment of Eleven Judges Bench in ***TMA Pai Foundation case***, wherein it categorically held educational qualifications shall be prescribed. Further, if granted it will be without jurisdiction and hence illegal.

34. In fact, even the Central Government also is not having power to grant any such benefits which would be against the RTE Act, 2009, since Parliament alone is empowered to amend the provisions. This is evident from the provisions under Section 23 the same is extracted hereunder:

> *"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****:*

****[Provided further that every teacher appointed or in position as on the 31st March, 2015, who does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of four years from the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017 (24 of 2017).]***

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

The proviso to Section 23 states that if the teacher is not having such qualification, then the teacher shall acquire the said qualification within a period of five years from the date of commencement of the RTE Act. When the question arose for extension of time, then Central Government did not extent the time. It is the Parliament which had amended the Act and granted extension of four more

years. And the proviso was inserted by the Amendment Act 24 of 2017 dated 09.08.2017 and published in gazette on 20.08.2017, but had given retrospective effect from 01.04.2015 onwards. From the above amendment it is evident that neither the Central Government nor the State Government has power to grant any exemption from the prescription of basic minimum qualification, one among them is TET qualification. If granted by State, then it will be directly interfering with the power of the Parliament. Therefore, the withdrawal of appeal by the State will not confer any benefits to the teachers in minority institutions from possessing TET qualifications. And also by withdrawing the appeal the State cannot confer any benefits to the teachers in minority institutions from possessing TET qualifications. In effect the withdrawal of appeal has no impact at all.

35. Therefore, this Court after perusing the facts, provisions and by relying on the judgments rendered in ***Pramati's case*** and ***T.M.A.Pai Foundation case*** is of the considered opinion that the Government has power to prescribe minimum educational qualifications for teachers to be appointed in the educational institutions including minority institutions. The government had appointed NCTE as "Academic Authority" to prescribe qualifications. And NCTE has prescribed TET as one of the qualifications. Therefore, TET qualification is

applicable to all educational institutions including minority institutions also.

36. In the present case, since the candidate is not having TET qualification, the approval of appointment cannot be granted. The order passed by the Educational Department denying the approval is valid as far as TET qualification is concerned. Therefore, the order passed by the Writ Court is set aside and the writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

[J.N.B., J.] [S.S.Y., J.]
02.04.2025

Index : Yes / No

Tmg

To:

1.The Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.

2.The Director of School Education,
College Road, Chennai-600 006.

3.The Chief Educational Officer,
Madurai, Madurai District.

4.The District Educational Officer,
Melur, Madurai District.

J.NISHA BANU, J.

and

S.SRIMATHY, J.

Tmg

W.A(MD)No.429 of 2025

02.04.2025