

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 10700 OF 2016
(Arising out of SLP (C) NO. 29245/2014)**

V. LAVANYA & ORS.

APPELLANTS

Versus

**STATE OF TAMIL NADU
REPRESENTED BY ITS PRINCIPAL SECRETARY & ORS.**

RESPONDENTS

WITH

**CIVIL APPEAL NOS. 10715-10716 OF 2016
(ARISING OUT OF SLP (C) NOS. 29353-29354 OF 2014)**

**CIVIL APPEAL NO. 10720 OF 2016
(ARISING OUT OF SLP (C) NO. 29634/2014)**

**CIVIL APPEAL NO. 10726 OF 2016
(ARISING OUT OF SLP (C) NO. 29715 OF 2014)**

**CIVIL APPEAL NOS. 10731-32 OF 2016
(ARISING OUT OF SLP (C) NO.32238-32239 OF 2014)**

**CIVIL APPEAL NO. 10737 OF 2016
(ARISING OUT OF SLP (C) NO.32240 OF 2014)**

**CIVIL APPEAL NO. 10736 OF 2016
(ARISING OUT OF SLP (C) NO. 32241 OF 2014)**

**CIVIL APPEAL NO. 10735 OF 2016
(ARISING OUT OF SLP (C) NO.34978 OF 2014)**

**CIVIL APPEAL NO. 10734 OF 2016
(ARISING OUT OF SLP (C) NO. 32160 OF 2014)**

**CIVIL APPEAL NO. 10733 OF 2016
(ARISING OUT OF SLP (C) NO. 34568 OF 2014)**

**CIVIL APPEAL NOS. 10727-10730 OF 2016
(ARISING OUT OF SLP (C) NOS. 33127-33128 OF 2014)**

CIVIL APPEAL NO. 10725 OF 2016
(ARISING OUT OF SLP (C) NO. 6543 OF 2015)

CIVIL APPEAL NOS. 10721-10723 OF 2016
(ARISING OUT OF SLP (C) NOS. 26461-26463 OF 2015)

CIVIL APPEAL NO. 10719 OF 2016
(ARISING OUT OF SLP (C) NO. 26464 OF 2015)

CIVIL APPEAL NOS. 10701-10714 OF 2016
(ARISING OUT OF SLP (C) NOS. 31629-31642 OF 2014)
[PETITIONS BY WAY OF SPECIAL LEAVE ARISING OUT JUDGMENTS
DELIVERED BY MADRAS BENCH]

AND
CIVIL APPEAL NOS.10717-10718 OF 2016
(ARISING OUT OF SLP (C) NOS. 26256-26257/2015)
[PETITION BY WAY OF SPECIAL LEAVE @ JUDGMENT DELIVERED BY
MADURAI BENCH]

STATE OF TAMIL NADU
REPRESENTED BY ITS SECRETARY TO GOVT.,
SCHOOL EDUCATION (TRB) DEPARTMENT AND ORS.

APPELLANTS

V.

S. VINCENT AND ORS.

RESPONDENTS

J U D G M E N T

R. BANUMATHI J.

Leave granted.

2. The present batch of appeals raise identical questions of law and fact concerning appointment of Secondary Grade Teachers and B.T. Assistants in the State of Tamil Nadu as per the Guidelines prescribed by National Council for Teacher Education (hereinafter referred to as the NCTE) in this

regard. These appeals impugn the conflicting judgments passed by both Madras and Madurai Bench of the High Court of Madras in W.A. No. 1031/2014 & Others. dated 22.09.2014; and W.P. No. 4558/2014 dated 25.09.2014 respectively. The dispute revolves around the relaxation of 5% marks to the reserved category candidates in the State Teachers Eligibility Test (hereinafter referred to as the TET) approved by the State Government, which is allegedly in contravention of the norms to that effect embodied in the notification dated 23.08.2010 issued by the NCTE.

3. Pursuant to the mandate of Right of Children to Free and Compulsory Education Act, 2009 ("the RTE Act"), the NCTE laid down minimum qualifications for a person to be eligible for appointment as a Teacher through a Notification dated 11.02.2011. As per the said Notification: *"...to be eligible for appointment as a teacher if any of the schools referred to in clause (n) of section 2 of the RTE Act is that he/she should pass the teacher eligibility test (TET) which will be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE"*. NCTE Guidelines prescribed 60% marks to be declared as pass in TET. The said Guidelines enabled the State Government to grant concession to persons belonging to Scheduled Castes/Scheduled Tribes, other Backward Classes, differently-abled persons etc.

4. In pursuance of the provisions of the Act, the State Government enacted the Tamil Nadu Right of Children to Free and Compulsory Education Act, 2011. State Government issued Order No. G.O.Ms.No.181 dated 15.11.2011, prescribing 60% marks as pass marks for TET under the said G.O. The Teacher Recruitment Board was appointed as the Nodal Agency for conducting the TET and recruitment of teachers. Subsequently, the State Government vide **G.O.(Ms.) No.252 School Education (Q) Department dated 05.10.2012** issued the Procedure/Guidelines for State Teachers' Eligibility Test. The said Guidelines earmarked 60% marks for State eligibility test and the remaining 40% for academic performance of the candidates. The 40% performance-based marks were divided into 10 marks and 15 marks each for the Higher Secondary Examination/Degree Examination and D.T.Ed/B. Ed. examination respectively.

5. The Teachers Recruitment Board conducted the first TET-Paper I (Secondary Grade Teacher) and Paper II (Graduate Teacher) on 12.07.2012 throughout the State in which 7,14,526 candidates appeared and 2448(0.3%) were successful. The details of number of the candidates who appeared and who passed are as under:-

Exam	No. of candidates who appeared	No. of candidates who passed	% of pass
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%

A supplementary TET was also conducted on 14.10.2012 for Paper I and Paper II in which all the candidates who had appeared in the first examination and had not secured 60% marks were allowed to appear without any additional examination fee. Around six lakh candidates appeared in the said exam, out of which 19,261 (around 3%) only cleared the TET.

The details are as under:-

Exam	No. of candidates who appeared	No. of candidates who passed	% of pass
Paper I	2,78,725	10,397	3.7%
Paper II	3,64,370	8,864	2.4%
Total	6,43,095	19,261	2.9%

6. The third TET which is the subject matter of the present challenge was conducted by the Teacher Recruitment Board in two papers viz., Paper I and Paper II on 17.08.2013 and 18.08.2013 respectively. The TET was conducted pursuant to Notification dated 22.05.2013 by which 10,672 vacancies of BT Assistants was advertised. As per the Notification, TET is only a pre-requisite eligibility test for those who are seeking appointment as a teacher; a TET certificate issued will be valid for seven years from the date of its issuance and recruitment of teachers will be conducted separately as and when there is a need, following the Guidelines issued by the State Government. Around 16,000 candidates qualified TET with more than 60% marks. In January, 2014, candidates who had obtained 60% or more were called for Certificate Verification (CV). Verification of certificates was done as per the G.O. (Ms.) No. 252 dated 05.10.2012 and weightage marks were

also awarded. However, recruitment of teachers and appointment thereof was not done.

7. In the meanwhile, the Hon'ble Chief Minister announced on the floor of the Assembly, relaxation of 5% marks in the passing marks of 60% and thus prescribed the passing marks as 55% for the candidates belonging to Scheduled Caste, Schedule Tribes, Backward Classes, Backward Classes (Muslim), Most Backward Classes, De-notified Communities and Persons with Disability (PWD). In tune with the announcement, the State Government issued orders in **G.O.Ms.No.25 School Education (TRB) Department dated 06.02.2014** in which relaxation of 5% of marks was given to the candidates belonging to SC, ST, BC, BC(M), MBC, DNC and PWD candidates. However, minimum qualifying marks with regard to general candidates was retained as 60% or 90% marks in both the papers. Relevant portion of the said G.O. (Ms.) No.25 dated 06.02.2014, reads as under:-

"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 marks 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	150	55% or 82.5 marks rounded off to 82	55% or 82.5 marks rounded off to 82 marks

Persons with Disability (PWD)		marks	
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- b) Relaxing 5% marks from the 60% marks prescribed for clearing of the Tamil Nadu Teacher Eligibility Test, 2013 held on 17.08.2013 and 18.08.2013 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).”

The said relaxation of 5% marks was held applicable to TET held on 17.08.2013 and 18.08.2013 and all future TETs for the reserved category candidates.

8. Vide **G.O.Ms. No. 29 School Education (Q) Department dated 14.02.2014**, corresponding amendments were made in criteria for selection of candidates who have cleared the TET for appointment to the post of Secondary Grade Teachers and Graduate Assistants prescribed in G.O. dated 05.10.2012. The said order laid down the weightage of marks under TET head as ‘36’ for those candidates who obtain 55% and above but below 60% marks in TET. The order also specified that the amended selection criteria would be applicable to TET held on 17.08.2013 and 18.08.2013. Relevant portion of the said G.O. reads as under:

“Tamil Nadu Teacher Eligibility Test for Secondary Grade Teachers and Graduate Assistants:-

Examination passed	Weightage of marks	90% and above	80% and above but below	70% and above but below 80%	60% and above but below 70%	55% and above but below 60%

			90%			
TNET	60	60	54	48	42	36

4. The Chairman, Teachers Recruitment Board is directed to take note of this Government order for finalizing selection list of the Tamil Nadu Teacher Eligibility Test 2013 held on 17.08.2013 and 18.08.2013 and for all future Tamil Nadu Teacher Eligibility Test with respect to candidates belonging to Scheduled Caste, Scheduled Tribes, Backward Classes, Backward Classes (Muslims), Most Backward Classes, De-notified Communities and Persons with Disability (PWD).”

9. Resultantly, a number of writ petitions were filed before the High Court challenging the Government Orders passed in G.O.Ms.No.252 School Education(Q) Department, dated 05.10.2012, G.O.Ms.No.25 School Education (TRB) Department dated 06.02.2014 and G.O.Ms.No.29, School Education (TRB) Department dated 14.02.2014 on different grounds. The Writ Court disposed of these petitions by upholding the validity of G.O.Ms.No.25, School Education (TRB) Department dated 06.02.2014. However, the learned Single Judge set aside the grading system adopted by the Government in G.O. Ms. No. 252 dated 05.10.2012 observing that it lacks rationality as it places a candidate with the difference of 1 to 9 marks in the same basket.

10. Pursuant to the order passed by the learned Single Judge, while continuing with the weightage of marks fixed earlier as per the Government Order passed in G.O.Ms.No.252 School Education (Q) Department, dated 05.10.2012 with reference to the basic qualification marks, the State Government passed a subsequent order in G.O.(Ms.) No.71 School Education (TRB) Department dated 30.05.2014 in tune with the suggestion

made by the learned Single Judge. Relevant portion of the said G.O.(Ms.)

No.71 dated 30.05.2014, is as under:

“7. The Government now issue revised orders for fixing the weightage and for distributing the weightage marks fixed in the light of the High Court orders as mentioned in para 5 above for selection of candidates for appointment to the post of Secondary Grade Teachers and Graduate Assistants in Government Schools from among those candidates who have cleared the Tamil Nadu Teacher Eligibility Test. The weightage of marks and the distribution of weightage of marks be fixed as follows:-

A) Tamil Nadu Teacher Eligibility Test Weightage for Secondary Grade Teachers

(a) There shall be 100 marks in total

(b) The computation of 100 marks will be in the following manner

- (i) Higher Secondary Exam : 15 marks
- (ii) D.T.Ed./D.E.Ed., Exam : 25 marks
- (iii) Teacher Eligibility Test : 60 marks

The weightage so assigned as indicated in (b) above to be distributed based on the actual percentage of marks obtained by the candidate in the qualifying examinations as shown below:-

Qualifying Examination	Weightage of marks	Percentage of marks obtained in the qualifying examination	Marks assigned
H. Sc.	15	P%	$\frac{P \times 15}{100}$
D.T.Ed./ D.E.Ed.,	25	Q%	$\frac{Q \times 25}{100}$
TET	60	R%	$\frac{R \times 60}{100}$
Total	100		xxxxx

B) Tamil Nadu Teacher Eligibility Test Weightage for Graduate Assistants:

(a) There shall be 100 marks in total

(b) The computation of 100 marks will be in the following manner

- (i) Higher Secondary Exam : 10 marks
- (ii) Degree Exam : 15 marks
- (iii) B.Ed., Exam : 15 marks
- (iv) Teacher Eligibility Test : 60 marks

The weightage so assigned as indicated in (b) above to be distributed based on the actual percentage of marks obtained by the candidate in the qualifying examinations as shown below:-

Qualifying Examination	Weightage of marks	Percentage of marks obtained in the qualifying examination	Marks assigned
H.Sc.	10	P%	$\frac{P \times 10}{100}$
Degree	15	Q%	$\frac{Q \times 15}{100}$
B.Ed.	15	R%	$\frac{R \times 15}{100}$
TET	60	S%	$\frac{S \times 60}{100}$
Total	100		xxx

The Government Order passed in G.O.(Ms.) No.71 School Education (TRP) Department dated 30.05.2014 was challenged both on the ground of weightage having been awarded for the marks obtained in three qualifications and also the method of gradation.

11. The High Court of Judicature at Madras heard various writ petitions and writ appeals filed before it challenging the concerned G.Os and by the orders impugned herein disposed of the same. The High Court dismissed the writ appeals as well as the writ petitions holding that the challenge to the policy decision of the Government can sustain only if it suffers from arbitrariness and unreasonableness which did not surface in these cases. It was held that the writ petitioners/writ appellants are non-suited to challenge the procedure adopted in granting weightage to the marks obtained in the basic qualification required.

12. As opposed to the view taken by the Madras Bench of the High Court, in a batch of writ petitions, the Madurai Bench has quashed the relaxation given to the reserved category candidates. The Madurai Bench also heard the challenge to Government Orders passed in G.O.Ms.No.252 School Education (Q) Department, dated 05.10.2012, G.O.Ms.No.25 School Education (TRB) Department dated 06.02.2014 and G.O.Ms.No.29, School Education (TRB) Department dated 14.02.2014 and held that in the absence of any statistics to prove that the prescription of 60% marks resulted in fewer number of candidates belonging to reserved categories getting appointed, it is not possible to uphold the Government Order. The Court further observed that the argument that relaxation was necessary to advance social justice, is nothing but a myth and is devoid of any factual data and analysis.

13. These petitions by way of special leave have been filed challenging the two contradicting decisions of the Madras Bench and Madurai Bench of the Madras High Court. For the sake of convenience, unless otherwise expressly mentioned, the term appellant has been used to refer to the private parties or original writ petitioners. Contention of the appellants is that after the Select List was finalized on the basis of G.O.Ms. No. 252 dated 05.10.2012, marks were awarded to all the candidates as per Government Order and all the candidates were awaiting the order of appointment and thereafter, Government issued orders in G.O.Ms. No. 25 School Education

Department relaxing 5% marks with respect to candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes, Most Backward Classes, Backward Classes (Muslims) De-notified communities and differently-abled persons by which the pass marks was reduced to 55% from 60% and G.O.Ms. School Education No. 29 dated 14.02.2014 was issued amending the criteria for selection prescribed in G.O.Ms. 252 dated 05.10.2012. It was submitted that the Government has reduced the passing percentage for qualifying in the TET and changed the criteria for selection after the commencement of the selection process, which is arbitrary, illegal and violative of Article 14 of the Constitution of India. In this regard, reliance was placed upon **K. Manjushree v. State of Andhra Pradesh and Anr.** (2008) 3 SCC 512 and **Hemani Malhotra v. High Court of Delhi** (2008) 7 SCC 11 to contend that it is impermissible to change the rules of selection once the selection process has started.

14. *Per contra*, learned counsel appearing for the State submitted that relaxation has been extended by the State Government only to the reserved category candidates. It was submitted that Clause 9 of the NCTE Guidelines for conducting TET empowers the State Government to give concessions/relaxations to candidates belonging to reserved categories and the State Government in exercise of its power under Clause 9 of the NCTE Guidelines granted relaxation and the same cannot be challenged. It is

submitted that the TET examination is a qualifying examination and after writing the examination and after accepting the rules and terms of selection in the first place, the appellants cannot challenge the procedure adopted by the respondent-State and challenge the weightage of marks. It was submitted that the Madras Bench has rightly upheld G.O. (Ms.) No. 25 dated 06.02.2014, G.O.Ms. No. 29 dated 14.02.2014 and G.O.Ms. No. 71 dated 30.05.2014 and the contrary view taken by the Madurai Bench is unsustainable.

15. Upon consideration of the rival submissions and perusal of the impugned judgments, the following issues arise for consideration:-

- (i) Whether the State Government has the competence to give relaxation of 5% marks in Teacher Eligibility Test (TET) and whether such relaxation provided by the State Government by G.O.(Ms.) No.25 dated 06.02.2014 is legally justified?
- (ii) Having regard to the stand of the Government in the earlier round of Writ Petitions in Writ Petition No.30426 of 2012 and 22407 of 2013, not to relax the qualifying marks for Teacher Eligibility Test (TET), whether Government is estopped from granting relaxation?
- (iii) Whether providing relaxation of 5% marks in Teacher Eligibility Test (TET) by G.O.(Ms.) No.25 dated 06.02.2014 amounts to change in the criteria of selection of teachers after the selection process commenced?
- (iv) Whether prescribing 40% marks as weightage for the academic performance is arbitrary and does not take into consideration different streams of education and subjects of study?

Point No. 1: Whether the State Government has the competence to give relaxation of 5% marks in Teacher Eligibility Test (TET) and whether such

relaxation provided by the State Government by G.O.(Ms.) No.25 dated 06.02.2014 is legally justified?

16. In exercise of the power conferred under Section 23 (1) of Right of Children to Free and Compulsory Education Act 35 of 2009, a Notification was issued by NCTE prescribing the minimum qualification for a person to be eligible for appointment as a teacher in Class I to VIII in a school referred to in clause (n) of Section 2 of Act 35 of 2009. Notification dated 23.08.2010 was followed by Guidelines dated 11.02.2011 issued by the NCTE for conducting TET under the Act. Guideline No.9 deals with qualifying marks, which reads as under:-

“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 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.”

While prescribing 60% marks as minimum qualifying marks for TET, Clause 9 enables concerned government/authorities to grant concessions/relaxation to persons belonging to SC/ST, OBC, differently-abled persons, etc., in accordance with their extant reservation policy.

17. As noticed earlier, the Government of Tamil Nadu in G.O.(Ms.) No.252 School Education (Q) Department dated 05.10.2012 fixed the criteria for

selection of candidates who have cleared the TET for appointment to the post of Secondary Grade Teachers and B.T. Assistants. As per the said Government Order, out of the 100 marks, 40 marks have been earmarked for academic performance. Remaining 60 marks out of 100 has been fixed for the TET. A Notification was issued by the Teachers Recruitment Board on 22.05.2013 for the conduct of TET, followed by recruitment of teachers. Clause 6 of the Notification, which deals with “General Information”, makes it clear that the TET is only a pre-requisite eligibility test for those who are seeking appointment as a teacher and that a TET certificate issued will be valid for seven years from the date of its issuance. Recruitment of teachers is conducted separately as and when there is a need, following the Guidelines issued by the Government of Tamil Nadu. Accordingly, it was notified to the candidates that TET is only an eligibility test and conducting of the same is distinct from the recruitment of teachers, which is a subsequent event.

18. Section 23 of the RTE Act empowers the Central Government to authorize the academic authority to prescribe minimum qualification to be eligible for appointment of teachers. Once the academic authority fixes the minimum qualification, then the relaxation is possible only under Section 23(2). Sub-section (2) enables the State to approach the Central Government to relax the minimum qualification required for appointment of

teachers, where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualification as laid down under sub-section (1) are not available in sufficient numbers. On such request, the Central Government may, if it deems necessary, by Notification, relax the minimum qualification required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that Notification. In terms of Section 23 (2) power to relax such minimum qualification has been reserved with the Central Government.

19. Contention of the appellants is that Section 23 (2) of the RTE Act requires the State/Union Territories to request the Central Government for relaxation of prescribed minimum qualification to be eligible for appointment of teachers and the power to relax the minimum qualification is exclusively within the domain of the Central Government and the same does not rest with the State Government or NCTE. It is further submitted that the High Court without properly appreciating the import of Section 23 of the Act, and Rules 17 and 18 of the Rules, erroneously held that Clause No. 9 of NCTE Guidelines dated 11.02.2011 empowered the State to make such relaxation. It was submitted that the Guidelines of NCTE cannot be contrary to the provisions of the Act and the Rules.

20. Per contra, the respondent-State has maintained that the Government was well within its powers to take a policy decision of granting relaxation to

the reserved category candidates. In this regard, the State has placed reliance on Clause No.9 of NCTE Guidelines which empowers the Government or local bodies to grant concessions/relaxation as per their respective reservation policies.

21. As noted earlier, Clause No.9 NCTE Guideline vests a discretion in the School Managements (State Government, Local Bodies, Government aided and un-aided) to grant relaxation/concessions to persons belonging to SC/ST, OBC, differently-abled persons etc. in accordance with their extant reservation policy. Clause No. 9(a) clearly empowers the State Government/School Managements/Local Bodies to grant such relaxation. Candidates had also contended before the courts that no reservation policy was in-effect at the relevant point of time.

22. Article 14 of the Constitution enshrines the principle of equality before law. Article 15 prohibits discrimination against citizens on grounds only of religion, race, caste, sex, place of birth or any of them. As per Article 16, there shall be equality of opportunity for all citizens in matters relating to employment, or appointment to any office under the State. However, at the same time, the framers of the Constitution were conscious of the backwardness of large sections of the population. It was also apparent that because of their backwardness, these sections of the population would not be in a position to compete with advanced section of the community. Article

16 (4) of the Constitution enables the State to make provision for reservation of appointments or posts in favour of any backward class of citizens which, in its opinion, is not, adequately represented in the services under the State. Article 16(4) has to be read with Article 335 which deals with claims of Scheduled Castes and Scheduled Tribes to services and posts and lays down that “the claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State”.

23. Constitution of India has made adequate enabling provisions empowering the State to promote reservation/concessions: Special provisions are made for advancement of the socially and economically backward classes. These provisions will bring out the contents of equality of opportunity guaranteed under Articles 14, 15 (1), 16 (1) of the Constitution of India by creating equal level-playing field. In **M. Nagaraj and Others v. Union of India and Others** (2006) 8 SCC 212, Constitution Bench of this Court held as follows:-

“47. Equality of opportunity has two different and distinct concepts. There is a conceptual distinction between a non-discrimination principle and affirmative action under which the State is obliged to provide a level-playing field to the oppressed classes. Affirmative action in the above sense seeks to move beyond the concept of non-discrimination towards equalizing results with respect to various groups. Both the conceptions constitute “equality of opportunity”.”

24. Preferential treatment or concessions granted to SC/ST, backward classes, physically handicapped and denotified communities is within the concept of equality. Grant of relaxation is for the upliftment of Scheduled Castes and Scheduled Tribes and other backward communities and the same has been eloquently stated in **State of Madhya Pradesh and Anr. v. Kumari Nivedita Jain and Others** (1981) 4 SCC 296 as under:-

“26. It cannot be disputed that the State must do everything possible for the upliftment of the Scheduled Castes and Scheduled Tribes and other backward communities and the State is entitled to make reservations for them in the matter of admission to medical and other technical institutions. In the absence of any law to the contrary, it must also be open to the Government to impose such conditions as would make the reservation effective and would benefit the candidates belonging to these categories for whose benefit and welfare the reservations have been made. In any particular situation, taking into consideration the realities and circumstances prevailing in the State it will be open to the State to vary and modify the conditions regarding selection for admission, if such modification or variation becomes necessary for achieving the purpose for which reservation has been made and if there be no law to the contrary. Note (ii) of Rule 20 of the Rules for admission framed by the State Government specifically empowers the Government to grant such relaxation in the minimum qualifying marks to the extent considered necessary.....The relaxation made by the State Government in the rule regarding selection of candidates belonging to Scheduled Castes and Scheduled Tribes for admission into Medical Colleges cannot be said to be unreasonable and the said relaxation constitutes no violation of Article 15(1) and (2) of the Constitution. The said relaxation also does not offend Article 14 of the Constitution. It has to be noticed that there is no relaxation of the condition regarding eligibility for admission into Medical Colleges. The relaxation is only in the rule regarding selection of candidates belonging to Scheduled Castes and Scheduled Tribes categories who were otherwise qualified and eligible to seek admission into Medical Colleges only in relation to seats reserved for them....”

25. The idea behind laying down NCTE Guidelines for conducting TET was to bring about uniformity and certainty in the standards and quality of education being imparted to the students across the nation. However, at the same time the framers of the guidelines took note of the huge

socio-economic disparity existing in the nation and accordingly, by virtue of Clause No. 9 enabled the respective state governments/authorities to provide relaxation to the candidates belonging to socially backward classes. As discussed earlier, such a provision is in line with the principles enshrined in the Constitution. State Government cannot be faulted for discharging its constitutional obligation of upliftment of socially and economically backward Communities by providing 5% relaxation to candidates belonging to Scheduled Caste, Schedule Tribes, Backward Classes, Backward Classes (Muslim), Most Backward Classes, De-notified Communities and Persons with Disability (PWD).

26. State of Rajasthan by its Notification dated 29.07.2011 has granted similar relaxation of 5% marks in the qualifying marks relatable to TET exams conducted in the State of Rajasthan. The Rajasthan High Court struck down the relaxation granted by the State of Rajasthan on the ground that such relaxation was in excess of extant reservation policy. In **Vikas Sankhala and Ors. v. Vikas Kumar Agarwal and Ors. Etc.** (2016) 10 SCALE 163, this Court reversed the judgment of the Rajasthan High Court holding that State has a legitimate right in granting such relaxation to SC/ST, OBC etc. After referring to ***Nivedita Jain*** and ***M. Nagaraj*** case, this Court in paras (51), (54) and (55) held as under:-

“51. Examined in the aforesaid context, when our Constitution envisages equal respect and concern for each individual in the society and the attainment of the goal requires special attention to be paid to some, that

ought to be done. Giving of desired concessions to the reserved category persons, thus, ensures equality as a levelling process. At jurisprudential level, whether reservation policies are defended on compensatory principles, utilitarian principles or on the principles of distributive justice, fact remains that the very ethos of such policies is to bring out equality, by taking affirmative action. Indian Constitution has made adequate enabling provisions empowering the State to provide such concessions.

.....

54. It hardly needs to be emphasized that the State has a legitimate and substantial interest in ameliorating or eliminating where feasible, the disabling effects of identified discrimination. It is a duty cast upon the State, by the Constitution, to remedy the effects of "societal discrimination". Provision for relaxation in TET pass marks has to be looked into from this angle which is in tune with the constitutional philosophy. After all it only ensures that such candidates belonging to reserved category become eligible for appointment as primary teachers. On the other hand, when it comes to selection process such reserved category candidates have to compete with general category candidates wherein due regard for merit is given. Therefore, only those candidates belonging to reserved category who are found meritorious in selection are ultimately appointed. We are of the opinion that in this manner the two constitutional goals, that of rendering quality education on the one hand and providing "equality of opportunity" to the unprivileged class on the other hand, are adequately met and rightly balanced.

55. We, thus, do not agree with the interpretation that is given by the High Court and answer Question No.1 holding that relaxation prescribed in letter dated March 23, 2011 in pass marks in TET examination for different reserved categories mentioned therein is legal and valid in law."

We are entirely in agreement with the above judgment in **Vikas Sankhala case**.

27. Granting relaxation to SC/ST, OBC, physically handicapped and de-notified communities is in furtherance of the constitutional obligation of the State to the under-privileged and create an equal level-playing field. After referring to clause 9 of the NCTE Guidelines, the Madras High Court rightly held that the Government of Tamil Nadu has acted in exercise of the powers conferred under clause 9 of the Guidelines issued by the NCTE. Madurai Bench was not right in quashing G.O.(Ms.) No.25 dated 06.02.2014

on the ground that such relaxation “*based upon the theory of social justice is actually destructive of the very fabric of the social justice*”. In our considered view, the judgment of the Madurai Bench has not kept in view the constitutional obligation of the State to provide equal level-playing field to the under privileged. In consonance with the ***M. Nagaraj*** case, an affirmative action taken by State Government granting relaxation for TET would not amount to dilution of standards and hence the view taken by the Madurai Bench is not sustainable and is liable to be set aside.

Point No. 2: Whether the State Government is estopped from granting relaxation?

28. In the earlier round of litigation (in Writ Petition No. 30425 of 2012 and Writ Petition No.22407 of 2013), Government of Tamil Nadu took a categorical stand that they would not compromise on the quality of the teachers. After referring to the said stand of the State Government in its counter affidavit before the Division Bench, in paras (38) to (40) of the judgment, Madurai Bench observed that the State Government is not justified in retracting from its earlier stand. The Madurai Bench further observed that the impugned Government Order G.O.(Ms.) No. 25 dated 06.02.2014 is not based upon any statistics and therefore granting relaxation to advance social justice “.... *is nothing but a myth and is not based on facts and figures*”. On behalf of the appellants much reliance was placed upon the earlier stand of the Government to contend that when the Government

had earlier taken the stand that it would not grant relaxation of marks for TET pass and dilute the standards of education, the Government cannot approbate and reprobate at the same time by changing its stand. It was further submitted that the teachers are responsible for moulding the younger minds and any dilution of standards of TET would be detrimental to the standards of education.

29. We are unable to persuade ourselves to accept the view of Madurai Bench quashing the impugned G.O. on the ground of alleged change in the stand of the Government. Considering the representation from various quarters, it was a policy decision taken by the Government to relax marks for TET pass for specified and under-privileged communities. It is a matter of State policy to frame and prescribe selection norms with regard to services and posts connected with the affairs of the State. It is well-settled that courts cannot interfere with the policy decisions of the State especially when the policy decision is taken in public interest to further the advancement of reserved categories. A policy decision taken by the State in exercise of its jurisdiction under Article 162 of the Constitution of India is subservient only to the mandate of the constitutional provisions and the recruitment rules framed by the State itself, either in terms of a legislative act or an executive order. The relaxation provided by the State Government and criteria of selection laid down *vide* impugned government orders are in exercise of the powers provided under the proviso to Article 309 of the

Constitution of India and being a policy decision in terms of its extant reservation policy cannot be impeached on the ground that the relaxation has been given to suit some specific class of individuals.

30. It is now well settled by a catena of decisions that there can be no question of estoppels against the Government in the exercise of its legislative, sovereign or executive powers (vide **Excise Commissioner U.P., Allahabad v. Ram Kumar** (1976) 3 SCC 540 and **M. Ramanatha Pillai v. State of Kerala and Anr.** (1973) 2 SCC 650). The view taken by Madurai Bench as regards the stand of the Government to relax the norms allegedly in contradiction to its earlier stand is not sustainable in law.

Point No. 3: Whether providing relaxation of 5% marks in TET amounts to change in the criteria of selection of teachers after the selection process commenced?

31. The appellants have contended that the provisionally selected candidates were called to attend certificate verification on 23.01.2014 and 24.01.2014 and weightage marks were also awarded as per the then existing Government Order. While so, by issuing impugned G.O.Ms. No.25 dated 06.02.2014 and G.O.Ms. No. 29 dated 14.02.2014 the criteria of selection was altered by relaxing passing marks by 5% in TET from 60% to 55%, thereby allowing large number of candidates who scored lesser marks to be considered for selection. As per the appellants, this has resulted in altering the criteria of selection after the commencement of selection

process. Reliance is placed upon **K. Manjushree v. State of Andhra Pradesh and Anr.** (2008) 3 SCC 512 and **Hemani Malhotra v. High Court of Delhi** (2008) 7 SCC 11 to contend that the rules of selection cannot be changed after the selection process commenced.

32. *Per contra*, State has contended that granting relaxation of marks to SCs/STs/OBCs and others will not amount to change in the rules of the games. By relaxation of marks more candidates belonging to reserved category are allowed to compete. The appellants cannot contend that their rights have been taken away; no prejudice has been caused to them as the selection criteria has not been altered with respect to them.

33. Appellants appeared in the TET conducted on 17.08.2013 and 18.08.2013. Respondents were to select the suitable candidates. As per the selection criteria laid down in G.O. Ms. No. 252 laid down that the candidates have to secure minimum 60% in TET so as to qualify the said exam. The weightage of the marks secured in TET was 60% and that of academic qualification was 40%. It is true that the candidates who passed TET were called to attend certificate verification on 23.01.2014 and 24.01.2014; but the selection process has not been completed. Later on, G.O.Ms. No.25 dated 06.02.2014 was issued granting relaxation of 5% marks to SC, ST, backward classes, physically handicapped, de-notified communities etc. The purpose of relaxation was to increase the participation

of candidates belonging to backward classes in State's pool of teachers. The State Government merely widened the ambit of TET so as to reach out to those candidates belonging to the deprived section of the society who were not able to compete, inspite of possessing good academic records and qualifications. The change brought about in the selection criteria is Government's prerogative. In terms of their extant reservation policy, the State Government is free to take actions suitable to the socio-economic conditions prevalent in the State, especially with regard to selection of candidates belonging to reserved category to be employed in State Service. Merely, because the Government has widened the ambit of selection, so as to enable more and more candidates to take part in the selection process, the right of candidates who were already in the process cannot be said to have been adversely affected. It is in the interest of reserved category of candidates that more candidates take part in the selection process and best and most efficient of them get selected. This will not amount to change in the criteria for selection after the selection process commenced.

34. As discussed earlier, by virtue of NCTE Guidelines No.9 dated 11.02.2011, the State Government was already empowered to grant relaxation to under-privileged candidates and only in exercise of that power, G.O.Ms.No.25 was issued to create a level-playing field. Further as noted earlier, in TET-I conducted in 2012, 7,14,526 candidates had appeared and

only 2448 (0.3%) had qualified. In the subsequent TET, around 6 lakhs candidates had appeared and only 20,000 i.e. 3% candidates could clear the test. Even in third TET with which we are concerned only 16,392 candidates had qualified. In that scenario to provide a level-playing field to persons belonging to SC/ST/OBC, denotified communities, differently-abled persons etc., State Government relaxed 5% marks to enable them to compete with others. It was the prerogative of the State Government to relax the passing marks with respect to reserved category candidates so that more qualified candidates could come up and participate in the selection process. In fact, even after grant of relaxation of 5% marks, many posts of reserved categories are remaining unfilled. State has placed the figures before us to show that even after granting relaxation of 5% marks, many posts of SCs/STs and other backward categories in various subjects are remaining unfilled.

35. The Government has not changed the rules of selection so far as the present appellants are concerned. Weightage of marks obtained in TET as well as that of academic qualification is still the same. The entire selection process conforms to the equitable standards laid down by the State Government in line with the principles enshrined in the Constitution and the extant reservation policy of the State. It is not the case where basic eligibility criteria has been altered in the midst of the selection process.

Conducting TET and calling for certificate verification thereafter is an exercise which the State Government is obliged to conduct every year as per the Guidelines issued by NCTE. By calling for CV along with certificates of other requisite academic qualifications, a candidate's overall eligibility is ascertained and then he/she is recruited. Such an exercise by which qualified teachers in the State are segregated and correspondingly certified to that effect cannot be equated to finalization of select list which comes at a much later stage. No prejudice has been caused to the appellants, since the marks obtained by the appellants in TET are to remain valid for a period of seven years, based on which they can compete for the future vacancies. Merely because appellants were called for certificate verification, it cannot be contended that they have acquired a legal right to the post. Impugned G.O. Ms.No.25 did not take away the rights of the appellants from being considered on their own merits as pointed out by the Madras Bench. We entirely agree with the views taken by the Madras Bench that "*by merely allowing more persons to compete, the petitioners cannot contend that their accrued right has been taken away*".

36. Appearing in TET is synonymous to obtaining an eligibility. By obtaining pass marks in TET a candidate is not said to have been recruited. Marks obtained in TET accounts only for 60% in the final selection and rest 40% is covered by academic performance. By granting relaxation of 5%

marks in TET for reserved categories only, the eligibility criteria is neither altered nor any prejudice is caused to the appellants. The contention of the appellants that the State Government cannot legally alter the selection criteria after conducting the exam does not find force in the light of view taken by a three Judge Bench of this Court in **Tej Prakash Pathak and Ors. v. Rajasthan High Court and Ors.** (2013) 4 SCC 540. In this case, the then Chief Justice of the concerned High Court ordered that examination conducted for the posts of 'Translators' be treated as competitive examination and only those candidates who secured a minimum of 75% marks be selected to fill up the posts in questions. In view of the decision of the Chief Justice, only three candidates were found suitable for appointment. This triggered the litigation. It was observed that there is difference between altering the basic eligibility criteria in the mid of the process of selection and altering the mere procedure of selection.

37. The State Government cannot be faulted for altering the selection criteria by relaxing 5% marks in favour of reserved category candidates. In **Tej Prakash (supra)** the alteration in procedure in effect led to elimination of selected candidates, still the Court refrained from finding fault with such an alteration, as it was done in public interest. In the present case, the relaxation afforded to the reserved category candidates has in no way eliminated the appellants from the selection process; rather a fair opportunity

has been provided to other candidates who can legitimately compete with the appellants herein.

Point No.4: Challenge to G.O. Ms. No.71 dated 30.05.2014?

38. The appellants have also challenged G.O.Ms. 71, which was issued by the respondents pursuant to the decision of the Single Judge of the High Court. As already noted before, the Single Judge while declining the challenge to G.O.Ms. No. 252 and G.O.Ms. No. 25 had set aside the grading system adopted by the Government vide G.O.Ms. No. 252. The Single Judge observed that the grading system adopted in G.O.Ms. No. 252 lacks rationality as it places candidates with the difference of 1 to 9 percentage in the same basket. Accordingly, vide G.O.Ms.No. 71 the Government came up with the grading methodology as indicated *supra* in para No 10. The appellants have not only challenged the new grading system introduced by G.O. No. 71; but they have also challenged the weightage of marks of 40% earmarked for academic performance. It is their contention that the Government has blindly accepted the recommendation of Single Judge without application of mind.

39. As it is evident from the records, distribution of marks for academic performance and TET fixed by the respondents vide G.O. No. 252 continues to be the same even after issuing of G.O. No. 71. That is, for the post of secondary grade teachers weightage of marks obtained in H.Sc. examination, D.T.Ed./D.E.Ed and TET was 15 marks, 25 marks and 60

marks respectively and it continues to be the same. Similarly, for the post of Graduate Assistants weightage of marks obtained in H.Sc. examination, Degree Examination, B.Ed and TET was 10 marks, 15 marks, 15 marks and 60 marks and it also continued to be the same. In such circumstances, we hold that the Madras High Court has correctly held that it is not open to the appellants to challenge the weightage of marks. The TET conducted on 17.08.2013 and 18.08.2013 was pursuant to the issuing of G.O.Ms.No.252 fixing the weightage for the marks in the basic qualification itself in which the appellants have participated. Thus, it is not open to the appellants to challenge the said procedure adopted by the respondents after writing the examination.

40. The second aspect of challenge relates to the grading system adopted by the respondents. The respondents have acted as per the directions of the Single Judge of the High Court. The Single Judge in his judgment dated 29.04.2014 while declaring the slab system irrational, suggested a scientific rational method for award of weightage marks with reference to actual marks secured by each candidate in H.Sc./D.T.Ed./D.E.Ed/B.Ed/TET for Secondary Grade Teachers/ Graduate Assistants as the case may be and accordingly make selections. This was accepted by the government in G.O.(Ms.) No.71 dated 30.05.2014 and the respondents have thus come up with the present awarding of weightage marks with reference to actual marks secured by each candidate which is more scientific and appropriate and as compared to

the previous grading system contained in G.O. No. 252 which had put candidates obtaining 1-9% marks on the same footing.

41. The appellants have maintained that while prescribing the marks for performance in Higher Secondary Examination, the respondents have failed to take into account different Education Boards (CBSE, ICSE, State Boards etc.) conducting Higher Secondary Examination and difference in their marks awarding patterns. As also, the appellants have alleged that respondents failed to consider different streams of education while formulating the grading pattern. It is submitted that unless and until the respondents take note of difference in marking scheme of Education boards, as also the marking scheme of different streams such as Arts, Science etc. a valid grading system cannot be formulated. Equivalence of academic qualifications is a matter for experts and courts normally do not interfere with the decisions of the Government based on the recommendations of the experts (vide **University of Mysore v. CD Govinda Rao** (1964) 4 SCR 575 and **Mohd. Sujat Ali v. Union of India** (1975) 3 SCC 76). We hold that it is the prerogative of State-Authorities to formulate a system whereby weightage marks is decided with reference to actual marks secured by each candidate. In the present case, as no arbitrariness is proved on the part of the respondents, in formulating the grading system we cannot interfere with the same. We cannot be expected to go into every minute technicalities of decision taken by the experts and perform the job of the respondent-State.

Moreover, the High Court has also noted that submission of learned Advocate General that almost all the appellants have completed their High Secondary examination from the State Boards.

42. The contention that different Boards of Examination have different standards and the examiners who evaluate the scripts are in some places more liberal than others and that the candidates who acquired qualifications decades back had to suffer strict evaluation as compared to the candidates who have qualified in the recent past facing liberal evaluation criteria, are all hypothetical arguments without any pleading and supporting material disclosed in the Writ Petitions. As noted earlier, weightage of marks for academic performance and TET fixed vide G.O.(Ms.) No.252 dated 05.10.2012 continues to be the same even after issuing G.O.(Ms.)No.71 dated 30.05.2014. Having taken up the examination as per G.O.(Ms.) No.252, the appellants cannot challenge the award of weightage for the distribution of marks for academic performance with reference to actual marks secured by each candidate. The appellants are not justified in challenging every rational decision taken by the respondents to make the selection process more fair and reasonable merely because the outcome does not favour the limited individual interests of the appellants.

43. The Madras High Court rightly rejected the challenge to G.O.(Ms.) No.25 dated 06.02.2014 and G.O.(Ms.)No. 71 dated 30.05.2014, holding

that as per the NCTE Guidelines, the State Government has the power to grant relaxation on the marks obtained in the TET for the candidates belonging to reserved category and the same is affirmed. The Madurai Bench did not keep in view the NCTE Guidelines and the power of the State Government to grant relaxation in terms of their extant reservation policy and erred in quashing G.O.(Ms.) No.25 dated 06.02.2014 and hence the same is liable to be set aside.

44. The appeals filed by the State Government are, accordingly, allowed and the impugned judgment of the Madurai Bench is set aside. The impugned judgment of the Madras Bench of the High Court is affirmed and all the appeals preferred by the unsuccessful candidates are dismissed.

.....J.
[SHIVA KIRTI SINGH]

.....J.
[R. BANUMATHI]

New Delhi;
November 9, 2016