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Court : Andhra Pradesh

Decided On : May-09-2012

Judge : Vilas V. Afzulpurkar

Appeal No. : Writ Petition Nos.6833, 6892, 7140, 7150, 7885, 7888, 7936, 7982, 8013, 8015, 8034, 8043, 8046, 8092, 8095, 8146, 10360, 10494, 10592, 11921 & 12271 of 2012 & WPMP.Nos.11672 & 11673 of 2012

Appellant : K. Devaiah and Others

Respondent : The Government of Andhra Pradesh, Rep. by Its Principal Secretary to Education, Secretariat and Others

Advocate for Pet/Ap. : Mr. K. Narayana

Judgement :

Common Order:

This batch of writ petitions challenges the clause 12(3)(iii) of the recruitment notification dated 06.02.2012 issued by the Commissioner and Director of School Education in his capacity as Ex-Officio Project Director, Rashtriya Madhyamik Shikhsha Abhiyan (RMSA).

2. The grievance of the petitioners is that by virtue of the impugned clause recruitment for the posts of Principal, Post Graduate Teacher (PGT) and Trained Graduate Teacher (TGT) was restricted to such of the candidates, who have studied in English medium. or the post of Principal it was stipulated that the candidates must have studied in English medium at any three levels of School/Junior College/Degree College/Post Graduation and for the posts of the PGT as well as TGT, one must have studied in English medium at any two levels of School/Junior College/Degree College/Post Graduation. All the petitioners claim that they are otherwise qualified as per the eligibility stipulated and only on account of the restriction aforesaid, they are excluded from consideration for direct recruitment notified under the impugned notification. Thus, the petitioners in this batch of cases though are having different qualifications and are seeking consideration of their respective case for different posts, admittedly, none of them are qualified with reference to the impugned requirement of having studied in English medium, as stated above. To that extent, therefore, the notification is questioned in the respective writ petitions.

Background facts:

(a) Under the 10th Five Year Plan of the Government of India, the secondary education, vocationalization of higher secondary education and open and distance learning was planned for enhancement of access to and improvement of the quality of children education. The National Policy on Education, 1986, as modified in 1992, provided 'Access to Secondary Education will be widened with emphasis on enrolment of girls, SC's and ST's, particularly, in science, commerce and vocational streams…'. A committee of Central Advisory Board of Education was constituted on Universalisation of Secondary Education and on its recommendation, the Central Government established Kendriya Vidyalayas. In the 11th Five Year Plan, the Union of India desired and aimed at establishing Secondary Education School within 5 KMs and a Higher Secondary School within 7-8 KM of every habitation. Towards achieving the general object of universalization of secondary education, the Government of India felt the need to provide high quality schools for talented rural children, who may not be in a position to get access to quality schools in the urban areas. With that in view, the

Government of India decided to invest in setting up good quality schools across the country and the Government introduced the Rashtriya Madhyamik Shiksha Abhiyan (RMSA) and to begin with 6,000 new high quality schools, one in every block of the country, with set standards of excellence are proposed to be established. This concept of model schools was primarily based upon the concept of Kendriya Vidyalayas in almost all respects and majority of these schools were proposed to be set up in educationally backward blocks. The respective State Governments were to participate in setting up the schools through a society created for this purpose and the State had to provide necessary infrastructure. The funding pattern was envisaged between the Central Government and the State Government at 75% and 25% respectively with gradual increase or decrease in the said sharing pattern.

(b) Out of the sanctioned model schools, 355 model schools are to be established in the State of Andhra Pradesh and for that purpose the Government of India sanctioned an amount of Rs.412.09 crores, which includes management, monetary evaluation and research component, as grant-in-aid. The Government of the Andhra Pradesh through the School Education Department registered a Society in the name of ‘Andhra Pradesh Secondary Education Society’ (for short ‘the society’) vide registration No.660 of 2009 dated 21.10.2009 under the Andhra Pradesh Societies Registration Act, 2001 with the objects in tune with the policy of the Central Government under the aforesaid scheme. The society also formed its byelaws for implementation of the objectives of the society by constituting an Executive Committee comprising of the following:

1. Secretary-in-charge of the Secondary Education - Chairman

2. Commissioner and Director of School Education and Ex-Officio Project Director, RMSA - Member Secretary

3. Representatives from Finance Department - Members

4. Representatives from Planning Department - Members

5. Nominee(s)/Representative(s) from Ministry of Human Resource Development - Members

6. Director of Intermediate Education - Member

7. Any other member nominated by the Chairman.

As per the byelaws of the society, the Executive Committee was entrusted with the powers of Management of the Society, which includes power to make rules, power to create posts, power to enter into contracts, power to acquire immovable property, power to set out subordinate bodies etc.

(c) The Government of Andhra Pradesh under G.O.Ms.No.254 Finance (SMPC-I) Department dated 03.12.2011 approved creation of posts for establishment of the model schools and the said sanction for posts includes creation of 39 posts at State level, 138 posts at District level and 7,100 posts at School level. In this batch of writ petitions, we are concerned with 7100 posts at school level sanctioned under the aforesaid GO, which comprise of one post of Principal; 12 posts of Post Graduate Teachers (PGT) and 7 posts of Trained Graduate Teachers (TGT) per school for each of 355 schools. The executive committee of the Society in its second executive meeting held on 17.01.2012 approved ad hoc rules, for direct recruitment to the posts of Principal, PGT and TGT, providing for method of appointment, scale of pay etc. It is based on the aforesaid rules, the notification, in question, was issued on 06.02.2012, so as to ensure that schools start functioning with effect from the academic year 2012-2013 for running classes from VI to XII with co-education in English medium, by inviting the applications online for all three category of posts aforesaid. As per the aforesaid notification, while the applications were invited from the eligible candidates, the written test is scheduled to be held on 10.05.2012.

(d) When this batch of writ petitions were filed, this Court by interim orders passed in some of the writ petitions directed that applications of the petitioners be received and considered along with others, who are similarly placed, but who may not have approached this Court. The Commissioner and Director of School Education and Ex-Officio Project Director, RMSA, questioned the said directions of a learned

single Judge, as aforesaid, in W.A.No.366 of 2012 before the Division Bench, which, on consideration, by order dated 28.03.2012 has set aside the directions aforesaid and in turn directed that this batch of writ petitions be heard and disposed of preferably ahead of the examination. The Division Bench also directed that if for any reason the writ petitions are not likely to be disposed of before the examination, the applications received pursuant to the impugned order passed by the learned single Judge may be processed and they may be permitted to write the examination but the results shall not be declared. The Division Bench, therefore, requested the Hon'ble the Chief Justice to direct listing the entire batch of writ petitions before any one of the learned single Judges for hearing and disposal. As per the directions of the Hon'ble the Chief Justice, this batch of writ petitions were listed before me on 03.04.2012 and as per the request of the learned counsel on either side, it was again listed for hearing on 11.04.2012 and thereafter, adjourned twice on the request of the petitioners and the hearing in the batch commenced on 17.04.2012 and was concluded on 27.04.2012 (last date before the Summer Vacation, 2012) and the batch was reserved for judgment.

3. Mr. D.V. Seetharama Murthy, learned senior counsel, led the arguments, on behalf of the petitioners, which were ably supplemented by Mr. J Ramchander Rao; Mr. Ch. Janardhan and Mr. K. Narayana. Learned Additional Advocate General opposed this batch of writ petitions to sustain the impugned clause in the notification apart from Mr. Raviteja Padiri, who sought impleadment in WP.No.6892 of 2012 vide WPMP.No.11672 of 2012 and WPMP.No.11673 of 2012, and opposed the batch of writ petitions. Since I have heard all the learned counsel at length including the proposed party, the applications for impleadment being WPMP.No.11672 of 2012 and WPMP.No.11673 of 2012 are disposed of as under.

CONTENTIONS ON BEHALF OF THE PETITIONERS:

4. The main thrust of the learned senior counsel for the petitioners was on the classification made in the impugned notification among all the candidates by classifying them into those, who have studied in English medium and others, who have studied in Telugu medium and it is contended that the said classification

clearly violates the equality enshrined under Article 14 of the Constitution of India. It is contended that the petitioners, who are otherwise eligible, are now excluded from opportunity to compete for public employment on the basis of artificial classification introduced in the impugned notification. It is contended that there is no nexus sought to be achieved, as the excluded candidates also fulfill the requirement of graduate and post graduate qualifications in the concerned subject, which they have, admittedly, studied in English medium. It is contended that for achieving graduate and post graduate degrees, English is the only medium under which these courses are offered in the State. Achieving of the said qualifications by the petitioners including acquiring of requisite certificate for teachers training, presupposes that all the petitioners are proficient in English. It cannot, therefore, be presumed that the petitioners are incapable of teaching their respective subjects in English medium. Instead of the impugned provision completely excluding the petitioners and others, it was open for the respondents to have tested such of the candidates, who have not studied in English medium, by holding a proficiency test in English but the petitioners and others are totally made ineligible to apply under the notification aforesaid.

5. Reliance is also placed on the National Council for Teacher Education Act, 1993 (for short 'NCTE Act') as well the Right of Children to Free and Compulsory Education Act, 2009 (for short 'RTE Act). It is contended that the NCTE Act is enacted by the Parliament to regulate the teacher education for achieving planned and guaranteed development and the said Act, as amended by Act 18 of 2011, applies to and covers qualification for school teachers as well. Under the NCTE Act, amended Section 12(A) provides that for maintaining standards of education in schools the council may by regulation determine the qualification of persons being recruited as teachers in pre-primary; primary; upper primary; secondary; senior secondary school or intermediate college by whatever name called. It is, therefore, contended that under the aforesaid Act the qualifications for the teachers is laid down and the respondents are bound to stipulate only such qualifications, as are prescribed under the NCTE Act. In other words, it is contended that determination of qualifications for recruitment of teachers, as in the present case, is a function exclusively within the NCTE Act, as stipulated by the council and the impugned provisions of the notification are clearly opposed to the

qualifications prescribed under the NCTE Act. Section 23 (1) of the RTE Act and Rule 17 (1) of Rules framed under the RTE Act, are extracted hereunder for the sake of convenience:

“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, authorized by the Central Government, by notification, shall be eligible for appointment as a teacher.

17. Minimum qualifications.- (1) The Central Government shall, within one month of the appointed date, notify an academic authority for laying down the minimum qualifications for a person to be eligible for appointment as a teacher.”

6. The Government of India issued notification dated 23.08.2010 laying down minimum qualifications for a person to be eligible for appointment as a teacher, referred to clause (n) of Section 2 of the NCTE Act and the Central Government issued notification dated 29.07.2011 under Section 23(1) of the RTE Act laying down the minimum qualifications for a person to be eligible for appointment as a teacher. Learned counsel for the petitioners contend that no medium of instruction is insisted upon under the aforesaid notifications, which are statutory in nature and once a candidate fulfills the minimum qualifications prescribed under the aforesaid notifications, all the petitioners herein, if otherwise eligible, are entitled to be declared as eligible for appointment and cannot be excluded from consideration. It is also contended that the State has no power to prescribe qualifications other than those under the NCTE Act or RTE Act. It is, further, contended that language cannot be a ground to discriminate, as it directly offends Article 16 of the Constitution of India. For the sake of convenience, Articles 15 and 16 are extracted hereunder:

“15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.-

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(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.

16.Equality of opportunity in matters of public employment.-

1. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

2. No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

3. Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

4. Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.

5. Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."

7. Learned counsel for the petitioners placed reliance upon a decision of the Supreme Court in **V.N. SUNANDA REDDY v. STATE OF ANDHRA PRADESH (** AIR 1995 SC 914)for the proposition that the State cannot justify such classification of meritorious candidates into Telugu medium candidates and Non-Telugu medium candidates and thereby, 5% weightage of total average marks

sought to be given to Telugu medium candidates by the Andhra Pradesh Public Service Commission was declared violative of Articles 14 and 16 of the Constitution of India. Reliance is also placed upon a Division Bench judgment of this Court in **DISTRICT SELECTION COMMITTEE v. M. VENUGOPAL (**2003 (5) ALD 512)wherein the candidature of petitioner therein for recruitment of teachers in the Zilla Parishad Schools was rejected on the ground that the said petitioner did not study Telugu as first language up to SSC. The imposition of such requirement was held not binding and the orders of the Andhra Pradesh Administrative Tribunal, which had set aside the said requirement, was upheld. Reliance is also placed upon a decision of the Supreme Court in **THE GUJARAT UNIVERSITY, AHMEDABAD v. KRISHNA RANGANATH MUDHOLKAR (**AIR 1963 SC 703)**,**particularly, paras 23 and 27 to contend that legislation relating to imposition of an exclusive medium of instruction in regional language, which was questioned, was declared invalid in view of exclusive legislative power conferred on the union in list I item 66 and as such, the State of Gujarat had no power, as power to legislate on subject of education including that of universities was entrusted to Parliament. Learned counsel for the petitioners also placed reliance on decisions of the Supreme Court in **THE STATE OF JAMMU and KASHMIR v. SHRI TRILOKI NATH KHOSA** (1974) 1 SCC 19)as well as in **AASHIRWAD FILMS v. UNION OF INDIA** (2007) 6 SCC 624).

8. The Supreme Court in **SHRI TRILOKI NATH KHOSA's** case (4 supra)was considering the classification among the Assistant Engineers in the Jammu and Kashmir Engineering Services when they were sought to be distinguished on the basis of one class possessing bachelors degree in Engineering and the other class possessing qualification of AMIE, for the purpose of promotion to the post of Executive Engineer. In my view, the said judgment is not relevant for the issue involved in the present batch of cases. Similarly, the decision in **AASHIRWAD FILMS's** case (5 supra)relates to interpretation of taxing statute differentiating between films in Telugu language for concessional rate of tax. That judgment also has no relevance in the present context.

9. Learned Additional Advocate General, on the other hand, contended that petitioners' basic premise of violation of Articles 14 and 15(5) of the Constitution of

India is misconceived, as according to him, the classification based on the object sought to be achieved is not violative of Article 14 of the Constitution of India and is permissible. He also contends that Article 15 (5) conspicuously does not use the word ‘language’ as is used in Article 29(2) of the Constitution of India and as such, the contention of the petitioners that the State cannot discriminate among the citizens on the ground of language/medium of instruction as provided under Article 15(1) of the Constitution of India is misconceived. Learned Additional Advocate General has placed before the Court a brief note with regard to the scheme described as RMSA, the constitution of APSE society, deliberations of Executive Committee and the ad hoc rules framed in view of sanction of posts accorded by the Government under G.O.Ms.No.254 dated 03.02.2011, referred to above and submits that the qualifications for the posts in question were prescribed under the ad hoc rules and based on that the notification, in question, was issued. He submits that none of the petitioners have questioned the rules and as such, mere challenge to the part of the notification is unsustainable. He also submits that the schools are proposed to be established in remote areas of the State and 58 proposed locations are also notified. He submits that the English medium schools are proposed to be established to ensure that children from rural areas achieve proficiency and communication skills in English and to equip them to compete with children in the urban areas.

10. Learned Additional Advocate General points out that in the very scheme under RMSA, the concept of model school envisages, inter alia, that ‘Medium of instruction will be left to the State Governments. However, special emphasis will be given to English teaching and spoken english’. Further, the State/Union Territory Governments will have option to establish schools either with class VI to XII or class IX to XII and that every educationally backward block as per the list drawn up by the Ministry of Human Resource Development will be eligible to get one model school on Kendriya Vidyalaya template under the State Government. The State/Union Territory Governments are free to establish new schools or select existing schools for conversion as model schools.

11. Learned Additional Advocate General also submits that the aims, objects and special rules framed by the Society for the model schools are in conformity with

the objects of NCTE Act and RTE Act. Learned Additional Advocate General, therefore, submits that establishing English medium model schools is only as per the Central Government scheme, which requires that the State Government should emphasize teaching in english and spoken English, as a policy for upliftment of children of rural areas and the teachers to be recruited in such model schools were required to have absolute knowledge of English. Hence, the requirement of having studied in two/three levels in English medium. The said policy decision, according to the learned Additional Advocate General, is not open to question, as it is neither arbitrary nor is unreasonable.

12. Counter affidavit filed by the second respondent, inter alia, reiterates the contentions, as above and states that children in rural areas with english medium teaching will be adequately equipped to compete in the examinations for professional courses on par with children of urban background, who have opportunity to study in english medium schools. It is also stated that there is no absolute exclusion of Telugu medium candidates for recruitment as teachers, if they have studied in English medium at the required number of levels. Thus, for the post of Principal though three levels of english medium education is prescribed, for the other posts two levels of english medium education is sufficient. Lastly, it is stated that even before the due date as on 22.03.2012, for 1,065 TGT non-language posts, 19,620 persons have applied; similarly, for 3195 PGT non-language posts, 24,832 applications have been received and for 355 posts of Principal, 3311 applications have been received apart from 1420 PGT language posts, 28,383 applications and for 1065 TGT language posts, 26,068 applications have been received. Thus, for total 7100 posts, 1,02,154 applications were received even by 22.03.2012 i.e. before the due date, which according to the learned Additional Advocate General, shows that large number of eligible candidates even as per the notification are available.

13. Learned Additional Advocate General placed reliance on the following decisions:

HINDI HITRAKSHAK SAMITI v. UNION OF INDIA (AIR 1990 SC 851) for the proposition that policy decision is not amenable to judicial review. **STATE OF**

MYSORE v. P. NARASING RAO (AIR 1968 SC 349) for the proposition that Article 14 of the Constitution of India does not forbid reasonable classification based on intelligible differentia and if the differentia,

in question, has reasonable nexus to the object sought to be achieved. **VISVESWARAYA TECHNOLOGICAL UNIVERSITY v. KRISHNENDU HALDER** (2011) 4 SCC 606) for the proposition that fixation of higher eligibility criteria by University/State Government than the minimum prescribed by a Central Government body to achieve excellence in education, being part of academic policy of the University, is beyond the judicial review. **STATE OF U.P. v. BHUPENDRA NATH TRIPATHI** (2010) 13 SCC 203) for the proposition that State in its discretion is entitled to prescribe higher qualifications than those prescribed under the NCTE Act. Lastly, in **STATE OF BIHAR v. BIHAR STATE +2 LECTURERS ASSOCIATIONS** (2008) 7 SCC 231) the Supreme Court upheld the classification in different pay scales for trained and untrained teachers, as a reasonable classification in larger public interest.

WP.No.8043 of 2012:

14. This writ petition is filed by 52 petitioners, who state in the affidavit that they possess qualification of graduation in English literature as well as Post Graduation in English literature in English medium.

15. Though general grounds, which are covered by the contentions based upon NCTE Act and RTE Act, are raised in the affidavit, learned counsel for the petitioners raised another argument, which was not pleaded. Learned counsel for the petitioners contends that for language teachers such as TGT (Hindi) or TGT (Telugu), the requirement of having studied in English medium at required levels is not prescribed. The same, however, was prescribed only for the language teacher in English. According to the learned counsel, all TGT's in languages ought to be treated uniformly prescribing uniform qualifications.

16. Since the said argument was, prima facie, found tenable, though a specific ground was not raised, the learned Additional Advocate General was asked to respond to the said contention.

17. Learned Additional Advocate General, has accordingly, filed a written note pointing out that the candidates, who studied only in one subject in English as optional while other subjects in Telugu medium cannot be said to be equipped in communication skills. The comparison made with Telugu or Hindi subjects is also stated to be incorrect, as the candidates for Telugu or Hindi subjects study all the papers in the respective language whereas for English literature students, except that subject other papers are in Telugu medium.

WP.No.8092 of 2012:

18. Apart from the contentions on behalf of both sides, as above, the present writ petition is a case of a candidate, who has qualification of M.Sc. (Biochemistry) but is not held eligible, as the said discipline is not one of the notified disciplines.

19. Learned counsel for the petitioner contends that the petitioner is fully eligible as M.Sc. (Zoology) is one of the disciplines notified and Biochemistry, being part of Zoology, the petitioner has to be construed as eligible. Reliance is also placed on the National Eligibility Test (NET); eligibility brochure issued in June 2011 by HRD, where M.Sc. (Biochemistry) is included in the discipline of Biosciences. Similarly, reliance is also placed on the resolution passed by the Department of Biochemistry, Osmania University, which recommended inclusion of Biochemistry, as a branch of life sciences. Similar recommendations from Kakatiya University and brouchers of Devi Ahilya Viswa Vidyalaya, Indore, is also relied upon.

20. Learned Additional Advocate General submits that equivalence of a qualification cannot be adjudicated under Article 226 of the Constitution of India, as the discipline of Biochemistry is not included in the list of eligibility, as per the circular issued by the Board of Intermediate Education, Andhra Pradesh. Even otherwise, it is contended that equivalence of a qualification being with the domain of academic bodies, this Court would not adjudicate upon the said aspect.

WP.No.8095 of 2012:

21. Petitioner in this case is aged 39 years and is a Bachelor of Arts degree holder with aggregate marks of 49.35% and a post graduate in Political Science with

aggregate marks of 47.50%. Petitioner seeks entitlement for consideration on the ground that requirement of securing 50% marks at graduation and post graduation levels, as per the notification cannot be achieved by the petitioner, as she obtained the bachelors degree in 1996 and post graduation in 2003 and cannot now appear for improvement. She, therefore, questions the academic qualifications prescribed under clauses 12(2)(A)(i) and 12(3)(A)(i) of the notification.

22. Petitioner in this case had initially approached the Andhra Pradesh Administrative Tribunal in O.A.No.2132 of 2012 but the same was dismissed on the point of jurisdiction on 20.03.2012 along with batch of OA's giving liberty to approach appropriate forum. Thereafter, petitioner has filed this writ petition on 21.03.2012 and when the same came up for hearing on 22.03.2012 on the request of the learned Additional Advocate General, it was adjourned to 26.03.2012 and on that date, after hearing the learned Additional Advocate General, as an interim arrangement, petitioner was directed to make application manually before the fourth respondent on or before 27.03.2012 subject to further orders of this Court.

23. Second respondent in the counter affidavit states that the educational qualification and its percentage, being academic issues, is the prerogative of the employer and petitioner cannot question the conditions of requirement. It is stated that restriction of age as well as fixation of cut off date is within the domain of recruiting agency.

WP.No.8146 of 2012:

24. Mr. K. Narayana, learned counsel for the petitioner, contended that the post of TGT is equivalent to School Assistant and based on paras 6 and 8 of the Presidential Order sought to contend that the selection to the said post must be held district wise.

25. The second respondent in para 9 of the counter affidavit states that scales of TGT is equivalent to that of School Assistant and above the Junior Assistant, which is a zonal post under the Presidential Order and hence, there is no violation of the Presidential Order. It was also pointed out that notification itself provides under clause 9(i) that rule of reservation to local candidates, as specified under the

Presidential Order shall be followed.

26. The contention of the petitioner that proficiency in English alone is sufficient etc. is already reiterated by the other counsel for the petitioners. Learned counsel points out that A.P. Subordinate Service Rules and seeks to equate the eligibility with that of School Assistant. He also points out that as per the Ad hoc rules, the 1/3rd of the posts can be filled by deputation from Kendriya Vidyalaya or Navodaya Vidyalaya where there is no such requirement of teacher having recruited on the basis of study in English medium at 2 or 3 levels. Thus, according to the learned counsel, for the remaining 2/3rd posts, the said requirement is clearly arbitrary.

27. Learned Additional Advocate General pointed out that the post, in question, is equivalent to a zonal post and as such, there is no violation of Presidential Order and secondly, the recruitment, as such, is for all the 7100 posts and no deputation of 1/3rd, as alleged, is being taken up or resorted to. Hence, the contention of the learned counsel for the petitioner is liable to be rejected. Similarly, the contention with respect to A.P. Subordinate Service Rules has no relevance as these posts are being filled under the Central Government scheme by the APSE Society and the posts are not the posts governed by A.P. Subordinate Service Rules.

WPMP.Nos.11672 and 11673 of 2012 in WP.No.6892 of 2012:

28. Learned counsel for the proposed parties has adopted the arguments of learned Additional Advocate General and points out that the model school proposed under the notification does not fall within Section 2(n)(iii) of the RTE Act, as it is not one of the specified authorities notified by the appropriate Government. A compilation of citations is also filed but in view of the contentions largely covered by the learned Additional Advocate General, it is not necessary to deal with those contentions separately. It is, however, necessary to notice that the proposed parties in WPMP.No.11673 of 2012 are prospective candidates, who claim to fulfill the eligibility requirement under the notification whereas the locus standi of the petitioners in WPMP.No.11672 of 2012 is extremely doubtful, as they are the parent of prospective students. The locus of petitioners in WPMP.No.11672 of 2012 is, therefore, clearly too remote to be considered. Therefore, WPMP.No.11673 of 2012 is allowed and WPMP.No.11672 of 2012 is dismissed.

29. In the light of these rival contentions, the following core questions emerge for adjudication:

“1. Whether the State or an instrumentality of the State can prescribe the eligibility qualification over and above the one prescribed by NCTE Act and RTE Act?

2. If the answer to the above question is in the affirmative, whether the classification made in the impugned notification on the medium of instruction violates Article 14 and 15(1) of the Constitution of India?”

Question No.1:

30. So far as the first question is concerned, it does not present much difficulty, as the said issue is no longer res integra. In BHUPENDRA NATH TRIPATHI’scase (9 supra)the real question, which fell for consideration before the Supreme Court was different from the question, which arises in this batch of cases and that question was answered by the Supreme Court in para 33 of its judgment. For our purposes, however, paras 34 and 35of the judgment are very relevant, which are extracted hereunder:

“34. Learned senior counsel appearing for the State however submitted that the State which runs a training course with the approval of NCTE is entitled to prescribe the qualifications for candidates seeking admission to the course so long as the qualifications prescribed are not lower than those prescribed by or under the NCTE Act. The submission was that after the NCTE Act has come into force the State is justified in insisting and prescribing B.Ed. qualification from only such of those institutions recognized by NCTE. Reliance has been placed upon the decisions of this court in State of A.P. and Ors. v. Lavu Narendranath and Ors. : (1971) 3 SCR 699; Dr. Preeti Srivastava and Anr. v. State of M.P. : (1999) 7 SCC 120 and State of T.N. and Anr. v. S.V. Bratheep (Minor) and Ors. : (2004) 4 SCC 513.

35. There is no quarrel with the proposition that the State in its discretion is entitled to prescribe such qualifications as it may consider appropriate for candidates seeking admission into BTC course so long as the qualifications so prescribed are

not lower than those prescribed by or under the NCTE Act. The State can always prescribe higher qualification, but the argument proceeds on the assumption that B.Ed. qualification obtained from only such of those institutions established and recognized by NCTE after the Act coming into force is higher or superior than the B.Ed. qualification obtained from the Universities or affiliated colleges duly recognized by the University Grants Commission prior to the Act coming into force. What is the rational basis for such a presumption? None. This fact assumes significance particularly in the light of the fact that all the institutions from where the candidates obtained their B.Ed. qualification have themselves received recognition from the Regional Council after the NCTE Act came into force.

VISVESWARAYA TECHNOLOGICAL UNIVERSITY'scase (8 supra) was a case where the University had fixed the minimum eligibility for B.E and B.Tech courses, which was under challenge on the ground that it is higher than what is prescribed by AICTE and it was contended that the norms prescribed by AICTE with regard to eligibility criteria alone would govern the admissions and the regulations of the University contrary to AICTE are unconstitutional and unenforceable. The said contention was specifically rejected by the Supreme Court when it summarized the legal position under para 14(i) to (iv), extracted hereunder.

14. The Respondents (colleges and the students) submitted that in that particular year (2007-2008) nearly 5000 engineering seats remained unfilled. They contended that whenever a large number of seats remained unfilled, on account of non-availability of adequate candidates, para 41(v) and (vi) of Adhiyaman would come into play and automatically the lower minimum standards prescribed by AICTE alone would apply. This contention is liable to be rejected in view of the principles laid down in the Constitution Bench decision in Dr. Preeti Srivastava and the decision of the larger Bench in S.V. Bratheep which explains the observations in Adhiyaman in the correct perspective. We summaries below the position, emerging from these decisions:

(i) While prescribing the eligibility criteria for admission to institutions of higher education, the State/University cannot adversely affect the standards laid down by the Central Body/AICTE. The term `adversely affect the standards' refers to

lowering of the norms laid down by Central Body/AICTE. Prescribing higher standards for admission by laying down qualifications in addition to or higher than those prescribed by AICTE, consistent with the object of promoting higher standards and excellence in higher education, will not be considered as adversely affecting the standards laid down by the Central Body/AICTE.

(ii) The observation in para 41(vi) of Adhiyaman to the effect that where seats remain unfilled, the state authorities cannot deny admission to any student satisfying the minimum standards laid down by AICTE, even though he is not qualified according to its standards, is not good law.

(iii) The fact that there are unfilled seats in a particular year, does not mean that in that year, the eligibility criteria fixed by the State/University would cease to apply or that the minimum eligibility criteria suggested by AICTE alone would apply. Unless and until the State or the University chooses to modify the eligibility criteria fixed by them, they will continue to apply in spite of the fact that there are vacancies or unfilled seats in any year. The main object of prescribing eligibility criteria is not to ensure that all seats are in colleges are filled, but to ensure that excellence in standards of higher education is maintained.

(iv) The State/University (as also AICTE) should periodically (at such intervals as they deem fit) review the prescription of eligibility criteria for admissions, keeping in balance, the need to maintain excellence and high standard in higher education on the one hand, and the need to maintain a healthy ratio between the total number of seats available in the state and the number of students seeking admission, on the other. If necessary, they may revise the eligibility criteria so as to continue excellence in education and at the same time being realistic about the attainable standards of marks in the qualifying examinations."

The legal position as stated in para 14(i), relevant for our purpose, clearly answers the question posed in the affirmative.

Question No.2:

31. As noticed above, the Ad hoc rules fixing the eligibility is not challenged in any of the cases in this batch of writ petitions. The recruitment notification, as such, to the extent of requirement of having studied in English medium at 3 levels/2 levels, as the case may be, is questioned. As has been noticed in the narration above, the very scheme of the Government of India i.e. RMSA envisages that though medium of instruction is left to the individual States/UT's, but it is desired that emphasis will be given to English teaching and spoken English. The APSE society, accordingly, through its executive committee, after discussions with academic experts, has resolved to establish model schools in identified locations in English medium with co-education. The notification itself stipulates the said purpose in para 1 itself and the relevant portion is extracted hereunder for convenience:

'…in these schools there will be classes from VI to XII with co-education in English medium. During the year 2012-2013, the schools start with classes VI to VIII and XI.'

The requirement of insisting upon the candidates having studied in English medium in 3 or 2 levels is, therefore, ex facie in conformity with the object sought to be achieved.

32. The contentions of the petitioners that the classification among the eligible candidates into one class, who have studied English medium as per the requirement and the other, who do not fulfill that requirement, would be a valid classification provided it fulfills the test as laid down by the Hon'ble Supreme Court. The earliest decision, on the point may noticed at this stage, in **RAM KRISHNA DALMIA V. SHRI JUSTICE S.R. TENDOLKAR (**AIR 1958 SC 538) and for the sake of convenience, it is appropriate to extract relevant portion of para 12(1) as under:

'**12**. A close perusal of the decisions of this Court in which the above principles have been enunciated and applied by this Court will also show that a statute which may come up for consideration on a question of its validity under Art. 14 of the Constitution may be placed in one or other of the following five classes: -

(i) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the court. **In determining the validity or otherwise of such a statute the court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things.** Where the court finds that the classification satisfied the tests, the court will uphold the validity of the law, as it did in Chiranjitlal Chowdhri v. The Union of India [1950] 1 SCR 869 , The State of Bombay v. F.N. Balsara [1951] 2 SCR 682 , Kedar Nath Bajoria v. The State of West Bengal 1953 Cri LJ 1621, V. M. Syed Mohammad and Company v. The State of Andhra [1954] 1 SCR 1117 and Budhan Choudhry v. The State of Bihar 1955 Cri LJ 374."

In **V.N. SUNANDA REDDY's** case (1 supra), relied upon by the learned counsel for the petitioners, also the said principle is noticed and on the facts of that case the principle was found to be not satisfied. The relevant portion is as follows:

"…The aforesaid Sub-classification of meritorious candidates into Telugu medium candidates and non-Telugu medium candidates insofar as their graduation is concerned does not have any rational nexus to the object sought to be achieved thereby…"

The said decision dealt with weightage given to candidates, who passed graduation in Telugu medium, it was found to be having no nexus with the object of recruitment, hence, the said weightage given was struck down as it encouraged conversion of merit into demerit and vice versa. On the facts as well as on the principle involved, the said case is clearly distinguishable from the present batch of cases.

33. Similarly, the Division Bench decision of this Court in **M. VENUGOPAL's**case (2 supra) is also clearly distinguishable, as the recruitment rules, which were, in question, did not specify any requirement of qualification as having passed in Telugu medium. The said statutory rules being silent, by an executive order, a clarification was issued that the proficiency envisaged under the rules has to be understood as candidates, who have studied in Telugu medium as a first language at high school level. That was not approved by the Division Bench, as rule cannot be clarified by departmental instructions and there was no statutory provision requiring the qualification of possessing Telugu as a first language at high school level. That case also is clearly distinguishable on the facts as well as on the principle laid down.

34. In **P. NARASING RAO's**case (7 supra) the relevant portion of para 4 is as follows:

"…It is true that the selective test adopted by the Government for making two different classes will be violative of Arts. 14 and 16 if there is no relevant connection between the test prescribed and the interest of public service. In other words, there must be a reasonable relation of the prescribed test to the suitability of the candidate for the post or for employment to public service as such. The provisions of Art. 14 or Art. 16 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for public service as such. It is therefore not right to say that in the appointment to the post of tracers the Government ought to have taken into account only the technical proficiency of the candidates in the particular craft. It is open to the Government to consider also the general educational attainments of the candidates and to give preference to candidates who have a better educational qualification besides technical proficiency of a tracer. The relevant of general education even to technical branches of public service was emphasised long ago by Macaulay as follows :

"Men who have been engaged, up to one and two and twenty, in studies which have no immediate connection with the business of any profession, and the effect

of which is merely to open, to invigorate, and to enrich the mind, will generally be found, in the business of every profession, superior to men who have, at eighteen or nineteen, devoted themselves to the special studies of their calling. Indeed, early superiority in literature and science generally indicates the existence of some qualities which are securities against vice-industry, self-denial, a taste for pleasures not sensual, a laudable desire of honourable distinction, a still more laudable desire to obtain the approbation of friends and relations. We, therefore, think that the intellectual test about to be established will be found in practice to be also the best moral test can be devised".

(Hansard, Series, 3 CXXVIII, 754, 755)

In our opinion, therefore, higher educational qualifications such as success in the S.S.L.C. examination are relevant considerations for fixing a higher pay scale for tracers who have passed the S.S.L.C. examination and the classification of two grades of tracers in the new Mysore State, one for matriculate tracers with a higher pay scale and the other for non-matriculate tracer with a lower pay scale is not violative of Arts. 14 or 16 of the Constitution."

35. The legal position settled by the pronouncements of the Apex Court, as above, clearly establish that the classification impugned herein can be sustained provided it is established that it is based upon differentia, which has close nexus with the object sought to be achieved. Since the recruitment notification involved in this batch of cases proposes to take up recruitment for establishing English medium co-education schools, the requirement of teaching faculty to satisfy the requisite qualifications with English medium background has close nexus with the object sought to be achieved. Hence, it cannot be said the classification impugned herein is violative of equality envisaged under Article 14 of the Constitution of India.

36. The contentions of the petitioners with reference to qualification prescribed under NCTE Act and RTE Act and that the qualifications prescribed in the notification with which we are concerned, it may also be noticed that what is prescribed by NCTE Act and RTE Act, are the minimum qualifications and as such, I am not able to find any illegality nor any violation of Article 14 of the Constitution of India when the respondents prescribe the requirement of having

studied in English medium at 2 or 3 levels, as the case may be.

Question No.2 is, accordingly, answered in negative.

WP.No.8043 of 2012:

37. The contention of the learned counsel for the petitioners that all language teachers must be treated uniformly, undoubtedly, is attractive in the first blush. It is, however, to be appreciated that the recruitment is being made for the schools where all subjects will be taught in English medium except the languages. The teachers to be recruited for all other subjects are required to satisfy the eligibility for teaching in English medium as per the notification. In that scenario, the teaching of English languages, as such, assumes more importance and it would be wholly inconsistent with the object, if non-English medium teachers are to be recruited on the basis of their graduate or post graduate qualification in English literature.

38. The situation with reference to TGT (Telugu) or TGT (Hindi) stands on a different footing than TGT (English) with reference to English medium schools where recruitment is being made. Irrespective of the proficiency of the petitioners, as claimed, it would be contradictory to accept the petitioners' argument when studying in English medium at required levels is insisted upon for other subjects as well but to exclude it for English language teachers. The said contention is accordingly rejected and the writ petition is liable to be dismissed.

WP.No.8092 of 2012:

39. The decision of the Supreme Court in **BASIC EDUCATION BOARD, U.P. v. UPENDRA RAI** (2008) 3 SCC 432), which is referred to hereunder, clearly holds that it is not for the Courts to interfere with the decision in the academic matters, particularly, relating to equivalence of qualifications. Since, admittedly, M.Sc. (Biochemistry) is not one of the notified disciplines, no relief can be granted to the petitioner.

40. The paragraph quoted below at paragraph 43 clearly answers the contention of the learned counsel for the petitioner in WP.No.8092 of 2012. The writ petition is

liable to be dismissed.

WP.Nos.8095 and 8146 of 2012:

41. I am unable to see any substance in any of the contentions of the learned counsel for the petitioners and as rightly pointed out by the learned Additional Advocate General, the posts, in question, are being filled under a scheme of the Central Government through the agency of the State Government and is neither a post falling under the A.P. Education Act nor A.P. Subordinate Service Rules. Hence, equivalence, as such, between the two posts is, therefore, totally non-existent.

42. Percentage of marks prescribed in the notification cannot be relaxed, as it amounts to interfering with the decision of the academic bodies, when the prescribed requisite qualifications and the cut off marks are required to be fulfilled. The educational qualifications and its percentage, being academic issued and within the purview of the recruiting agency, this Court under Article 226 of the Constitution of India would not interfere with the same. The writ petitions are thus liable to be dismissed.

43. The other contention of the learned Additional Advocate General that prescribing the eligibility qualifications is within the realm of the recruiting agency and as a policy decision, the said decision taken by the executive committee is not open for judicial review also appears well supported by a decision of the Supreme Court in **BASIC EDUCATION BOARD's** case (12 supra)wherein it was held that that the circular prescribing qualifications is a policy decision of the Government and unless it is shown to be in violation of some statutory or constitutional provision, the Courts would not interfere with the policy decision. It was also held further held in para 15 that 'Grant of equivalence and /or revocation of equivalence is an administrative decision which is in the sole discretion of the concerned authority, and the Court has nothing to do with such matters. The matter of equivalence is decided by experts appointed by the government, and the Court does not have expertise in such matters. Hence it should exercise judicial restraint and not interfere in it'.

In the result, the writ petitions are dismissed. As a sequel, the miscellaneous applications, if any, shall stand dismissed. There shall be no order as to costs.

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