



Serial No. 1-21
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

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Date of Hearing: 22-09-2020

Dated of Decision: 05-10-2020

Shri. Probirth D. Marak & 59 Ors.	Vs.	State of Meghalaya & 3 Ors.
Shri. Loppuston S. Sangma & 60 Ors.	Vs.	State of Meghalaya & 3 Ors.
Shri. Torin K. Marak & 56 Ors.	Vs.	State of Meghalaya & 3 Ors.
Shri. Tengrak M. Sangma & 66 Ors.	Vs.	State of Meghalaya & 3 Ors.
Shri. Asilbirth R. Marak & 46 Ors.	Vs.	State of Meghalaya & 3 Ors.
Shri. Tengrak M. Sangma & 81 Ors.	Vs.	State of Meghalaya & 3 Ors.
Shri. Torin K. Marak & 57 Ors.	Vs.	State of Meghalaya & 3 Ors.
Shri. Asilbirth R. Marak & 47 Ors.	Vs.	State of Meghalaya & 3 Ors.
Shri. Probirth D. Marak & 59 Ors.	Vs.	State of Meghalaya & 3 Ors.
Shri. Loppuston S. Sangma & 60 Ors.	Vs.	State of Meghalaya & 3 Ors.
Shri. Pranay Rabha & 2 Ors.	Vs.	State of Meghalaya & 3 Ors.

Appearance:

For the Petitioner/Appellant(s) :	Mr. P.T. Sangma, Adv.
For the Respondent(s) :	Mr. A. Kumar, AG with Mr. A. Kharwanlang, GA. Mr. N. D. Chullai, AAG with Ms. R. Colney, GA. Mr. S. Sengupta, Addl. Sr. GA. Mr. K. P. Bhattacharjee, GA. Mr. H. Abraham, GA.



Smt. Khamkorshisha Syiemlieh & 77 Ors. Vs. State of Meghalaya & 4 Ors.
 Shri. Teibniahlang Kharbani & 52 Ors. Vs. State of Meghalaya & 4 Ors.
 Smt. Arbihlang Suchiang & 65 Ors. Vs. State of Meghalaya & 4 Ors.
 Shri. Phroster Khyndeit & 67 Ors. Vs. State of Meghalaya & 3 Ors.
 Shri. Babitdor Hoojon & 43 Ors. Vs. State of Meghalaya & 4 Ors.
 Smt. Lutmon Dkhar & 19 Ors. Vs. State of Meghalaya & 3 Ors.
 Shri. Lanfair Nongtdo & 62 Ors. Vs. State of Meghalaya & 3 Ors.
 Smti. Dasuklang Dohtdong & 22 Ors. Vs. State of Meghalaya & 3 Ors.

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Dey, Adv.

For the Respondent(s) : Mr. A. Kumar, AG with
 Mr. A. Kharwanlang, GA.
 Mr. N. D. Chullai, AAG with
 Ms. R. Colney, GA.
 Mr. S. Sengupta, Addl. Sr. GA.
 Mr. K. P. Bhattacharjee, GA.
 Mr. H. Abraham, GA.

Coram:

Hon'ble Mr. Justice Ranjit More, Judge

1. By filing above petitions, the petitioners are seeking regularization in service. The petitioners are also challenging the Meghalaya Teachers Eligibility Test (for short 'MTET') examination which was held on 31-01-2019. Since the issues involved in the above petitions are similar, the pleadings are also completed and the learned counsel for the respective parties agreed for disposal



of these petitions at the stage of admission, I have heard them extensively and I am disposing of the petitions by this common judgment.

2. For convenience, brief facts of the Writ Petition being WP(C). No.98/2020 are taken into consideration, which are as follows:

The petitioners were appointed as teachers in Government Schools in the State of Meghalaya on temporary/adhoc basis for the period of 59 days and since then they have been continuing in service for the past 2 - 10 years. It is the case of the petitioners that they were qualified in all aspects as per the requirement of NCTE Notification dated 29-07-2011. The Director of Educational Research & Training has made an advertisement dated 29-10-2018 for conducting MTET examination. Accordingly, the petitioners and other candidates had appeared for the examination which was conducted on 31-01-2019 and the results were declared on 25-02-2020. Petitioners contends that there was no proper clarification as to whether it was mandatory for the existing teachers to appear in the examination and whether the existing teachers who fail to clear the said examination will be removed from the existing service. Petitioners further contends that they were told that MTET examination is not mandatory for existing teachers and it is only meant for fresh candidates who are applying for the post of teachers in the Government schools and it is optional for the petitioners to appear for the examination. It is further the case of the petitioners that after declaration of the MTET results on 25-02-2020, the



Government has issued an order dated 18-02-2020 directing all Sub-Divisional Schools Education Officers to issue only one-time extension to temporary teachers for the period of 59 days. The petitioners being aggrieved, therefore, filed this petition impugning the said order dated 18-02-2020. The petitioners have also sought regularization in service. The petitioners are further praying for cancellation of the whole process of MTET examination which was conducted on 31-01-2019.

3. Mr. P.T.Sangma, learned counsel submitted that the petitioners were appointed on temporary/adhoc basis and were having all the requisite qualification to be appointed as teachers as per requirement of the National Council for Teachers Education (for short 'NCTE') and they are working in such capacity for the period ranging from 2 – 10 years. Mr. Sangma submitted that the examination for MTET was conducted on 31-01-2019 in different districts of Meghalaya. However, it was found that there was leakage of the question papers before the scheduled date and time of examination. In respect of this leakage, two First Information Report at Tura Police Station also came to be filed. He submitted that there was no progress in the investigations and consequently, the results of the said examination in one Sub-Division namely, Dadangre has not been declared till date. Mr. Sangma submitted that the entire examination process because of the leakage is vitiated and same should be set aside. Mr. Sangma in support of his arguments relied upon the decision of the Apex Court in ***Chairman, All India Railway Recruitment Board and Another Vrs. K.Shyam Kumar and Others (2010) 6 SCC 614*** and ***Madhyamic Shiksha***



Mandal, M.P. Vrs. Abhilash Shiksha Prasara Samiti and Others (1998) 9 SCC 236.

Mr. Sangma submitted that the petitioners have served for a period between 1 – 10 years and they have legitimate expectation that they would be regularized in service considering their vast experience and length of service. Mr. Sangma further contended that the respondent authority had appointed the petitioners on temporary basis after examining their educational qualification and after it was found that the petitioners were eligible and qualified to be appointed as teachers as they fulfill the required educational qualification of 2-year Diploma in Elementary Education as per NCTE norms. Mr. Sangma concluded his submission by submitting that the services of the petitioners deserve to be regularized.

4. Mr. N.Syngkon, learned counsel invited my attention to the provisions of Section 23 of the Right to Education Act, 2009 and submitted that if MTET is an essential qualification, then it must be acquired by all the teachers who have been appointed prior to the enactment of the Right to Education Act, 2009. He submitted that the teachers appointed in the schools run by the Government prior to the coming into force of the Right to Education Act, 2009 do not possess the qualification of the MTET and despite that, they have been retained in service. If that be so, the petitioners also cannot be compelled to acquire the MTET qualification and their services deserves to be regularized. He also made extreme argument that if the services of temporary teachers like the petitioners cannot be protected, then all the teachers appointed prior to the Right to Education Act, 2009 who does not have the qualification of MTET should be terminated.



5. Mr. R.Kar, learned counsel submitted that the MTET examination which was held in January, 2019 is vitiated and therefore same must be quashed and set aside. He submitted that there is no dispute that there was leakage of question papers and two First Information Report came to be filed in this regard. He submitted that there was large scale leakage of question papers and same was circulated amongst the candidates through social media like whatsapp. Despite this, only the result of one Sub-division was withheld and the respondent authorities declared the result of other centres. He submitted that in today's era where social media like whatsapp is available, the candidates from any centre can get the copy of the leaked question papers within no time. Therefore, he sought cancellation of the entire MTET examination.

6. Mr. S.Dey, learned counsel submitted that the Right to Education Act came into force in the year 2010 under which having the qualification of MTET is mandatory. He invited my attention to the first and second Proviso of the Right to Education Act and submitted that the Government of Meghalaya since 2010 only held one MTET examination. He submitted that more opportunity ought to have been given to the teachers like the petitioners for qualifying the said qualification by holding the examination every year. Mr. S.Dey adopted the argument of Mr. R.Kar and submitted that even if leakage of question paper is in one centre, in that case also examination in all centres must be cancelled because of the easy access of leaked question papers through social media.

7. Mr. A.Kumar, learned AG opposed the petitions vehemently. He has also filed detailed affidavit in reply opposing the petitions. Mr. Kumar submitted that the petitions deserve to be dismissed on preliminary objections namely;



(a) The petitioners have not approached the High Court with clean hands inasmuch as they have not disclosed material information.

(b) Writ petitions are instituted after inordinate delay and suffers from laches.

(c) Petitioners are estopped from questioning the selection and examination process after having participated in it.

(d) Petitioners have prayed for multifarious reliefs merging distinct causes of action which is an abuse of process of law, petitions are liable to be dismissed as it suffers from Non-joinder of necessary parties.

8. Mr. Kumar, learned AG submitted that the MTET is a mandatory qualification under the law which cannot be relaxed by the respondents. He also submitted that action taken by the respondents in respect of allegations of leakage of question papers is in accordance with the reports of the Enquiry Committee constituted for that purpose. He further submits that wide latitude is required to be given to the Government when it comes to taking necessary disciplinary action in examination matters. Mr. Kumar further submitted that conducting fresh examination would cause huge public inconvenience and lead to tremendous financial and administrative ramifications. Learned AG asserts that the scope of judicial review is limited in respect of the decision taken by the Government in examination matters and of the conclusion drawn by the experts inspecting the factum and magnitude of leakage of question papers.

9. Regarding regularization, Mr. Kumar submitted that same cannot be granted to the petitioners in contravention of the Statutory and constitutional provisions. He also submitted that regularization cannot be granted in exercise



of general executive power under Article 162 when recruitment is governed by a statutory regime. According to learned AG, mere continuance of the petitioners as teachers on temporary basis does not vest in them any legal right to demand regularization. Lastly, he submitted that no direction of regularization can be granted on principle of equity as same is a policy decision of the executive.

10. I have gone through the pleadings of the respective parties and I have also given my anxious thoughts to the submissions advanced by the respective counsels. At the outset, I would deal with the petitioner's claim regarding regularization of service. To deal with the issue of regularization, I must refer to some of the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (herein after the 'Right to Education Act, 2009'). Section 2(a) defines 'appropriate government' and Section 2(n) defines 'schools' which reads as follows:

“2(a) “appropriate government” means –

- (i) *in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union territory, having no legislature, the Central Government;*
- (ii) *in relation to a school, other than the school referred to in sub-clause (i), established within the territory of –*
 - (A) *a State, the State Government;*
 - (B) *a Union territory having legislature, the Government of that Union territory.”*

2(n) “school” means any recognized school imparting elementary education and includes –

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



- (iii) *a school belonging to specified category; and*
- (iv) *an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.”*

11. Section 23 of the Right to Education Act, 2009 deals with qualification for appointment and terms and conditions of service of teachers which reads as follows:

“23. Qualifications for appointment and terms and conditions of service of teachers. – (1) *Any persons 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.*

(2) *Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if its deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:*

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

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

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

Reading of the above provisions makes it abundantly clear that it is mandatory to possess minimum qualification as laid down by the



academic authority authorized by the Central Government for becoming eligible for appointment as a teacher. The first proviso to Section 23 makes it clear that teachers who at the commencement of the Act does not possess minimum qualification as laid down under Sub-section (1) shall acquire such minimum qualification within a period of five years. The second proviso was added by Act 24 of 2017 whereunder extension of four years' time was granted w.e.f. 01-04-2015 for acquiring minimum qualification required under Section 23(1) of the Act.

12. After enactment of Right to Education Act, 2009, Joint Secretary, Department of School Education and Literacy, Ministry of Human Resources and Development issued a notification dated 31-03-2010 authorizing the National Council for Education (for short 'NCTE') as academic authority to lay down minimum qualification for appointment of teachers. Consequently, the amendment was carried out in the Act namely, the National Council for Education Act, 1993 and Section 12 A was introduced in the said Act by Act 18 of 2011 w.e.f. 01-06-2012 giving powers to NCTE to determine the minimum standards. Section 12 A of the NCTE Act, 1993 reads as follows:

“12A. Power of Council to determine minimum standards of education of school teachers. – *For the purpose of maintaining standards of education in schools, the Council may, by regulations, determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college, by whatever name called, established, run, aided or recognized by the Central Government or a State government or a local or other authority:*

Provided that nothing in this section shall adversely affect the continuance of any person recruited in any pre-primary, primary, upper primary, secondary, senior



secondary or intermediate schools or colleges, under any rule, regulation or order made by the Central Government, a State Government, a local or other authority, immediately before the commencement of the National Council for Teacher Education (Amendment) Act, 2011 (18 of 2011) solely on the ground of non-fulfilment of such qualifications as may be specified by the council:

Provided further that the minimum qualifications of a teacher referred to in the first proviso shall be acquired within the period specified in this Act or under the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009).”

13. Perusal of Section 12 A referred above makes it abundantly clear that power is given to the NCTE to lay down minimum standard qualification required for being eligible for appointment to the post of teachers at various levels in schools. Thus, NCTE has been statutorily empowered in pursuance of Section 23 of the Right to Education Act, 2009 to lay down standards of appointment to the post of teachers and the standards laid by the NCTE is binding on the State Government.

14. By virtue of provision of Section 12 A of the NCTE Act, the NCTE has laid down the minimum qualification for appointment to the post of teachers vide notification dated 23-08-2010. This notification is annexed as Annexure R/3 in the affidavit in reply of the Government. Perusal of this notification makes it clear that any person who apart from other qualification must pass in the Teacher Eligibility Test (TET) to be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE for the purpose. In continuance to notification dated 23-08-2010, the NCTE has laid down the guidelines for holding the Teachers Eligibility Test and informed the State Government/Union Territory vide letter dated 11-02-2011 copy of which is



annexed as Annexure R/4 to the affidavit in reply of the Government. These guidelines provide for two papers of 150 marks each. Paper-I for Classes I-V and Paper-II for Classes VI-VIII. Any person interested in teaching in either of the two Classes referred above should appear in both the examinations. Qualifying marks for the examination has been set at 60% or more.

15. In the light of the mandatory provisions of the Right to Education Act, 2009, the NCTE Act and notification and guidelines issued thereunder, the State of Meghalaya was bound to conduct the MTET examination and include it as necessary qualification for eligibility to appointing teachers at Lower and Primary level schools. Annexure R/5 to the affidavit in reply of the Government is a copy of letter of the Director of School Education & Literacy, Meghalaya dated 01-04-2015 which was issued to the District School Education Officers and Sub-Divisional School Education Officers. The Director by this letter insisted that the District School Education Officers and Sub-Divisional School Education Officers should appoint persons for Lower and Upper Primary Schools only in accordance with the norms laid down by NCTE. It is the case of the respondent Government that teachers like petitioners were appointed on temporary basis to meet the exigencies of time and to ensure that there is no break in the education. It is further the case of the respondents that petitioners were appointed on adhoc basis as stop-gap arrangement for teaching children in Lower and Upper Primary Schools and therefore, a short term contractual appointment has been made.



16. The Government of Meghalaya in the light of the enactment referred above issued notification on 08-10-2018 laying down norms for holding of MTET examination for Elementary school teachers. In pursuant to this notification, the Directorate of Educational Research & Training, Government of Meghalaya issued an advertisement dated 29-10-2018 for conducting the Meghalaya Teacher Eligibility Test, 2018. This examination was held on 31-01-2019 and was conducted in 15 centres across 42 venues for Lower Primary Paper-I at 9:00 AM and for Upper Primary Paper-II, the examination commenced at 1:30 PM for 15 centres across 26 venues. A total of 19,789 candidates appeared for Lower Primary and 9046 for Upper Primary. At this stage, reference must be made to the fact that during above examination, in one of the venues i.e. Tura Government College there was a complaint with regard to leakage of question paper of Lower Primary school and based on this complaint, FIR came to be registered on 01-02-2019. This aspect of the leakage of question paper, I will deal with it at the later part of the judgment while deciding the petitioner's arguments that the entire examination is vitiated.

17. In the light of the mandatory provision of the Right to Education Act, 2009, the NCTE Act, 1993 and the notification made thereunder, it was obligatory on the part of the State of Meghalaya to employ teachers who are in compliance with the NCTE norms and have passed MTET. The State of Meghalaya accordingly held this examination on 31-01-2019, results of which was declared on 25-02-2020. The Government thereafter initiated the process of recruitment in compliance with statutory scheme requiring mandatory qualification of MTET. The Director of Education and Literacy through



notification dated 26-02-2020 and 29-05-2020 directed the District Education Officers and Sub-Divisional School Education Officers to advertise the number of vacancies in Lower and Upper Primary levels in their respective jurisdictions and conduct the interview in accordance with guidelines mentioned therein. Meanwhile, the Government also issued the order dated 18-02-2020 directing all the District Education Officers and Sub-Divisional Education Officers to issue only one-time extension to the teachers like the petitioners for the period of 59 days. This order is also impugned in the petition while claiming regularization.

18. The Apex Court in ***State of U.P vrs. Anand Kumar Yadav (2018) 12 SCC 560*** examined the scheme of Right to Education Act, 2009 as well as the NCTE Act, 1993 and held that the States cannot derogate and relax the minimum qualifications prescribed by NCTE. Relevant paragraphs 27 and 28 reads as follows:

“27. We may now further examine the question whether the Shiksha Mitras have, under the law, right to be appointed or absorbed as teachers dehors the prescribed qualifications. In this regard, the finding in the impugned judgement [*Anand Kumar Yadav v. Union of India, 2015 SCC OnLine All 3997: ILR 2015 All 1108: (2015) 8 ADJ 338*] is as follows: (*Anand Kumar case [Anand Kumar Yadav v. Union of India, 2015 SCC OnLine All 3997: ILR 2015 All 1108: (2015) 8 ADJ 338]*, SCC OnLine All paras 67, 73, 84, 89, 90, 94, 96, 105, 113-14, 125 & 127);

67. The essential characteristics of the Shiksha Mitra Scheme envisaged, firstly, that each appointment was made on a contractual basis for a stipulated term of eleven months, renewable subject to satisfactory performance and on an honorarium. Secondly, the Scheme, as notified, contemplated that the engagement of Shiksha Mitras was not in the regular service of the State, as indeed it could not have been, having due regard to the provisions of the Service Rules of 1981 which held the filed in regard to the constitution of a cadre of teacher imparting basic education and regularly engaged for that purpose. Thirdly, each of the



persons appointed as Shiksha Mitras was placed on notice of the fact that this was a Scheme envisaging service by the unemployed youth for the benefit of the community against the payment of an honorarium. Shiksha Mitras were not entitled to the payment of a salary in the regular pay scale but would only receive a Mandeya (honorarium). The application form which every prospective candidate was required to fill up in terms of the Government Order dated 1-7-2001, envisaged a statement of acceptance that the candidate would be bound by the terms and conditions governing the Scheme. The consent form required to be filled in by every candidate envisaged that he/she would not be treated as a regular employee of the State Government and would only be entitled to the payment of honorarium. Moreover, Clause 3 of Form II appended to the Government Order stipulated that the training which was imparted to a candidate was only to enable him or her to render community service in the capacity of a Shiksha Mitra. Fourthly, appointments as Shiksha Mitras were not against sanctioned posts as determined by the Board of Basic Education with the previous approval of the State Government under Rule 4 of the Service Rules of 1981. Fifthly, the manner of making appointments and the procedure for recruitment was not in conformity with the provisions contained in Rules 14, 15, 16 and 17 of the Service Rules of 1981. Instead, what the Shiksha Mitra Scheme envisaged, was that appointments should be made by Village Education Committees at the village level. At the district level, there was a Committee chaired by the District Collector and consisting, inter alia, of the District Panchayat Raj Officer and the Basic Education Officer. The District Level Committee was constituted to oversee the implementation of the Scheme in the District. Sixthly, the qualification which was prescribed for appointment as a Shiksha Mitra under the Government Order dated 26-5-1999 was the possessing of an intermediate qualification. Prior thereto, an amendment was made in the Service Rules on 9-7-1998 by which Rule 8 was amended to prescribe the holding of a graduate degree for appointment as a regular teacher. Under the Service Rules of 1981, a regular teacher was required to also possess a basic teacher's certificate. This was not a requirement for Shiksha Mitras under the Government Order. Shiksha Mitras did not fulfil the qualifications for a regular teacher under the Service Rules of 1981. Seventhly, the manner in which reservations were to be worked out under the Rules of 1981 was evidently not the manner in which reservations in the recruitment of Shiksha Mitras would operate. At the highest, what has been urged before the Court by the Additional Advocate General and supporting counsel is that



the selection of Shiksha Mitras at the village level envisaged that a Shiksha Mitra to be appointed should belong to the same category as the Gram Pradhan, thereby resulting in a rough and ready adoption of the norm of reservation. This is certainly not the manner in which the policy of reservation as envisaged by the State is implemented in the case of regularly selected candidates, including by the application of the roster and implementing horizontal and vertical reservations. Rule 9, it must be noted, envisages reservation not only for the Scheduled Castes, Scheduled Tribes and Other Backward Classes, but other categories also including the dependents of freedom fighters and ex-servicemen. Moreover, the orders of the State Government also contemplate horizontal reservation across various class. These aspects leave no manner of doubt that the engagement of Shiksha Mitras was envisaged under an administrative scheme by the State Government on a contractual basis with a specified purpose and object and dehors the governing provisions of the applicable service Rules of 1981.

...

96. *What has happened in the State of Uttar Pradesh is that the State Government, in a clear violation of the mandate of Section 23 (2) which vests the power to relax the minimum qualifications in the Central Government, has arrogated to itself a power which it lacks, to grant exemption from the mandatory qualifications which are laid down by NCTE in their application to Shiksha Mitras in the State. The State Government, has in our view, acted in clear violation of its statutory powers. Parliament has legislated to provide, in no uncertain terms, that any relaxation of the minimum educational qualifications can only be made by the Central Government. However, Rule 16-A which has been introduced by the State Government by a Notification dated 30-5-2014 purports to provide a non obstante provision which will operate notwithstanding anything contained in Rules 15 and 16 of the State Rules. Rules 15 and 16 of the State Rules were originally formulated in a manner consistent with the provisions of Section 23 (2) and the provisions contained in Rules 17 and 18 of the Central Rules of 2010. However, as a result of the introduction of Rule 16-A, the State Government has assumed to itself the power to make provisions for relaxing the minimum educational qualifications for appointment of Shiksha Mitras as Assistant Teachers in junior basic schools ‘as are considered otherwise eligible and in order to implement the provisions of the Act’. There can be no manner of doubt that far from implementing the provisions of the Act, the State Government by its amendment of the subordinate legislation has*



purported to negate the very object and purpose of the RTE Act of 2009.

113. The issue before the Court is in regard to the legality of the absorption. Articles 14 and 16 of the Constitution provide for Equality in matters of public employment. The limit on the power of the State to grant regularization was considered by a Constitution Bench of the Supreme Court in a judgement in State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1: 2006 SCC (L&S) 753]. Emphasizing the principle of the “rule of equality” in public employment, the Constitution Bench Court held as follows: (SCC p.36, para 43)

‘43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disable from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.’

114. The Supreme Court held that there may be cases where certain appointments were not illegal but were irregular. These are situations where an appointment has been made (i) of duly qualified persons; and (ii) in duly sanctioned vacant posts and the employees would have continued to work for more than ten years without the intervention of the orders of the court or tribunal. In those cases, the judgement of the Supreme Court in Umadevi [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] left it open to the State Governments, the Union Government and their instrumentalities to take steps to regularize, as a onetime measure, the services of such irregularly appointed persons. The relevant observation in that regard is as follows: (SCC p.42, para 43)

‘43. One aspect needs to be clarified. There may be cases where irregular appointments (not



illegal appointments) as explained in *S.V. Narayanappa [State of Mysore v. S.V. Narayanappa, AIR 1967 SC 1071]*, *R.N. Nanjundappa [R.N. Nanjundappa v. T. Thimmiah, (1972) 1 SCC 409]* and *B.N. Nagarajan [B.N. Nagarajan v. State of Karnataka, (1979) 4 SCC 507: 1980 SCC (L&S) 4]*, and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunal. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above-referred to and in the light of this judgement. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly (Ed.: The word “Irregularly” has been emphasized in *Umadevi (3) case, (2006) 4 SCC 1.*) appointed, who have worked for ten years or more in duly sanctioned posts but no under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wages are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgement, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

“94. The Central Government has exercised powers under Sub-section (2) of Section 23 on 10-09-2012. The Union Ministry of Human Resource Development, in its notification, has granted a relaxation until 31-03-2014 only in respect of persons referred to in sub-clause (a) of clause (1) of Para 3 of the Notification dated 23-08-2010 as amended. This category covers persons with BA/BSc degree with at least fifty per cent marks and holding a BEd qualification. While issuing a Notification on



10-09-2012 for the purpose of relaxing the qualifications....”

“125. ... Shiksha Mitras to whom the benefit of regularization has been granted neither fulfilled the prescribed minimum qualifications nor were they appointed against sanctioned posts. The fact that Shiksha Mitras did not fulfil the qualifications prescribed by NCTE which has the unquestioned jurisdiction under the NCTE Act of 1993 and the RTE Act of 2009 is evident from the fact that the State Government, by inserting Rule 16-A into the Rules of 2011 has assumed to itself a power to relax the minimum qualifications required to be observed, in the case of Shiksha Mitras. In other words, by Rule 16-A, the State Government has created an island of exclusion for the benefit of Shiksha Mitras who, in the exercise of the rule-making power of the State under Rule 16-A, would not have to fulfil the minimum qualifications prescribed by NCTE. The State Government has sought to get over the inseparable obstacle that the Shiksha Mitras do not fulfil TET requirement by unlawfully conferring power on itself to relax the requirement. Having committed that illegality, the State has proceeded to do away with TET qualification in its application to Shiksha Mitras, by unlawfully amending the service rules. These amendments have been held to be ultra vires and an impermissible encroachment on the exclusive domain of NCTE. Having done this the State Government has compounded its illegality by regularizing/absorbing the Shiksha Mitras as Assistant Teachers. As a consequence, qualified candidates fulfilling the NCTE norms are denied the equality of opportunity to seek appointment as Assistant Teachers. We have earlier held Rule 16-A to be ultra vires the rule-making authority of the State Government since the power to grant a relaxation from the minimum qualifications is vested exclusively in the Central Government. In assuming to itself a power to relax the minimum qualification and thereafter by diluting the minimum qualifications in the case of Shiksha Mitras, the State Government has patently acted in a manner which is arbitrary, ultra vires the governing Central legislation and in breach of the restraint on the limits of its own statutory powers. By this exercise, the State Government has sought to grant regularization to persons who failed to fulfil the minimum qualifications and who were never appointed against sanctioned posts. In these circumstances, the grant of largesse by the State Government to Shiksha Mitras cannot be upheld and the amendment to the Rule is ultra vires and unconstitutional.



127. *In the present case, it is evident that Shiksha Mitras do not fulfil any of the norms laid down by the Supreme Court for regular absorption into the service of the State. They were at all material times appointed as and continued to be engaged as contractual appointees. Their appointments were against sanctioned posts. They did not fulfil the minimum qualifications required for appointment as Assistant Teachers.”*

28. *We are in agreement with the above findings. In view of clear mandate of law statutorily requiring minimum qualification for appointment of teachers to be appointed after the date of the Notification dated 23-08-2010, there is no doubt that no appointment was permissible without such qualifications. Appointments in the present case are clearly after the said date. Relaxation provision could be invoked for a limited period or in respect of persons already appointed in terms of applicable rules relating to qualifications. The Shiksha Mitras in the present case do not fall in the category of pre 23-08-2010 Notification whose appointment could be regularized.”*

The Government of Meghalaya in the light of the decision of the Apex Court in **Anand Kumar Yadav (Supra)** must follow the Right to Education Act, 2009 and NCTE Act, 1993. As stated earlier, the State of Meghalaya has taken steps in this regard and conducted the MTET examination. Though in some petitions, it was not disclosed that the petitioners therein also appeared for the MTET examination, but during the course of arguments, it is accepted that almost all the petitioners had appeared for the said examination, however, they failed. Thus, though the petitioners were continued as temporary/adhoc teachers in the schools run by the Government of Meghalaya, they are not eligible to be appointed as permanent teachers for lack of essential qualification namely, MTET. If the petitioners are not qualified to be appointed as permanent teachers for



want of essential qualification namely, MTET, then in my considered view their services also cannot be regularized.

19. In regard to the petitioner's prayer regarding regularization, reference must be made to the decision of the Apex Court in ***State of Karnataka vrs. Umadevi (2006) 4 SCC 1*** and essentially the observation made in para 15, 16 and 53 which reads as follows:

“15. Even at the threshold, it is necessary to keep in mind the distinction between regularization and conferment of permanence in service jurisprudent. In State of Mysore v. S.V. Narayanappa [(1976) 1 SCR 128: AIR 1967 SC 1071] this Court stated that it was a misconception to consider that regularization meant permanence. In R.N. Nanjundappa v. T. Thimmiah [(1972) 1 SCC 409: (1972) 2 SCR 799] this Court dealt with an argument that regularization would mean conferring the quality of permanence on the appointment. This Court stated: (SCC pp. 416-17, para 26)

“Counsel on behalf of the respondent contended that regularization would mean conferring the quality of permanence on the appointment whereas counsel on behalf of the State contended that regularization did not mean permanence but that it was a case of regularization of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules.”

16. In B. N. Nagarajan v. State of Karnataka [(1979) 4 SCC 507: 1980 SCC (L&S) 4: (1979) 3 SCR 937] this Court clearly held that the words “regular” or “regularization” do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This Court emphasized that when rules



framed under Article 309 of the Constitution are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of rules. These decisions and the principles recognized therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization.

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* [(1967) 1 SCR 128: AIR 1967 SC 1071], *R. N. Nanjundappa* [(1972) 1 SCC 409: (1972) 2 SCR 799] and *B.N. Nagarajan* [(1979) 4 SCC 507: 1980 SCC (L&S) 4: (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgement. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgement, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

Perusal of the above observation of the Apex Court makes it clear that regularization is not a mode of recruitment. It is only a process through



which procedural irregularity in the appointment of duly qualified persons made against sanctioned posts is condoned. However, it is not mean that non-adherence of any fundamental aspect of appointment can be corrected through regularization. This observation also makes it clear that contractual employees appointed on adhoc basis and lacking necessary qualification required for the post cannot claim permanency in employment.

20. In my considered opinion, the petitioners cannot rely upon the doctrine of legitimate expectation to seek regularization of employment. The petitioners from the very beginning of their contract were fully aware of the temporary nature of employment and that it would expire within stipulated period unless extended by the Government. The Hon'ble Apex Court in this regard has dealt with this principle in **Umadevi** (Supra) and held as follows:

“47. When a person enters a temporary employment or gets engagements as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent of the post.

.....

49. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule



of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and Courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.”

21. The petitioners were appointed on temporary/adhoc basis as a stop-gap arrangement in view of the exigencies faced by the Government during that time. It is by now settled principle that temporary appointments have to be replaced with permanent employment of qualified persons made in accordance with the stipulated selection procedure. In earlier part of the judgment, I have observed that the State of Meghalaya held the MTET examination, however, the petitioners failed and thereafter, advertisement inviting applications of qualified candidates for appointment as teachers at Lower and Upper Primary levels at schools was already issued.

In the light of the above discussion, I hold that none of the petitioners are entitled for regularization, therefore, their prayer for regularization stands rejected.



22. Now I will proceed to consider the other relief claimed by the petitioners namely, quashing and setting aside of the MTET examination held by the State of Meghalaya on 31-01-2019. This relief is opposed by learned AG on preliminary ground namely, Delay and Laches, Estoppel due to participation in the Examination Process and Non-Joinder of necessary parties.

Delay and Laches

Though petitioners in some of the above petitions have not disclosed that they have appeared in the MTET examination which was held on January, 2019, however, during the course of argument it was not disputed that all the petitioners in above petitions have appeared in the examination conducted by the Directorate Educational Research and Training on 31-01-2019. The result of the examination has been declared on 25-02-2020 and the petitioners never challenged the examination which was held on 31-01-2019 till declaration of the results on 25-02-2020. The said examination is being challenged on the ground that the question papers had been leaked. The petitioners however remained inactive for more than one year after the examination was conducted on 31-01-2019 and by the present petition there is belated challenge to MTET examination, that too, only after the petitioners have been found to be unsuccessful. It is no longer res-integra that delay in invoking writ remedy is justifiable ground for not entertaining the writ petition. Reference can be made to the decision of the Apex Court in ***City and Industrial Development Corporation Vrs. Dosu Aardeshir Bhiwandiwalla (2009) 1 SCC 168***. In this decision, the Apex Court held that the relief in writ petition is not available as a matter of course and it can be rejected on the grounds of unexplained delay and



laches. Though the MTET examination was held on 31-01-2019, the petitions were filed only in the month of March, 2020 i.e. after a period of one year. There is no explanation whatsoever for this delay in the petition. In the absence of any explanation, I find merit in the submission of learned AG in this regard.

Estoppel due to participation in the Examination Process

There is no dispute that the petitioners participated in the MTET examination which was held in January, 2019 but could not clear the same. It is by now settled principle of law that the persons who have participated in the examination or selection process cannot turn around and challenge the same. The Apex Court in *Ashok Kumar vrs. State of Bihar* (2017) 4 SCC 357 in para 12 held as follows:

“12. The appellants participated in the fresh process of selection. If the appellants were aggrieved by the decision to hold a fresh process, they did not espouse their remedy. Instead, they participated in the fresh process of selection and it was only upon being unsuccessful that they challenged the result in the writ petition. This was clearly not open to the appellants. The principle of estoppel would operate.”

Similar view is taken by the *Apex Court in Pradeep Kumar Rai vrs. Dinesh Kumar Pandey* (2015) 11 SCC 493, *Manish Kumar Shahi vrs. State of Bihar* (2010) 12 SCC 576 and *Union of India vrs. S. Vinodh Kumar* (2007) 8 SCC 100.

In the light of the principle laid down in the above decisions, I also find merit in the submission of learned AG that having participated in the MTET exam, it is not open to the petitioners to challenge the same.



Non-Joinder of necessary Parties

The provision of Order I Rule 9 of the CPC provides that non-joinder of necessary parties is fatal. Though the provisions of CPC are not strictly applicable in writ jurisdiction by virtue of Section 141 CPC but the principles enshrined therein are applicable. In this regard, reference can be made to the decision of the Apex Court in ***Gulabchand Chhotalal Parikh vrs. State of Gujarat AIR 1965 SC 1153***. Admittedly, MTET examination was held in January, 2019 results of which was declared in the month of February, 2020. There is no dispute that petitioners failed in this examination. Admittedly, many candidates cleared this examination and now they are eligible for appointment as teachers in Schools. It is established position of law that affected persons have to be made party to the petition. The successful candidates in MTET examination referred above are directly affected by any order or direction if any that may be passed for cancelling the examination held on January, 2019. The interest of the successful candidates has to be balanced with the grievances of the petitioners. The principle of natural justice demands that the successful candidates ought to be made party to the present petitions. However, in none of the above petitions the successful candidates have been impleaded, though they are directly affected in the event relief in favour of the petitioners is granted. In this regard, reference can be made to the observation of the Apex Court in the case of ***Public Service Commission vrs. Mamta Bisht (2010) 12 SCC 204***. Para 9 reads as follows:

“9. In case Respondent 1 wanted her selection against the reserved category vacancy, the last selected candidate in that category was a necessary party and without impleading her, the writ petition could not have been entertained by the High Court in view of the law laid down by nearly a Constitution Bench of this Court in Udit Narain Singh Malpaharia v.



Board of Revenue [AIR 1963 SC 786], wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1, Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called “CPC”) provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat [AIR 1965 SC 1153], Babubhai Muljibhai Patel v. Nandlal Khodidas Barot [(1974) 2 SCC 706: Air 1974 SC 2105] and Sarguja Transport Service v. STAT [(1987) 1 SCC 5: 1987 SCC (Cri) 19: AIR 1987 SC 88].)”

Another judgment of the Apex Court in the case of **State of Assam vrs. Union of India (2010) 10 SCC 408** is required reference. In this case, State of Assam was not made party to the case although it was directly affected. The Apex Court para 23 held as follows:

“23. We are also unable to comprehend any possible reasons for the Union of India to omit the State of Assam from the array of parties in the writ appeals filed before the Division Bench of the High Court. The fact remains that they were not made parties to the proceedings. The High Court, in our view, while allowing the appeals filed by the Union of India and shifting the liability of payment of salary/wages to the Voluntary Female Attendants on the State of Assam, should have taken a little more care and caution to find out whether the State of Assam is arrayed as a party to the proceedings and whether they are served with the notice of the appeals and in spite of service, whether they have remained absent. This is the least that is expected from the Court. Without making this small verification, the Division Bench of the High Court has fixed huge recurring financial liability on the State Government. In our opinion, in matters of this nature, even by mistake of the party, the proper parties were not arrayed in the proceedings, it is the duty of the Court to see that the parties are properly impleaded. It is well-settled principle consistent with natural justice that if some persons are likely to be affected on account of setting aside a decision enuring to their benefit, the Court should not



embark upon the consideration and the correctness of such decision in the absence of such persons.”

In the light of the above discussion, I also find merit in the submission of learned AG that petition deserves to be dismissed on the ground of non-joinder of necessary party.

23. The petitioners in my considered view are not entitled to the relief of cancellation of the MTET examination on the above referred preliminary ground. Nevertheless, I deem it appropriate in the interest of justice to deal with the claim of entitlement of the petitioners to this relief, on merit.

As observed earlier, the MTET examination was held on 31-01-2019 and same was conducted in 15 centres across 42 venues for Lower Primary Paper-I at 9:00 AM and for Upper Primary Paper-II in 15 centres across 26 venues. There is no dispute that during this examination in one of the venues i.e. Tura Government College, there was a complaint with regard to leakage of question paper and based on this complaint, two First Information Report came to be registered on 01-02-2019. Learned AG placed on record the steps taken by the Government in pursuant to the complaint of leakage of Lower Primary school question paper. It is submitted that the Government of Meghalaya appointed an Enquiry Officer vide notification dated 05-02-2019 to enquire into the alleged leakage of question paper and set out terms of reference to enquiry officer as follows:

“4. As per the aforesaid notification, the Terms of Reference (TOR) of the Enquiry Officer were:



- i. *To assess and verify the allegation on leakage of question papers of MTET-2019.*
- ii. *To assess the magnitude of the alleged leakage by examining all Examination Centres.*
- iii. *To suggest whether to continue with the evaluation of Answer Script or otherwise.*
- iv. *To determine the likely source of leakage.*
- v. *To fix responsibility and suggest ways of improvement for future MTET Examination.”*

Learned AG submitted that the enquiry officer conducted a detailed and thorough enquiry into the alleged leakage of question papers and submitted the report to the Government on 20-03-2019 and suggested ways and means to improve the system. It was also submitted that the enquiry officer in para 123 of the enquiry report suggested to conduct statistical trend analysis on the marks scored by the candidates for the purpose of ascertaining the magnitude of leakage. Learned AG further submitted that in terms of the recommendation of the enquiry officer, the statistical trend analysis on the marks scored by the candidates was carried out by an independent expert namely Professor Atul Mehta of Indian Institute of Management Shillong (IIM Shillong). It was further submitted that on the basis of the trend analysis report submitted by Prof. Atul Mehta, it was found that only results emerging out of Dadenggre centre that too Paper-I concerning Lower Primary deviated significantly from the trend noted from other centres. The trend analysis report of Prof. Atul Mehta was subsequently confirmed by expert report from DERT. Learned AG further submitted that having regard to the above stated report, the



Government decided to declare the results of all centres vide notification dated 25-02-2020 except for candidates of Dadenggre centre appearing in Paper-I (Lower Primary).

24. At this stage, it would be appropriate to reproduce the recommendation of the enquiry officer and the conclusion of Prof. Atul Mehta which reads as follows.

“Recommendation

117. *I am of the opinion that alternate approaches be considered for an accurate assessment of the magnitude of the leakage.*

118. *In this connection, I have come across two apt cases which are elaborated as below:*

(i) *A study of the press reports related to the case of CBSE Class 10 Maths and Class 12 Economics Question Paper Leakage in 2018, was done. It may be mentioned here, that one of the news items mentioned that CBSE informed the Delhi High Court that the decision not to conduct reexamination of Maths Class 10, which was allegedly leaked, was taken after doing a trend analysis of the Science, Maths and English papers. The news report further states that:*

“The CBSE, in its affidavit, had earlier said it had decided not to hold re-examination of Class 10 Maths test as a scientific evaluation of random answer sheets did not indicate any unusual pattern to believe that there was widespread benefit of the alleged paper leak.”

(ii) *Another news item reported that the Supreme Court refused to interfere with the discretion of the CBSE and that it refused to intervene in the matter of conducting reexamination of the alleged leaked papers in the CBSE Class 10 & Class 12 examination 2018.*

119. *Similar expert(s) may be required to analyze the scores of the candidates who appeared in the MTET-2019 Examination at the Dadenggre Centre after evaluating their OMR Answer sheets.*



120. If advised by the expert(s), these scores may also be compared to the scores of the candidates from other Centres. This will help to ascertain the magnitude of the leakage.

123. Therefore, I recommend that in order to ascertain the magnitude of the leakage, expert(s) be engaged to conduct a statistical trend analysis on the marks scored by candidates and check if there is anomaly.”

Conclusion

“It may thus be concluded that the candidates qualified from the DG [Dadenggre] centre have statistically different characteristics that those from the other centres. While such difference exists both in the Upper and Lower Primary category, the difference is more significant in the Lower Primary category. Moreover, the differences are significant between the DG [Dadenggre] and Tura centre which belong to the same district. Even within DG [Dadenggre] centre, the difference in qualified candidates between Lower and Upper Primary category is quite significant whereas such difference within in Tura centre is very less.”

The recommendation and conclusion of Enquiry Officer and Prof. Atul Mehta respectively makes it abundantly clear that the problem of leakage was limited in magnitude and also confirmed to one centre namely, Dadenggre that too in respect of the candidates appearing in Paper-I (Lower Primary). The Government of Meghalaya therefore decided to withhold the result of the candidates appearing in Dadenggre centre for Paper-I (Lower Primary) and results of the other centres were declared.

25. By now it is well settled principle that the Government is accorded wide latitude in matters of examination and the Court should not interfere with the decision of cancellation of examination. In **B. Ramanjini vrs. State of A.P.**



(2002) 5 SCC 533 the Hon'ble Apex Court upheld the decision of the Government to cancel the examination of a particular centre only. In this case, the Government of Andhra Pradesh by an order dated 15-05-1998 cancelled the examination held in Anantapur district for selecting secondary school teachers on 19-04-1998 after noticing the allegations of mass copying. The results of teacher selection tests were also withheld. In a writ petition filed before the High Court contentions were raised that the situation in Anantapur district was similar to other centres and following the analogy, Government ought to have cancelled the examination for all districts. The High Court accepted that contention. The Hon'ble Supreme Court set aside the decision of the High Court. The relevant observation contained in para 7 and 8 reads as follows:

“7. In matters of this nature, as to how the courts should approach is explained in Bihar School Examination Board v. Subhas Chandra Sinha [(1970) 1 SCC 648] and Board of High School and Intermediate Education, U.P., Allahabad v. Ghanshyam Das Gupta [AIR 1962 SC 1110: 1962 Supp (3) SCR 36]. The facts revealed above disclose not only that there was scope for mass copying and mass copying did take place in addition to leakage of question papers which were brazenly published in a newspaper and the photocopies of the question papers were available for sale at a price of Rs. 2000 each. These facts should be alarming enough for any Government to cancel the examinations whatever may be the position in regard to other centres. It is clear that so far as the centres at Anantapur district is concerned, there was enough reason for the Government to cancel the examinations. We have no doubt in our mind that what has weighed with the Government is the letter of the Collector accompanied by the report of the Superintendent of Police, though unfortunately the same does not seem to have been made available to the High Court, which was the basis for making the order on 15-05-1998 cancelling the examination and holding of the fresh examination.

8. Further, even if it was not a case of mass copying or leakage of question papers or such other circumstance, it is clear that in the conduct of the examination, a fair procedure has to be adopted. Fair procedure would mean that the candidates taking part in the examination must be capable of



competing with each other by fair means. One cannot have an advantage either by copying or by having a foreknowledge of the question paper or otherwise. In such matters wide latitude should be shown to the Government and the courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same. The courts ought not to take the action lightly and interfere with the same particularly when there was some material for the Government to act one way or the other. Further, in this case, the first examinations were held on 19-04-1998. The same stood cancelled by the order made on 15-05-1998. Fresh examinations were held on 11-07-1998 and results have been published on 29-07-1998. Interviews were however held on 29-07-1998 (sic 27-08-1998) in such cases. The events have taken place in quick succession. The parties have approached the court after further examinations were held and after having participated in the second examination. It is clear that such person would not be entitled to get relief at the hands of the court. Even if they had participated in the second Examination, they need not have waited till the results had been announced and then approached the Tribunal or the High Court. In such cases, it would lead to very serious anomalous results involving great public inconvenience in holding fresh examinations for a large number of candidates and in Anantapur district alone nearly 1800 candidates were selected as a result of the examination held for the second time. Therefore, we think, the High Court ought not to have interfered with the order made by the Government on 15-05-1998 in cancelling the examinations and holding fresh examination.”

26. It is well established by now by a cantena of cases of the Hon’ble Apex Court that the scope of judicial review is limited over the decision of the Government to cancel examination based upon reports of technical experts and inputs from examiners and invigilators overseeing the conduct of examination at ground level.

In *Nidhi Kaim vrs. State of Madhya Pradesh* (2016) 7 SCC 615, the Apex Court held that the scope of interference and judicial review is limited



where the Government has taken the decision of cancelling the examination to ensure sanctity of the examination process.

In ***Bihar School Examination Board vrs. Subhas Chandra Sinha*** (1970) 1 SCC 648, the Apex Court upheld the decision of the Board (and overturning the decision of the High Court) in cancelling the exam to protect the academic standard pursued by the academic body. The relevant paragraph of the Apex Court judgment is as follows:

“14. Reliance was placed upon Ghanshyam Das Gupta case [(1962) 3 Supp SCR 36] to which we referred earlier. There the examination results of three candidates were cancelled, and this Court held that they should have received an opportunity of explaining their conduct. It was said that even if the inquiry involved a large number of persons, the Committee should frame proper regulations for the conduct of such inquiries but not deny the opportunity. We do not think that that case has any application. Surely it was not intended that where the examination as a whole was vitiated, say by leakage of papers or by destruction of some of the answer books or by discovery of unfair means practiced on a vast scale that an inquiry would be made giving a chance to every one appearing at that examination to have his say? What the Court intended to lay down was that if any particular person was to be proceeded against, he must have a proper chance to defend himself and this did not obviate the necessity of giving an opportunity even though the number of persons proceeded against was large. The Court was then not considering the right of an examining body to cancel its own examination when it was satisfied that the examination was not properly conducted or that in the conduct of the examination the majority of the examinees had not conducted themselves as they should have. To make such decisions depend upon a full-fledged judicial inquiry would hold up the functioning of such autonomous bodies as Universities and School Board. While we do not wish to whittle down the requirements of natural justice and fair-play in cases where such requirement may be said to arise, we do not want that this Court should be understood as having stated that an inquiry with a right to representation must always precede in every case, however different. The universities are responsible for their standards and the conduct of examinations. The essence of the examinations is that the worth of every person is appraised without any



assistance from an outside source. If at a centre the whole body of students receive assistance and are managed to secure success in the neighborhood of 100% when other at other centres are successful only at an average of 50%, it is obvious that the University or the Board must do something in the matter. It cannot hold a detailed quasi-judicial inquiry with a right to its alumni to plead and lead evidence etc., before the results are withheld or the examinations cancelled. If there is sufficient material on which it can be demonstrated that the university was right in its conclusion that the examinations ought to be cancelled, then academic standards require that the University's appreciation of the problem must be respected. It would not do for the Court to say that you should have examined all the candidates or even their representatives with a view to ascertaining whether they had received assistance or not. To do this would encourage indiscipline if not also perjury."

In ***Board of High School & Intermediate Education vrs. Bagleshwar Prasad (1963) 3 SCR 767***, the result of the examinee was cancelled by the Board for the Intermediate examination held in 1960. The High Court quashed the said cancellation on the ground that there was no evidence to support the decision of the Board. The Apex Court held that High Court was not justified in interfering with the order passed by the Board and relevant observations are contained in para 12 which reads as follows:

"12. In dealing with petitions of this type, it is necessary to bear in mind that educational institutions like the Universities or Appellant 1 set up Enquiry Committees to deal with the problem posed by the adoption of unfair means by candidates, and normally it is within the jurisdiction of such domestic Tribunals to decide all relevant questions in the light of the evidence adduced before them. In the matter of the adoption of unfair means, direct evidence may sometimes be available, but cases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities and circumstantial evidence. This problem which educational institutions have to face from time to time is a serious problem and unless there is justification to do so, courts should be slow to interfere with the decisions of domestic Tribunals appointed by educational bodies like the Universities. In dealing with



the validity of the impugned orders passed by Universities under Article 226, the High Court is not sitting in appeal over the decision in question; its jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence at all, the High Court would be justified to quashed that order. But the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. Enquiries held by domestic Tribunals in such cases must, no doubt, be fair and students against whom charges are framed must be given adequate opportunities to defend themselves, and in holding such enquiries, the Tribunals must scrupulously follow rules of natural justice; but it would, we think, not be reasonable to import into these enquiries all considerations which govern criminal trials in ordinary courts of law. In the present case, no animus is suggested and no malafides have been pleaded. The enquiry has been fair and the respondent has had an opportunity of making his defence. That being so, we think the High court was not justified interfering with the order passed against the respondent.”

27. In the light of the relevant materials placed on record by learned AG coupled with the settled principles of law referred above, I am of the considered view that no fault can be found with the decision of the Government to withhold the result of the MTET examination at one centre namely Dadenggre with regard to Paper I (Lower Primary). The Government in pursuant to the above recommendation and conclusion was also justified in declaring the results of candidates appearing in other centres. I also find merit in the contention of learned AG that any direction by the Court to cancel of examination en masse and conducting fresh examination could cause huge public inconvenience and lead to anomalous results having significant financial and administrative ramifications. Thus, I hold that petitioners are not entitled for the relief of quashing and setting aside of the MTET examination which was held on 31-01-2019 and prayer is accordingly rejected.



28. Before parting with the judgment, I must deal with the arguments of learned counsel for the petitioners. Now, I will deal with the arguments of respective counsel appearing for the petitioners.

Admittedly, none of the petitioners possess the MTET qualification, therefore, the contention of Mr. P.T.Sangma that petitioners are eligible to be appointed as permanent teachers or their services can be regularized cannot be accepted. I also find no merit in the contention of Mr. Sangma that the petitioners were told that MTET examination is not mandatory for existing teachers. In this regard, reference can be made to the notification dated 08-10-2018 of the Government of Meghalaya. The notification clearly stated that only those persons who have passed the test shall be eligible for recruitment as Lower and Upper Primary teachers in Government Aided Schools. As pointed out earlier that petitioners appeared in the MTET examination which was conducted in pursuant to the advertisement dated 29-10-2018, therefore, it cannot lie in the mouth of the petitioners that they were told that MTET examination is not mandatory for existing teachers and it is only meant for fresh candidates who are applying for the post of teachers in Government schools.

Reliance of Mr. Sangma on the decision of ***Chairman All India Railway Recruitment Board and Another vrs. K.Shyam Kumar and Others*** (supra) and ***Madhyamic Shiksha Mandal, M.P.***



vrs. Abhilash Shiksha Prasara Samiti and Others (supra) in support of his argument that the entire MTET examination is vitiated also cannot be accepted and is misplaced. In *K. Shyam Kumar and others*, the Railway Board directed the Railway Recruitment Board to conduct a retest for Group D posts, for those candidates who have obtained minimum qualifying marks in the first written examination against which large scale irregularities and malpractices were noticed. The retest was ordered on the basis of report of Vigilance Department which conducted the preliminary enquiry and prima facie revealed leakage of question papers, mass copying and impersonation of candidates in the written test. Certain candidates who had taken the first written examination approached the Central Administrative Tribunal questioning the decision of the Railway Recruitment Board to conduct retest. The Tribunal found no irregularity in the said decision of the Railway Recruitment Board which was taken after referring to the vigilance report and other relevant materials. Writ petition was thereafter filed before the High Court by the aggrieved parties and the High Court by applying *Wednesbury principle* of unreasonableness held the decision of the Board illegal, arbitrary and unreasonable and directed the Board to finalise selection on the basis of the first written test and to issue appropriate orders to all candidates, except the 62 candidates against whom there were allegations of impersonation. The Railway Recruitment Board challenged the High Court order before the Apex Court. The Apex Court held that there is no infirmity in the decision



taken by the Board in conducting the second written test for those who have obtained minimum qualifying marks in the first written test rather than going ahead with the first written test which was tainted by large scale irregularities and malpractices. Consequently, the Apex Court set aside the High Court order. The ratio of this decision cannot be made applicable to the present case inasmuch as decision to withhold the examination at Dadenggre was taken by the State of Meghalaya on the basis of the recommendation of the enquiry officer and conclusion arrived by the experts.

In *Madhyamic Shiksha Mandal* (supra), the Madhyamic Shiksha Mandal cancelled the examination on the report of Naib Tehsildar who had visited the centre and found the students copying with impunity even before the distribution of question papers. The decision of the Madhyamic Shiksha Mandal was challenged before the High Court and the High Court interfered with the Madhyamic Shiksha Mandal's decision on technical ground that valuers report was subsequent material and Naib Tehsildar has not been authorized by Madhyamic Shiksha Mandal to visit the examination centre. The Apex Court held that the scope of judicial review in the decision of the body conducting the examination to cancel the same is limited and observed that High Court should not have interfered in such decision. The Apex Court accordingly allowed the appeal and set aside the order of the Division Bench of the High Court and upheld the decision taken by the Board. The ratio of this decision does not come to the rescue of Mr. Sangma, learned counsel for the



petitioners inasmuch as the impugned decision to withhold the examination at Dadenggre center was taken on the basis of the recommendation of enquiry officer and conclusion of the expert. The High Court is not expected to interfere in such matters as scope of judicial review is limited.

The contention of Mr. Sangma and Mr. R.Kar to the effect that there was large scale leakage of question paper and same was circulated amongst the candidates through social media like whatsapp also has no merit in view of the finding of the enquiry officer and expert that magnitude of leakage was limited to one centre only.

Mr. N. Syngkon's contention that the qualification laid down under Section 23(1) of the Right to Education Act, 2009 requires to be acquired by the teachers appointed earlier to the coming into force of the said Act and if it is not acquired, the services of those teachers are required to be terminated cannot be accepted for more than one reason namely;

- (i) There is no pleading in this regard in the petition.
- (ii) The teachers appointed prior to the coming into force of the Act are not impleaded as party respondents to this petition.

29. I find some substance in the contention of Mr. S. Dey that for the period between 2010-2020 i.e., from the date of coming into force of the Right of



Education Act, 2009 till date, the Meghalaya Government conducted only one MTET examination and thereby deprived opportunity to the petitioners. The State of Meghalaya could have earlier to 2019 also conducted the MTET examination, however, unfortunately, same was not done and only one opportunity was given to the petitioners. At the same time, I cannot overlook the mandatory provisions of Section 23 of the Right to Education Act, 2009 especially the first and second proviso thereof. Under the first proviso, five years was given to the teachers to acquire the qualification prescribed under Sub-section (1) of Section 23 and under the second proviso, the period of five years was extended to further four years from 2015. In the light of this mandatory statutory provision, the petitioners ought to have acquired the essential qualification namely, MTET before the period prescribed under second proviso. Unfortunately, the petitioners failed in the MTET examination held in the year 2019, therefore, the submission cannot be accepted.

30. Taking totality of the facts and circumstances of the case into consideration, in my view the petitions are devoid of any substance and same are accordingly dismissed with no order as to cost. Ad interim relief granted earlier stands vacated.

Judge

Meghalaya
05.10.2020
"Samantha PS"