M. Parvatham vs The State Of Tamil Nadu on 10 July, 2024

Bench: R.Mahadevan, Mohammed Shaffiq

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

CORAM :

THE HONOURABLE MR.R.MAHADEVAN, ACTING CHIEF JUSTICE
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition Nos. 26084, 26133, 27571, 27807, 28291, 32081, 32218
32698 and 35350 of 2023
and
Writ Miscellaneous Petition Nos. 35331 and 7354 of 2023

WP No. 26084 of 2023

1. M. Parvatham
2. S. Chinnamani
3. S. Amutha
4. N. Vanmathi
5. M. Vallinayaki
6. P. Subramani
7. G. Kaviyarasi
8. S. Maheshwari
9. V. Maheshwari
10. S. Balasankari
11. C. Subramanian
12. A. Gopal Rao
13. M. Nagalakshmi
14. R. Sakthivel
15. M. Geetha
16. K. Chitrakala
17. M. Mahendran
18. C. Venkatesan
19. G. Vijayalakshmi
20. P. Anand
21. R. Priya
22. N. Govindan

23. B. Jayapandi
24. J. Umamaheswari
25. S. Kalamani
26. S. Vasanthi
27. P. Radha
28. K. Subha Ponni
29. M.S. Pradhima
30. R.G. Rajkumar
31. A. Prakash Jolly
32. P. Rupa
33. P. Gowri
34. V. Tamilarasan
35. P. Ananthi
36. R. Usharani
37. G. Rajiv Gandhi
38. K.V. Paramanantham
39. M. Muthu
40. C. Kavitha
41. S. Mahalakshmi
42. Karthikeyan
43. P.K. Karthik
44. S. Murugeswari
45. S. Deepa
46. T. Angulakshmi
47. V. Pavai Mani
48. M. Santhanalakshmi
49. R. Raja
50. V. Lavanya
51. S. Rani
52. R. Sakthivel
53. A. Induraj
54. M. Elumalai
55. M. Ramesh
56. A. Nallendran
57. A. Krishna Priya
58. S. Tamilarasi
59. M. Rajapandi
60. K.N. Sunith
61. N. Priya
62. G. Narmatha

63. R. Mani
64. S. Murugesan
65. K. Brindhadhevi
66. V. Shanmugavalli
67. R. Santhi
68. V. Kavitha
69. S. Jeya Bharathi

70. J. Sangeetha
71. S. Kanakalakshmi
72. P. Kowsalya
73. A. Kirubai Doss
74. M. Karuppasamy
75. K. Kamakshi
76. T. Rajan
77. N.R. Geetha
78. V. Padmavathi
79. R. Kalaivani
80. A. Megala
81. P. Agiladevi
82. M. Banumathy
83. G. Karpagam
84. M. Santhoshkumar
85. Bhuvaneshwari
86. R. Sathya
87. R. Vanitha
88. C. Selvi
89. V. Raja Rajeswari
90. A. Vasuki
91. B. Jayapriya
92. C. Indira
93. J. Umarani
94. B. Chitra Devi
95. K. Dharmalingam
96. P. Deepa
97. S. Sangeetha
98. A. Mariammal
99. J. Deepalakshmi
100. P. Poongodi
101. G. Jamuna
102. M. Murugesan

103. P. Raja
104. M. Muthukannu
105. G. Jothi
106. P. Senthilvadivu
107. S. Karpagam
108. A. Vithya
109. K. Venkatesan
110. R. Karthikeyan
111. R. Chinnamma Jeyashree
112. T. Prakalatha
113. D. Manjula
114. S. Vinodhini
115. V. Vijayalakshmi
116. K. Thenmozhi

117. T.A. Jesintha Rani
118. A. Thanigaivelan
119. A. Gowri
120. K. Logalakshmi
121. A. Venkatesan
122. A. Baby
123. K. Kathavarayan
124. M. Malathi
125. S. Manoharan
126. S. Vimal Raja Singh
127. N. Jayanthi
128. K. Amuthavalli
129. P. Anbarasi
130. P. Lakshmanan
131. M. Shanmugam
132. K. Arulkumar
133. P. Sumithra Devi
134. P. Soundararajan
135. U. Narasimman
136. K. Sudarsan
137. M. Leninraj
138. E. Abraham Nelson
139. G. Anusuya
140. M. Lakshmi
141. R. Sambangi
142. M. Amuthavalli

143. A. Uthirakumar
144. K. Rajasekaran
145. R. Saravanan
146. S. Nathiya
147. S. Vijayan
148. P. Mekala
149. L. Stalin
150. P. Jayabharathi
151. S. Govindan
152. S. Punitha
153. A. Mutheeswari
154. R. Amutha
155. S. Jeyasowdeeswari
156. M.S. Dasarathan
157. K. Narmatha
158. B. Prabhakaran
159. A. Selvi
160. S. Shahul Hameed Badusha ..

Versus

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

2. The Commissioner of School Education
Directorate of School Education
DPI Campus, College Road
Chennai - 600 006

3. The Joint Director of School Education (Personnel)
DPI Campus, College Road
Chennai - 600 006

4. The Director of School Education
Directorate of School Education
DPI Campus, College Road
Chennai - 600 006

5. Teachers Recruitment Board (TRB)
Rep. by its Member Secretary
4th Floor, DPI Campus
College Road, Chennai - 600 006 .. Responde

WP No. 26133 of 2023

1. K. Sudha
2. K. Prakash
3. C. Muniyappan
4. S. Manoharan
5. T. Raji Priyadharshini
6. R. Kiruthika
7. P. Sangeetha
8. N. Priyadharshini
9. N. Ramasamy
10. K. Chidambaram
11. M. Deivanai
12. P. Tamilarasi
13. T. Mohanapriya
14. S. Suba
15. K.T. Raajmohan
16. M. Kalaiyarasi
17. V. Ashok
18. A. Celine
19. V. Santhi
20. P. Kavitha
21. M. Jeeva
22. S. Senthamil Selvi

23. S. Senthamarai
24. T. Nathiya
25. P. Thangavel
26. N. Angayarkanni
27. K. Subhashini
28. M. Narmadha
29. K. Indumathi
30. N. Sangeetha
31. G. Kavitha
32. V. Subashini .. Petition

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4. The Director of School Education
   Directorate of School Education
   DPI Campus, College Road
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5. Teachers Recruitment Board (TRB)
   Rep. by its Member Secretary
   4th Floor, DPI Campus
   College Road, Chennai - 600 006 .. Respon

WP No. 27571 of 2023

1. P. Vanitha
2. M. Ganesan
3. K. Vidhya
4. R. Chitra
5. R. Sumathi
6. S. Alexander
7. D. Anbarasi
8. U. Geetha
9. S. Kamalaveni
10. M. Vadivelan
11. Mathavan, G

12. N. Ananth
13. M. Balaji

14. D. Arumugam
15. K. Vijayalakshmi
16. S. Deepa
17. R. Pradhap
18. S. Moorthy
19. K. Murugan
20. P. Dhanapal
21. M. Kasilingam
22. K. Selva Shanthi
23. G. Jayanthi
24. P. Vidhya
25. V. Malarvizhi
26. D. Vasanthakumari
27. V. Kohilavani
28. M. Poorani
29. N. Rajagopal
30. S. Saritha
31. R. Selvakumar
32. A.Palaniyammal
33. G. Senthil
34. S. Santhalingam
35. S. Silambarasan
36. S. Anandhan
37. B. Dhayanithi
38. M. Chitra
39. K. Indhumathi
40. S. Saradha
41. R. Thendral
42. Revathy
43. Samayamuthu
44. P. Palaniammal
45. S. Karthik
46. S. Revathi
47. C. Sivaraja
48. M. Vasanthakumar
49. P. Bhuvaneswari
50. Dhanapal
51. A. Narmadha
52. P. Prabakaran
53. G. Mathavan

54. T. Sindhu Kumari
55. T. Aiswarya
56. R. Punitha
57. K. Mehala
58. R. Radhika
59. M. Krishnaveni
60. P. Mohan Ram
61. M. Renuga Devi
62. V. Punitha
63. C. Malathi
64. R. Kannan
65. R. Tamilkottri
66. G. Vadivelthangam
67. S. Jegan
68. B. Devi
69. N. Munusamy
70. R. Deepan
71. M. Baskaran
72. G. Senthil
73. R. Vasuki
74. K. Kathiravan
75. S. Muruganantham
76. G. Karthikeyan
77. V. Rubarani
78. M. Viakula Victory Nightingale
79. A. Sakthikumari
80. K. Pothimani
81. Ambikamani
82. S. Leelavathi
83. V. Murugan
84. N. Kavitha
85. V. Kanaga
86. M. Prakasam
87. D. Dinesh
88. A. Ramakrishnan
89. M. Sivan
90. P. Madhu
91. V. Udhayakumar
92. D. Priya
93. R. Saravanan

94. C. Muthulakshmi
95. V. Pavunesan
96. N. Karthik
98. C. Velu
99. M. Senthilkumar
100. S. Ramkumar

101. K. Chinnasamy
102. V. Thirumalai
103. P. Kumaresan
104. A. Bharathithasan
105. S. Nirmala
106. R. Deepa
107. V. Jamunarani
108. Nithiya, J
109. S. Jeyadevi
110. S. Manimaran
111. M. Thangaraj
112. V. Ravi
113. Y. Sivanesan
114. M. Jothi
115. S. Ganesh
116. C. Kiruthika
117. Renugadevi, R
118. A. Parimala
119. V. Jothimani
120. T. Chinnadurai
121. S. Yosodha
122. S. Rani
123. V. Raja Rajeswari
124. P. Selvakumar
125. S. Sathya
126. R. Sathiya
127. P. Raja
128. M. Sivanandhini
129. P. Sangeetha
130. M. Thenmozhi
131. R. Dhivya
132. P. Gopinath
133. K. Meena
134. N. Biruntha

135. M. Gomathi
136. K.K. Bala Murugan
137. S. Angelin Deepa
138. C. Yasodha
139. M. Kausalya
140. R. Gomathi
141. N. Munusamy
142. R. Thangaraji
143. M.P. Meenakshi
144. G. Jayashri .. Petit

Versus

1. The State of Tamil Nadu

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2. The Commissioner of School Education
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Chennai - 600 006

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4. The Director of School Education
Directorate of School Education
DPI Campus, College Road
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5. Teachers Recruitment Board (TRB)
Rep. by its Member Secretary
4th Floor, DPI Campus
College Road, Chennai - 600 006 .. Respo

WP No. 27807 of 2023

1. M. Ganesan
2. S. Gokul Chandran
3. K. Kasi

4. S. Vijaya Rani
5. C. Sridhar
6. R. Sheema
7. J. Karthikraj
8. S. Prabhu
9. T. Kasirajan
10. M. Jeevitha
11. D. Kandasamy
12. M. Ramalakshmi
13. S. Ananthy
14. J. Antony Ranjith Kumar
15. S. Kalithai
16. P. Venkatesh Raj
17. SP Chitra
18. M. Regina
19. P. Nalraj
20. M. Ezhilarasan
21. M. Sivaraj
22. J. Kavitha
23. S. Chitra

24. Kamaraj
25. Muniyammal
26. C. Senthilkumar
27. S. Kasitheertham
28. L. Sudha
29. M. Vasanthi
30. Ashwini
31. U. Dhivya
32. S. Pallavi
33. S. Arockia Richard
34. N. Indhumathi
35. Murali M
36. D. Pormannan
37. A. Aruna
38. G. Suresh Kannan
39. M. Amudha
40. D. Anandaraj
41. A. Radhakrishnan
42. A. Karthik
43. P. Thirumani

44. M. Muthambigai
45. Jayaraman
46. K. Prakash
47. P. Shan Prakash
48. R. Revathi
49. S. Anitha
50. P. Umakaleeswari
51. M. Saranya

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1. S. Ramya
2. A. Kannimary
3. S. Prya

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4. Selvarani. V
5. S. Muthukumaran
6. C. Mohan
7. R. Vijayaraj
8. R. Bhuvaneswari
9. S. Sankar Ganesh ..

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Chennai - 600 006

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Chennai - 600 006

4. The Director of School Education
Directorate of School Education
DPI Campus, College Road
Chennai - 600 006

5. Teachers Recruitment Board (TRB)
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4th Floor, DPI Campus
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WP No. 32081 of 2023

1. A.G. Jeevitha
2. M. Kiruthika
3. A.G. Murali
4. V. Arun ..

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1. The State of Tamil Nadu
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2. The Director of School Education
DPI Campus, College Road
Chennai - 600 006

3. The Joint Director of School Education (Personnel)
DPI Campus, College Road
Chennai - 600 006

4. Teachers Recruitment Board (TRB)
rep. by its Member Secretary
4th Floor, DPI Campus
Chennai - 600 006 ..

WP No. 32218 of 2023

A. Vengatesan ..

Versus

1. The State of Tamil Nadu
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Department of Education
Fort St. George, Chennai - 600 009

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

3. The Chairman
Teachers Recruitment Board
4th Floor, E.V.K. Sampath Building
College Road
Chennai - 600 006 ..

WP Nos. 26084 of

WP No. 32698 of 2023

R. Buvaneswari ..

Versus

1. The State of Tamil Nadu
rep. by its Principal Secretary to Government
School Education Department
Fort St. George, Chennai - 600 009
2. The Director of School Education
DPI Campus, College Road
Chennai - 600 006

3. Teachers Recruitment Board
Rep. by its Member Secretary
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WP No. 35350 of 2023
1. K. Chitra
2. A. Jaya
3. S. Suresh
4. R. Chitra
5. T. Suguna
6. A. Ramani
7. K. Aruna
8. Madheswaran ..

versus

1. The State of Tamil Nadu
rep. by its Principal Secretary
Department of Education
Chennai - 600 009

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

3. The Chairman
Teachers Recruitment Board
4th Floor, E.V.K. Sampath Maligai
College Road
Chennai - 600 006 .. Re

WP No. 26084 of 2023:- Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declar petitioners are entitled to be appointed as Teachers (Secondary Grade/ Assistants as the case may be) who were litigants before this Honourab Court and Honourable Supreme Court, and who have completed certificate verification in the year 2014, recruitment being made on the basis of marks and TET passed seniority without resorting to any competitive examination as stated in G.O. Ms. No. 149 dated 20.07.2018, as a measu equity and fairness, as well as on the foundation of the doctrine of p estoppel and legitimate expectation.

WP No. 26133 of 2023:- Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declar petitioners are entitled to be appointed as Teachers (Secondary Grade/ Assistants as the case may be) on the basis of TET Marks and TET-passe year seniority, having completed certificate verification before 20.07 the date of passing of G.O. Ms. No.149, School Education (TRB) Departm dated 20.07.2018, without resorting to any competitive examination as in G.O. Ms. No1.49 dated 20.07.2018, as a measure of equity and fairne well as on the foundation of the doctrine of promissory estoppel and l expectation.

WP No. 27571 of 2023:- Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declar petitioners herein are entitled to be appointed as Teachers (Secondary B.T. Assistants as the case may be) on the basis of TET Marks and TET-passed year seniority, having completed certificate verification befor 20.07.2018 i.e., the date of passing of G.O. Ms. No.149, School Educat (TRB) Department dated 20.07.2018, without resorting to any competitiv examination as stated in G.O. Ms. No. 149 dated 20.07.2018, as a measu equity and fairness, as well as on the foundation of the doctrine of p estoppel and legitimate expectation.

WP No. 27807 of 2023:- Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declar petitioners are entitled to be appointed as Teachers (Secondary Grade/ Assistants as the case may be) on the basis of TET Marks and TET-passe year seniority, with appropriate age relaxation, having completed cert verification before 20.07.2018 i.e., the date of passing of G.O. Ms. N School Education (TRB) Department dated 20.07.2018, without resorting any competitive examination as stated in G.O. Ms. No. 149 dated 20.07. as a measure of equity and fairness, as well as on the foundation of t doctrine of promissory estoppel and legitimate expectation.

WP No. 28291 of 2023:- Petition filed under Article 226 of The

Constitution of India praying to issue a Writ of Declaration to declar petitioners are entitled to be appointed as Teachers (Secondary Grade/ Assistants as the case may be) on the basis of TET Marks and TET-passe year seniority, with appropriate age relaxation, having completed cert verification before 20.07.2018 i.e., the date of passing of G.O. Ms. N School Education (TRB) Department dated 20.07.2018, without resorting any competitive examination as stated in G.O. Ms. No. 149 dated 20.07. as a measure of equity and fairness, as well as on the foundation of t doctrine of promissory estoppel and legitimate expectation.

WP No. 32081 of 2023:- Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declar petitioners herein are entitled to be appointed as B.T. Assistants on TET Marks and TET-passed year seniority, without resorting to any competitive examination as enumerated in G.O. Ms. No. 149 dated 20.07.2018.

WP No. 32218 of 2023:- Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing th respondents to appoint the petitioner as Graduate Teacher as per TET Examination Scheme in TET 13 TE 40200 207 Certificate Verification No. M.6652 by considering the representation of the petitioner dated 07.11 on the file of the respondents herein.

WP No. 32698 of 2023:- Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Declaration to declar petitioner is entitled to be appointed as B.T. Assistant Teacher based Marks awarded to the petitioner in August 2013 by the third respondent Roll No.13TE 29208201 and TET passed year seniority without resorting any competitive examination as enumerated in G.O. Ms. No.149, School Education Department dated 20.07.2018.

WP No. 35350 of 2023:- Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing th respondent to appoint the petitioners as B.T. Assistant Teacher based exam scheme awarded to the petitioners in August 2013 by the third respondent in Roll Nos. (1) 13TE45200596 (2) 13TE54201427 (3) 13TE40201855 (4) 13TE53204286 (5) 13TE40204257 (6) 13TE40200064 (7) 13TE40202406 (8) 13TE31200993 and TET passed year seniority without resorting to any competitive examination as in G.O. No. 149, School Education Department dated 20.07.2018.

For Petitioners : Mrs. N. Kavitha Rameshwar

WP Nos.32218 and 35350 of 2023

For Petitioner : Mr. R. Sankarasubbu

WP No.32698 of 2023

For Petitioner : Mr. C. Munusamy

For Respondents : Mr. R. Neelakandan, Additional Advocate Gener
assisted by Mr. C.Kathiravan,
Special Government Pleader for TRB

Mr.U.M.Ravichandran,
Special Government Pleader for other responde
https://www.mhc.tn.gov.in/judis in all the writ petitions

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WP Nos. 26084 o

COMMON ORDER

[Order of the Court was made by Hon'ble Acting Chief Justice] The writ petitioners have come forward with these writ petitions, predominantly, with a prayer to issue a Writ of Declaration to declare that they are entitled to be appointed as Teachers (Secondary Grade/B.T. Assistants as the case may be) on the basis of TET Marks and TET-passed year seniority and having completed certificate verification before 20.07.2018 i.e., the date of passing of G.O. Ms. No.149, School Education (TRB) Department dated 20.07.2018, without resorting to any competitive examination as stated in G.O. Ms. No.149 dated 20.07.2018, as a measure of equity and fairness, as well as on the foundation of the doctrine of promissory estoppel and legitimate expectation.

2. At the outset, it is worthwhile to have a look at the genesis of the litigation as follows:

> (i) The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) was enacted by the Government of India and it has come into force from 01.04.2010. The object of the Act is to provide free and compulsory education to all children of the age of six to fourteen years. As per the RTE https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases Act, schools defined under Section 2 (n) should recruit teachers only with qualification as defined under Section 23 (1) of the RTE Act. The Government of India appointed the National Council for Teacher Education (NCTE) as the Academic authority as defined under Section 23 (1) of the Act. The NCTE issued guidelines in the notification dated 23.08.2010, in which referring to clause (n) of Section 2 of the RTE Act, the minimum qualification for a person to be eligible for appointment as a teacher in a school has been prescribed. In other words, one of the essential qualifications for a person to be eligible for appointment as a Teacher in

any of the schools is that he or she should have passed the Teachers Eligibility Test (TET) which will be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE.

(ii) Following the notification issued by the NCTE, the Government of Tamil Nadu notified the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011 in the Government Gazzette dated 12.11.2011. The Government also issued G.O. Ms. No.181, School Education (C2) Department dated 15.11.2011, based on the guidelines issued by the NCTE on 11.02.2011, inter alia appointing the Teachers Recruitment Board (TRB) as the Nodal Agency for conducting Teachers Eligibility Test (TET).

The TRB, on being appointed as nodal agency, submitted a detailed proposal https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases to the Government with regard to the modalities for conduct of the TET and it was also accepted by the Government. One of the proposals is to fix 60% as the pass mark for determining the eligibility of the candidates and the Government also accepted it through a Government letter dated 04.02.2012, in which reference was made to the guidelines of the NCTE dated 23.08.2010.

The TRB, as a nodal agency, gave advertisement and prospectus on 08.03.2012 for conducting the first TET Examination. Accordingly, the first TET examination was conducted on 12.07.2012. Subsequently, a second TET examination was conducted on 14.10.2012 and the third Eligibility test was conducted on 17th and 18th August 2013. In the first TET examination conducted in the State on 12.07.2012, 7,14,526 candidates participated, but only 2,448 (0.34%) candidates passed the eligibility test. Therefore, on 14.10.2012, a supplementary examination was conducted, in which, those candidates who appeared in the first examination on 12.07.2012 were also allowed to participate. In the supplementary examination, 6,43,095 candidates appeared, out of which 19,261 (2.99%) candidates alone passed the examination. Those who have passed the eligibility test were selected and appointed as Secondary Grade Teachers and Graduate Assistants, as the case may be, by following the guidelines fixed by the Government in G.O. (Ms) No.252, S.E. (Q) Department dated 05.10.2012.

https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases

(iii) As per the notification issued by the Government, the TET is only an eligibility test for determining the eligibility of the candidates for being appointed as Teachers. The candidates who are found to be eligible, may seek appointment in Government, Government Aided and private Schools as per Section 23 (1) of the RTE Act, which prescribes that only after obtaining eligibility from the test conducted by the nodal agency, the candidates shall be appointed as teachers in the schools defined under Clause 2 (n) of the RTE Act.

(iv) Challenging the validity of the notification issued by the NCTE bringing into force the RTE Act, petitions were filed before the Honourable Supreme Court and they were dismissed upholding the constitutional validity of the RTE Act, 2009 in the case of Society for Unaided Private Schools of

Rajasthan vs. Union of India and another reported in 2012 (6) SCC 1.

(v) As per the proviso to Section 23 (1) of the Act, a teacher, who at the commencement of the Act, does not possess the minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualification within a period of five years. For this purpose, the Government has issued G.O. Ms. No.252, School Education (Q) Department dated 05.10.2012 in which certain criteria for selection of candidates, who have cleared the TET, https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases have been prescribed. Further, taking note of the dismal number of candidates who passed TET, the State Government issued G.O. Ms. No.25, School Education Department dated 06.02.2014 by which the Government relaxed the pass mark from 60% to 55% for candidates belonging to Scheduled Caste, Scheduled Tribes, Backward Classes, Backward Classes (Muslim), Most Backward Classes, Denotified communities and persons with disability.

Challenging G.O. Ms. No.25 dated 06.02.2014, batch of writ petitions were filed before this Court and they were dismissed on 29.04.2014. Subsequently, the Government issued G.O. Ms. No.29, School Education (Q) Department dated 14.02.2014 prescribing the method for awarding weightage marks for selection to the post of Secondary Grade Teachers and Graduate Teachers.

(vi) Challenging G.O.Ms.No.29 dated 14.02.2014, several writ petitions were filed and this Court set aside G.O. Ms. No.29 dated 14.02.2014 by holding that the Government shall prescribe any other scientific rational method for awarding weightage marks for possession of higher secondary, D.T.E., D.E.Ed., Degree, B.Ed., as well as TET for Secondary Grade Teachers/ Graduate Assistants as the case may be and resort to selection to the said posts.

Accordingly, the Government issued G.O. Ms. No.71, School Education Department dated 30.05.2014 by modifying G.O. Ms. No.252, School Education (Q) Department dated 05.10.2012, fixing revised criteria for https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases appointment to the post of Secondary Grade Teachers and Graduate Assistants in Government Schools from among those who have cleared TET.

3. For the purpose of effective adjudication, the averments made in the writ petitions are elucidated hereunder:-

> (i) The writ petitioners are the candidates, who have passed TET conducted by the TRB during the years 2013 and 2017. After they passed the TET examination, they were called for certificate verification in the years 2014 and 2017 as the case may be, by the TRB. However, even after several years of completion of certificate verification, the writ petitioners were not issued appointment orders. They were eagerly waiting to get their orders of appointment on the basis of their pass in TET examination, however, they were not forthcoming. The writ petitioners also state that for the past several years, those who have passed TET, have not been given orders of appointment and they were made to wait endlessly for the same. In this context, the writ petitioners referred to the judgment dated 02.06.2013 passed by the very same Bench in W.A.No.313 of 2022 etc., wherein it was observed that teachers have not

been appointed for the last ten years though several candidates have passed the mandatory TET. Therefore, the State Government was directed to conduct TET periodically and to make direct recruitment of teachers and promotions https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases from among the qualified teachers at the earliest. Referring to the above decision, it was submitted that the writ petitioners have been waiting for appointment for years together but the orders of appointment are not forthcoming in their favour. While the writ petitioners are anticipating to get appointment orders, one P. Jayabharathi and others filed Writ Petition in WP No.5590 of 2014 before this Court challenging G.O.Ms.No.252, School Education Department dated 05.10.2012, by which certain criteria for selection of candidates for the post of Graduate Assistants/ Secondary Grade Teachers were prescribed. The said Writ Petition was taken up for hearing, along with various other cases. By order dated 29.04.2014, this Court dismissed the writ petitions challenging G.O. Ms. No.25, School Education (TRB) Department dated 06.02.2014. Similarly, the prayer made to direct that the benefits conferred under G.O.Ms.No.25, School Education Department dated 06.02.2014 will come into operation retrospectively, was also dismissed. A direction was also issued to the Government to ensure that the selection process is completed and vacancies are filled up atleast at the beginning of the next academic year.

(ii) Pursuant to such order, the Government issued G.O. Ms. No.71, School Education Department dated 30.05.2014, whereby it cancelled G.O. Ms. No.252, School Education Department dated 05.10.2012 as well as G.O. https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases Ms. No.29, School Education (TRB) Department dated 14.02.2014. The Government thereafter issued revised orders for fixing the weightage and for distributing the weightage marks fixed in the light of the order passed by this Court for selection and appointment to the post of Secondary Grade Teachers and Graduate Assistants in Government Schools from among those who have cleared TET.

(iii) According to the writ petitioners, before the order dated 29.04.2014 was passed and issuance of G.O. Ms. No.71, School Education Department dated 30.05.2014, 3,347 candidates were appointed as Teachers.

The petitioners were floundered and keeping their fingers crossed as to how and what method of selection was followed for their appointments.

(iv) In the meantime, the order dated 29.04.2014 passed in WP No.5590 of 2014 etc., batch was challenged before a Division Bench of this Court by filing writ appeals, which were ultimately dismissed. A further appeal was preferred by some other candidates in SLP (C) No.33240 of 2014 renumbered as Civil Appeal No. 10737 of 2016. The Civil Appeal was also dismissed on 09.11.2016 whereby G.O. Ms. No.71, School Education (TRB) Department dated 30.05.2014 was upheld by the Honourable Supreme Court.

(v) The grievance of the petitioners is that in spite of dismissal of the Civil Appeal by the Honourable Supreme Court, the Government has not taken https://www.mhc.tn.gov.in/judis WP Nos. 26084 of

2023 etc. cases any steps to select and appoint them to the post of Secondary Grade Teachers/Graduate Assistants. At the time when the writ petitioners appeared for TET examination the methodology adopted was to ensure that those candidates who passed TET will be appointed after their educational testimonials are verified. Even before this Court as well as the Honourable Supreme Court, it was admitted that the methodology devised in G.O.Ms.No.71 dated 30.05.2014 is vitiated and it is arbitrary. While the facts are so, now, the State Government has issued G.O. Ms. No.149, School Education (TRB) Department dated 20.07.2018 dispensing with the methodology adopted in the earlier Government Orders. As per G.O. Ms. No.149, passing a competitive examination is necessary. As far as the writ petitioners are concerned, they have already passed the TET and therefore, they need not appear again for the competitive examination conducted as per G.O. Ms. No.149 dated 20.07.2018. In other words, in the earlier Government Orders, which were struck off by this Court and confirmed by the Honourable Supreme Court, the awarding of weightage marks for qualifying examination by distributing the marks acquired or the actual percentage of marks in each qualifying examination was the criterion adopted. Such a criterion was found to be in violation of Articles 14 and 16 of the Constitution of India inasmuch as the Government Order treats the unequals as equals considering the fact that https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases curriculum, syllabus, course content, method of examination and awarding of marks with reference to academic qualification have been changed from time to time and will differ from one University to another. Thus, the weightage marks based on actual marks secured in the qualifying examination cannot be the basis for assessment of comparative merit in the level playing field.

(vi) The writ petitioners further stated that now, the Government had abandoned its own stand and introduced a new method i.e., competitive examination without giving preference to them, who have already passed such competitive examination. The Government has failed to take note of the fact that those, who have already passed the competitive examination, must not be directed to undergo the very same examination again. Instead, the writ petitioners must be given orders of appointment on the basis of the pass in the TET examination during the years 2013 and 2017 and also as per the certificate verification conducted earlier. Such an action of the Government, without giving preference to those TET passed candidates like the writ petitioners is directly hit by the principle of promissory estoppel and is violative of the legitimate expectation. The petitioners would also state that they were made to run from pillar to post from 2014 endlessly waiting for employment. In this process, some of the writ petitioners have crossed the https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases requisite age for being appointed as Teachers in Government or Government Aided Schools. While so, if some of the petitioners, who are already aged, are made to take the competitive examination again, it will frustrate them. In any event, when the writ petitioners have already passed the TET examination conducted by the nodal agency, relegating them to appear for the very same examination once again without appointing them as Teachers, is not proper.

The government issuing G.O.Ms.No.149, seeking to introduce competitive examination without specifying a cut off date for application, is arbitrary. The Government failed to take note of the fact that tens of thousands of persons like the writ petitioners, who have qualified TET, are waiting for more than a decade without employment. While so, by virtue of G.O. Ms. No.149, the Government

introduced a special rule by statutory amendment seeking to insist TET as an eligibility criterion for direct recruitment for the post of Graduate Teacher (BT Assistant) contrary to the NCTE notifications. By virtue of such action, on the one hand, the number of unqualified teachers increases and on the other hand, it frustrates the persons like the writ petitioners who have already cleared the TET examinations during the years 2013 and 2017. Thus, two disparate groups of teachers have been created who were made to indirectly seek to defeat the idea of uniformity and upgradation of the standards of teaching. Thus, it is pleaded by the writ petitioners that G.O. Ms. https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases No.149, School Education (TRB) Department dated 20.07.2018 cannot be made applicable to them.

(vii) It is also submitted by the writ petitioners that by virtue of G.O. Ms. No. 149 dated 20.07.2018, the Government has announced that the selection to the teaching posts will be made only among the eligible candidates on the basis of a competitive examination to be conducted. Thus, the Government has now abandoned its own stand and introduced a new method i.e., conducting competitive examination. As per G.O. Ms. No.149, the Government seeks to introduce a competitive examination without specifying a cut off date for application. The State Government has introduced a Special Rule by statutory amendment seeking to insist on TET as eligibility criterion for direct recruitment for the post of Graduate Teacher (B.T. Assistant), contrary to NCTE notifications and Para 6.2 of the Judgment of this Court in W.A. No. 707 of 2014 dated 22.09.2014 (P.Sushila vs. State of Tamil Nadu and others), wherein this Court has held that TET is both a qualifying as well as a competitive examination and therefore, introduction of a competitive examination over and above TET will be prejudicial to the interest of those who have qualified for TET as early as in the year 2013.

(viii) According to the petitioners, G.O. Ms. No.149 is vitiated by arbitrariness inasmuch as it does not provide a level playing field to all the https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases candidates on account of the fact that the State Government did not make direct recruitment for ten years on any of the methods devised by them.

However, by virtue of G.O. Ms. No.149, the Government now seeks to introduce competitive examination as a compulsory one for selection, thereby dispensing with the selection of the candidates like the writ petitioners, who have graduated more than a decade ago and also completed TET. The writ petitioners, who have graduated a decade ago and also passed TET and become qualified are now made to compete with unequals who have passed graduation recently and those who have not passed TET. Thus, the Government, by virtue of G.O. Ms. No.149 is attempting to treat the unequals with equals, which is in violation of Article 14 of The Constitution of India.

The writ petitioners, who have passed TET and have also completed the certificate verification, cannot be treated on par with those who have graduated in recent years and who have not passed TET at all. If G.O. Ms. No.149 is made applicable to the writ petitioners, they will be in a disadvantageous position in securing employment by competing with those who have recently graduated. In such a situation, the chance of the writ petitioners to get appointed to the post will be taken away and their fundamental right to equality of opportunity in public employment, as envisaged under Article 16 of the Constitution of India, would be defeated.

https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases The writ petitioners form a separate class and they should be given priority in appointment to the post of Secondary Grade Teacher/B.T. Assistant on the basis of their passing TET and also completing the certificate verification.

(ix) The writ petitioners also state that based on G.O. Ms. No.149 dated 20.07.2018, the Government has conducted TET examination from 03.02.2023 to 12.02.2023 and based on the same, selection is likely to be made to the post of Secondary Grade Teachers and Graduate Assistants. However, the writ petitioners who have passed TET during 2013 and 2017 and completed certificate verification during 2014 and 2018 have been grossly ignored from the purview of selection and appointment to the post of Secondary Grade Teacher/Graduate Assistant. Thus, the action of the Government is clearly arbitrary and in the absence of any reason for not selecting the writ petitioners to the post of Secondary Grade Teacher/Graduate Assistant, the present attempt to recruit the candidates on the basis of the conduct of TET during the year 2023 cannot be allowed to be proceeded with. The Government must ensure that the writ petitioners, who have passed TET several years before, are given priority in the matter of appointment to the post of Secondary Grade Teacher/Graduate Assistant. However, by ignoring the claim of the writ petitioners, on the basis of G.O. Ms. No.149 dated 20.07.2018, attempt is now being made to recruit candidates. Therefore, the writ petitioners are before this https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases Court with these writ petitions for a Writ of Declaration as well as a Writ of Mandamus to direct the respondents to select and appoint them to the post of Secondary Grade Teacher/Graduate Assistant as the case may be, based on the TET marks and TET passed year.

4. The submissions of the learned counsel appearing for the writ petitioners in all the writ petitions are summarised as follows:

> (i) (a) Mrs. Kavitha Rameshwar, learned counsel appearing for the writ petitioners in W.P.No.26084 of 2023 etc. cases would vehemently contend that the writ petitioners have passed the mandatory TET exam even during the year 2014 as well 2017. At the time when they passed TET, there was neither any specific notification pursuant to which, eligible candidates could apply nor were the exact number of vacancies announced. All eligible candidates were called for certificate verification and such certificate verification was, in effect, the first as well as the last stage of selection. Thereafter, the process of selection commenced as laid down under G.O.Ms.No.71 dated 30.05.2014, which has been in vogue since 30.05.2014. As per G.O. Ms. No.71 dated 30.05.2014, the State Government has assessed the certificates and comparative merit of the candidates by applying the weightage method during 2014 and 2017. Immediately after participation in the certificate verification, https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases the weightage awarded to each candidate and the marks obtained by them was declared whereby the candidates came to know whether they are in the zone of consideration for appointment to the post of teachers (Secondary Grade Teachers or BT Assistants) depending upon the available vacancies. By applying GO Ms. No.71, 10,817 candidates were subjected to the process of certificate verification in the year 2014.

> The writ petitioners, who were called for certificate verification, also became eligible to be considered for the post of teachers depending upon their merit and available vacancies. However, appointment order are not forthcoming in their favour.

(b) Adding further, the learned counsel submitted that the process of selection commenced in 2017 was abandoned midway by the State in an unreasonable, arbitrary, whimsical and capricious manner, and the selection could not be taken to its logical end. From the year 2017, no appointment was made for the post of Secondary Grade Teachers or BT Assistants. However, by virtue of G.O. Ms. No. 149, School Education (TRB) Department dated 20.07.2018, selection is sought to be made. Even though the said G.O. Ms. No.149 dated 20.07.2018 contemplates a competitive examination, there was no clarity in the conduct of such examination. In any event, the selection process that began in the year 2017 need not be abandoned at the cost of the persons like the writ petitioners and it violates the doctrine of legitimate https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases expectation. The Government cannot dispense with the selection already made by conducting a competitive examination by resorting to another such examination. Even if such a decision to conduct another competitive examination is a policy decision, it lacks clarity and reasons for disregarding the selection already made. The Government did not take steps to accommodate the writ petitioners first, especially when they have undergone the due selection process resorted to by the Government and thereby made them wait for years together to get their appointment orders. The legitimate expectation of the petitioners to get selected and appointed to the post of Secondary Grade Teachers or BT Assistants is defeated by virtue of the impugned Government Order.

(c) The learned counsel for the writ petitioners further submitted that the decision to conduct another competitive examination is arbitrary and unreasonable. It is well settled that changing the rules of the game after the players enter into the arena or midway is legally impermissible and it is opposed to the principles of fairness. Applying the above principles to this case, the writ petitioners have written the competitive examination and were declared pass and while so, requiring them to undergo similar examination along with those who had recently graduated and did not pass TET, is unreasonable and arbitrary.

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(d) The learned counsel for the writ petitioners also invited the attention of this Court to para 9 (b) of the NCTE notification dated 11.02.2011, wherein it is stated that weightage is to be given to the TET marks in the selection and appointment of teachers. These guidelines have been specifically adopted by the State Government in GO Ms. No. 181, School Education (C2) Department dated 15.11.2011. As such, any change in the method of selection will definitely amount to change in the rules of the game.

As far as the petitioners are concerned, their process of selection commenced in 2017, but remains unconcluded. Therefore, subjecting the petitioners to a fresh selection process with an enlarged group of persons in the zone of consideration would be treating unequals with equals which is impermissible under Article 14 of the Constitution. It is the vehement contention of the learned counsel for the petitioners that seeking a remedy in personam, by forming a separate class of

persons, the petitioners have participated in the process of selection in 2017 and subjected themselves to the method of selection then adopted by the State Government. They have been waiting for employment since then, however, the State Government did not conclude the process of selection and abandoned it midway much to their chagrin. In fact, the Government has not resorted to any recruitment till date. However, there is a hope that the Board will conduct recruitment. Hence, it is the plea of the https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases learned counsel for the petitioners that while the petitioners herein are similarly placed to the tens and thousands of candidates, who have participated in the process of selection started by the State Government in 2017, what differentiates them from others is the fact that they had approached this Court in time to assert their rights and the relief granted to them would certainly enure to the writ petitioners alone.

(e) It is further reiterated by the learned counsel for the petitioners that all the petitioners form one homogeneous group, the common binding factor being that they approached this Court well in time. The fact that some of the petitioners had gone upto the Supreme Court and some others had been approaching this Court at different points of time, cannot be a dividing factor among them. Further, the petitioners have not laid any challenge to the policy decision taken by the Government in passing GO Ms. No. 149 School Education (TRB) Department dated 20.07.2018 and they only question the rationale in conducting the competitive examination requiring the writ petitioners to once again participate in the same. The focus of these writ petitions is not an attack on the policy decision of the Government, but the manner in which it is being applied to the petitioners in respect of whom an early method of selection was applied and abruptly dropped.

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(f) The learned counsel for the petitioners, in support of her contentions, placed reliance on the observations of the Hon'ble Supreme Court as well the High Court in the following decisions:

> (i) Shankarsan Dash vs. Union of India (UOI), [1991 (3) SCC 47]:
>
> " 7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted....."
>
> (ii) Food Corporation of India vs. Kamdhenu Cattle Feed Industries, [1993 (1) SCC 71]:

"8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bonafide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.

9. In Council of Civil Service Unions and Ors. v. Minister for the Civil Service, 1985 A.C.374 (H.L) the House of Lords indicated the extent to which the legitimate expectation interfaces with exercise of discretionary power. The impugned action was upheld as reasonable, made on due consideration of all relevant factors including the legitimate expectation of the applicant, wherein the considerations of national security were found to outweigh that which otherwise would have been the reasonable expectation of the applicant. Lord Scarman pointed out that the controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject - matter'. Again in In re Preston, 1985 A.C. 835 (H.L) it was stated by Lord Scarman that 'the principle of fairness has an important place in the law of judicial review' and 'unfairness in the purported exercise of a power can be such that it is an abuse of excess of power'.

These decisions of the House of Lords give a similar indication of the significance of the doctrine of legitimate expectation. Shri A.K. Sen referred to Shanti Vijay &Co. etc. v. Princess Fatima Fouzia and Ors. etc. [1980] 1 S.C.R. 459, which holds that court should interfere where discretionary power is not exercised reasonably and in good faith."

(iii) Union of India (UOI) and others vs. Hindustan Development Corporation and others [1993 (3) SCC 499]:

"20. .... In the aforesaid facts, the Group Housing Societies were entitled to 'legitimate expectation' of following https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases consistent past practice in the matter of allotment, even though they may not have any legal right in private law to receive such treatment. The existence of 'legitimate expectation' may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the 'legitimate expectation' without some overriding reason of public policy to

> justify its doing so. In a case of 'legitimate expectation' if the authority proposes to defeat a person's 'legitimate expectation' it should afford him an opportunity to make representation in the matter..... In this connection reference may be made to the discussions on 'legitimate expectation' at page 151 of Volume 1 (1) of Halsbury's Laws of England - Fourth Edition (Re-issue). We may also refer to a decision of the House of Lords in Council of Civil Service Union and Ors. v. Minister for vicil Service reported in 1985 (3) AER 935. It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons.

.....It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation. Within the conspectus of fair dealing in case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in. We, have not been shown any compelling reasons taken into consideration by the Central Government to make a departure from the existing policy of allotment with reference to Seniority in Registration by introducing a new guideline.

(iv) Asha Kaul and others vs. State of Jammu and Kashmir and others, [1993 (2) SCC 573]:

> https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases "8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment state of Haryana v. Subhash Chandra Marwaha MANU/SC/0400/1973 : (1973) IILLJ266SC ; IMS.

Jain v. State of Haryana MANU/SC/0540/1976 : [1977] 2SCR361 State of Kerala v. A. Lakshmikutty MANU/SC/0126/1986 : [1987] 1 SCR 136 but that is only one aspect of the matter. The other aspect is the obligation of the government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition / request to the commission to select a particular number of candidates for a particular category, in pursuance of which the commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the government

- the government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any government can adopt such a stand with any justification today. This aspect has been dealt with by a Constitution Bench of this Court in Shankarsan Dash v. Union of India MANU/SC/0373/1991 : (1992) IILLJ 18 SC when the earlier decisions of this Court are also noted. The following observations of the Court are apposite:

> It is not correct to say that if a umber of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an

indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be https://www.mhc.tn.gov.in/judis permitted. This correct position has been consistently WP Nos. 26084 of 2023 etc. cases followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha, Neelima Shangla v. State of Haryana, or Jatendra Kumar v. State of Punjab."

(v) R.S.Mittal vs. Union of India (UOI) [1995 Supp (2) SCC 230]:

"10..... It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.

(vi) A.P. Aggarwal vs. Government of N.C.T. of Delhi and Others, [2000 (1) SCC 600]:

"11. In our opinion, this is a case of conferment of power together with a discretion which goes with it to enable proper exercise of the power and therefore it is coupled with a duty to shun arbitrariness in its exercise and to promote the object for which the power is conferred which undoubtedly is public interest and not individual or private gain, whim or caprice of https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases any individual. Even if it is to be said that the instructions contained in the office memorandum dated 14-5-1987 are discretionary and not mandatory, such discretion is coupled with the duty to act in a manner which will promote the object for which the power is conferred and also satisfy the mandatory requirement of the statute. It is not therefore open to the Government to ignore the panel which

was already approved and accepted by it and resort to a fresh selection process without giving any proper reason for resorting to the same. It is not the case of the Government at any state that the appellant is not fit to occupy the post. No attempt was made before the Tribunal or before this Court to place any valid reason for ignoring the appellant and launching a fresh process of selection.

12. It is well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us (vide Shrilekha Vidyarthi v. State of U.P. MANU / SC / 0504 / 1991 : AIR 1991SC537.

14. In R.S.Mittal v. union of India MANU/SC/1009/1995 :

1995 (2) SCALE 433 the question arose with regard to selection of candidates to the post of Judicial member, income - tax Appellate Tribunal. The Selection was made by a Selection Board consisting of a sitting Judge of this Court. The Selection Board prepared a panel of selected candidates which included the name of the appellant before this Court and sent its recommendations. The candidates who were at numbers 1 and 2 in the panel did not accept the appointment. The Bench observed that though a person on the select panel has no vested right to be appointed to the post for which he has been selected, he has a right to be considered for appointment and at the same time the appointing authority cannot ignore the select panel or decline to make an appointment on its whims....."

(vii) Chanchal Goyal vs. State of Rajasthan [2003 (3) SCC 485]:

14. What remains to be considered is the plea of legitimate expectation. The principle of 'legitimate expectation' is still at a stage of evolution as pointed out in De Smith Administrative Law (5th Edn. Para 8.038). the principle is at the root of the rule of https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases law and requires regularity, predictability and certainty in governments' dealings with the public.....

16. The basic principles in this branch relating to 'legitimate expectation' were enunciated by Lord Diplock in Council of Civil Service Unions and Ors. v. Minister for the Civil Service (1985 AC 374 (408-409) (Commonly known as CCSU case). It was observed in that case that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should

> not be withdrawn. The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. The substantive part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit that it will be continued and not be substantially varied, then the same could be enforced.....
>
> 17. The principle of a substantive legitimate expectation, that is, expectation of a favourable decision of one kind or another, has been accepted as part of the English law in several cases. (De Smith : Administrative Law, 5th Edn., (para 13.030).

(See also Wade, Administrative Law, 7th Ed.) (pp. 418-419). According to Wade, the doctrine of substantive legitimate expectation has been “rejected” by the High Court of Australia in Attorney General for N.S.W. v. Quin [(1990) 93 All E.R 1] (But see Teon's case referred to later) and that the principle was also rejected in Canada in Reference Re Canada Assistance Plan (1991) 83 DLR 297], but favoured in Ireland in Canon v. Minister for the Marine 1991 (1) I.R. 82. The European Court goes further and permits the Court to apply proportionality and go into the balancing of legitimate expectation and the public interest....."

(viii) Sethi Auto Service Station and others vs. Delhi Development Authority and others, [2009 (1) SCC 180]:

> "18. We may, now, consider the plea relating to the legitimate expectation of the appellants in terms of DDA's policy dated 14-10-1999 and the impact of change of the policy, in June, 2003, thereon.
>
> 19. The protection of legitimate expectations, as pointed out in De Smith's Judicial Review (6th Edn.), (Para 12-001), is at the root of the constitutional principle of the rule of law, which requires regularity, predictability and certainty in the Government's dealings with the public. The doctrine of legitimate expectation and its impact in the administrative law has been considered by this Court in a catena of decisions but for the sake of brevity we do not propose to refer to all these cases. Nevertheless, in order to appreciate the concept, we shall refer to a few decisions. At this juncture, we deem it necessary to refer to a decision by the House of Lords in Council of Civil Service Unions and others v. Minister for the Civil Service [1984] 3 All ER 935, a locus classicus on the subject, wherein for the first time an attempt was made to give a comprehensive definition to the principle of legitimate expectation. Enunciating the basic principles relating to legitimate expectation, Lord Diplock observed that for a legitimate expectation to arise, the decision of the administrative authority must affect such person either (a) by altering rights or obligations of that person which are enforceable by or against him in private law, or (b) by depriving him of some benefit or advantage which either: (i) he has in the past been permitted

by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until some rational ground for withdrawing it has been communicated to him and he has been given an opportunity to comment thereon, or (ii) he has received assurance from the decision-maker that they will not be withdrawn without first giving him an opportunity of advancing reasons for contending that they should be withdrawn.

https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases .....

22. The concept of legitimate expectation again came up for consideration in Union of India and others vs. Hindustan Development Corporation and Ors. MANU/SC/0219/1994 : AIR 1994 SC 988. Referring to a large number of foreign and Indian decisions, including in Council of Civil Service Unions and Kamdhenu Cattle Feed Industries (supra) and elaborately explaining the concept of legitimate expectation, it was observed as under:

"If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, 8 (1993) 3 SCC 499 20 gross abuse of power or violation of principles of natural justice, the same can be questioned on the well- known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is "not the key which unlocks the treasury of natural justice and it ought not unlock the gate which shuts the court out of review on the merits", particularly when the element of speculation and uncertainty is inherent in that very concept."

25. This Court in Punjab Communications Ltd. Vs. Union of India & Ors. MANU/SC/0326/1999 : [1999] 2SCR1033, referring to a large number of authorities on the question, observed that a change in policy can defeat a substantive legitimate expectation if it can be justified on "Wednesbury" reasonableness. The decision maker has the choice in the https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases balancing of the pros and cons relevant to the change in policy.

Therefore, the choice of the policy is for the decision maker and not for the Court. The legitimate substantive expectation merely permits the Court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. (Also see: Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer & Ors.

MANU/SC/0994/2004 : (2004) 192 CTR (SC)

492)

27. An Examination of the afore-noted few decisions shows that the golden thread running through all these decisions is that a case for applicability of the doctrine of legitimate expectation, now accepted in the subjective sense as part of our legal jurisprudence, arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfill unless some overriding public interest comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in the public interest unless the action taken amounts to an abuse of power. The court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. Therefore, a legitimate expectation can at the most be one of the grounds https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases which may give rise to judicial review but the granting of relief is very much limited. [Vide Hindustan Development Corporation (supra)] "

(ix) The State of West Bengal and others vs. Gitashree Dutta (Dey), [2022 INSC 452]:

"9. The respondent has contended that she has legitimate expectation to be treated fairly even if she may not have a vested right in getting the appointment. It is the duty and the obligation of the State to act fairly and not arbitrarily. A decision not to fill up the vacancies must be bonafide and for justifiable and appropriate reasons.

10. The doctrine of "legitimate expectation" has been developed in the context of principles of natural justice. ‘Legitimate expectation’ is a public law right whereas ‘promissory estoppel’ is a private law right. The doctrine of legitimate expectation in public law is based on the principle of fairness and non arbitrariness in governmental actions.

11. However, the doctrine of legitimate expectation ordinarily would not have any application when the legislature has enacted the statute. Further, the legitimate expectation cannot prevail over a policy introduced by the Government, which does

not suffer from any perversity, unfairness or unreasonableness or which does not violate any fundamental or other enforceable rights vested in the respondent. When the decision of public body is in conformity with law or is in public interest, the plea of legitimate expectation cannot be sustained. In Punjab Communications Ltd. v. Union of India and Ors.1 this Court held that policy decision creating the legitimate expectation which is normally binding on the decision maker, can be changed by the decision maker in overriding public interest. It was held as under:

"37. The above survey of cases shows that the doctrine of legitimate expectation in the substantive sense has been accepted as part of our law and that the decision- maker can normally be compelled to give effect to his representation in regard to the expectation based on https://www.mhc.tn.gov.in/judis previous practice or past conduct unless some overriding WP Nos. 26084 of 2023 etc. cases public interest comes in the way....."

(x) K.Manjushree vs. State of UP and another, (Civil Appeal No.1313 of 2008):

"30. It was submitted that Administrative Committee and Interview Committee were only delegates of the Full Court and the Full Court has the absolute power to determine or regulate the process of selection and it has also the power and authority to modify the decisions of the Administrative Committee. There can be no doubt about the proposition. The Administrative Committee being only a delegate of the Full Court, all decisions and resolutions of Administrative Committee are placed before the Full Court for its approval and the Full Court may approve, modify or reverse any decision of the Administrative Committee. For example when the resolution dated 30.11.2004 was passed it was open to the Full Court, before the process of selection began, to either specifically introduce a provision that there should be minimum marks for interviews, or prescribe a different ratio of marks instead of 75 for written examination and 25 for interview, or even delete the entire requirement of minimum marks even for the written examination. But that was not done. The Full Court allowed the Administrative Committee to determine the method and manner of selection and also allowed it to conduct the examination and interviews with reference to the method and manner determined by the Administrative Committee. Once the selection process was completed with reference to the criteria adopted by the Administrative Committee and the results were placed before it, the Full Court did not find fault with the criteria decided by the Administrative Committee (as per resolution dated 30.11.2004) or the process of examinations and interviews conducted by the Administrative Committee and Interview Committee. If the Full Court had found that the procedure adopted in the examinations or interviews was contrary to the procedure prescribed, the Full Court could have set aside the entire process of selection and directed the Administrative https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases Committee to conduct a fresh selection. The resolution dated 30.11.2004 was approved. It did not find any irregularity in the examination conducted by the Administrative Committee

> or the interviews held by the Selection Committee. The assessment of performance in the written test by the candidates was not disturbed. The assessment of performance in the interview by the Selection Committee was not disturbed. The Full Court however, introduced a new requirement as to minimum marks in the interview by an interpretative process which is not warranted and which is at variance with the interpretation adopted while implementing the current selection process and the earlier selections. As the Full Court approved the resolution dated 30.11.2004 of the Administrative Committee and also decided to retain the entire process of selection consisting of written examination and interviews it could not have introduced a new requirement of minimum marks in interviews, which had the effect of eliminating candidates, who would otherwise be eligible and suitable for selection. Therefore, we hold that the action of Full Court in revising the merit list by adopting a minimum percentage of marks for interviews was impermissible.
>
> 32. We therefore, find that the judgment of the Division Bench of the High Court has to be set aside with a direction to the AP High Court to redraw the merit list without applying any minimum marks for interview. The merit list will have to be prepared in regard to 83 candidates by adding the marks secured in written examination and the marks secured in the interview. Thereafter, separate lists have to be prepared for each reservation category and then the final selection of 10 candidates will have to be made. The scaling down of the written examination marks with reference to 75 instead of 100 is however, proper."

(xi) The State of Tripura and others vs. Sri Arunabha Saha and another in WA.No.196 of 2019 dated 25.08.2020:

> 5. We may record that in case of Samudra Debbarma (supra) similar issues were examined by the Single Judge. In the said case what was under challenge was the cancellation of the https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases ongoing selection process by the TPSC for TCS and TPS Grade-

II Group-A Gazetted services. In the said case also the selection process had reached at an advanced stage when relying on the same Government notifications, TPSC cancelled the selection process in view of the Government adopting new recruitment policy. The cancellation of the selection was challenged by the petitioner and others. The leaned Single Judge held that the cancellation was wholly impermissible and allowed the writ petition. This decision of the learned Single Judge was challenged by the State Government in Writ Appeal No.142 of 2019. It was, therefore, that when this writ appeal was taken up for hearing previously, on 19.11.2019 the Division Bench of this Court Page 7 of 10 while admitting the appeal had provided that the same be tagged along with Writ Appeal No.142 of 2019. Subsequently, the said Writ Appeal No.142 of 2019 was disposed of by the Division Bench by a judgment dated 03.12.2019. Due to oversight though this appeal was to be heard along with the said writ appeal the same got separated.....

(xii) Ramjit Singh Kardam and others vs. Sanjeev Kumar and others [2020 (7) SCR 1096]:

"45. The above sequence of events indicates that in accordance with the "special instruction" extracted above the Commission decided the criteria for calling the candidates for the selection as holding of written examination of 200 marks and interview for 25 marks which was the perfect criteria looking to the number of the candidates i.e. 20836 who had applied in pursuance of the advertisement for the post of PTI. The criteria was implemented by holding a written test on 21.07.2007 which was cancelled due to some complaints. The written test was again notified for 20.07.2008 which was withdrawn by notice published on 30.06.2008, the earlier criterion was given a go bye by another notification dated 11.07.2008. The above indicates that the standard on which candidates are to be screened for selection was downgraded by Chairman of his own. When the number of candidates who applied against certain posts are enormously large, short-listing has always been treated as an accepted mode https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases to correctly value the work and merit of the candidate.....

.....

54. As noted above the decision of Chairman of the Commission dated 30.06.2008 not to hold the written examination was claimed to have been taken due to "administrative reasons", but what were "administrative reasons" have never been disclosed or brought on record by the Commission. The decision to change the selection process as notified on 28.06.2006 was a major decision not only affecting the applicants who had to participate in the selection on the basis of criteria as notified on 28.12.2006 but had adverse effect on merit selection as devised for 1983 posts of PTI."

(xiii) Devesh Sharma vs. Union of India and others [2023 (11) SCR 167]:

"36. The introduction of B.Ed as a qualification by NCTE on the directions of the Central Government is a policy of the Government, as has been submitted before this Court, and is also evident from the sequence of events, the minutes of the various meeting and the order passed in this regard. Section 29 of NCTE Act which mandates that NCTE must follow the directions of the Central Government in discharging of its functions. It is a policy decision which binds NCTE.

We have absolutely no doubt in our mind that policy decisions of the Government should normally not be interfered with, by a constitutional Court in exercise of its powers of judicial review. At the same time if the policy decision itself is contrary to the law and is arbitrary and irrational, powers of judicial review must be exercised.

A policy decision which is totally arbitrary; contrary to the law, or a decision which has been taken without proper application of mind, or in total disregard of relevant factors is liable to be interfered with, as that also is the mandate of law and the Constitution. This aspect has been reiterated by this Court time and again.

Judicial review becomes necessary where there is an https://www.mhc.tn.gov.in/judisillegality, irrationality or procedural impropriety. These WP Nos. 26084 of 2023 etc. cases principles were highlighted by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service (commonly known as CCSU case). The above decision has been referred by this Court in State of NCT of Delhi v. Sanjeev. This view was reiterated again by this Court in State of M.P. & Ors. v. Mala Banerjee:-

“6. We also find ourselves unable to agree with the appellants' submission that this is a policy matter and, therefore, should not be interfered with by the courts. In Federation of Railway Officers Assn. v. Union of India [(2003) 4 SCC 289] , this Court has already considered the scope of judicial review and has enumerated that where a policy is contrary to law or is in violation of the provisions of the Constitution or is arbitrary or irrational, the courts must perform their constitutional duties by striking it down...”

(xiv) Chairman/Managing Director UP Power Corporation Ltd & others vs. Ram Gopal [2020 (3) SCR 514]:

"16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizen sought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In SS Balu v. State of Kerala, this Court observed thus:

“17. It is also well-settled principle of law that “delay defeats equity”. ...It is now a trite law that https://www.mhc.tn.gov.in/judis where the writ petitioner approaches the High Court WP Nos. 26084 of 2023 etc. cases after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.”

(xv) The Assam Public Service Commission and others vs. Pranjal Kumar Sarma and others [2019 (14) SCR 1072]:

"9.2 The appellant’s counsel then argues that alteration of the selection norms by the APSC through the 2019 Procedure which has prospective application, should have no bearing on the ongoing process, on account of the savings clause incorporated in the

2019 Procedure.

13. The law with regard to applicability of the Rules which are brought anew during the selection process have been crystalized by this Court. It has been held that the norms existing on the date when the process of selection begins, will control the selection and the alteration to the norms would not affect the ongoing process unless the new Rules are to be given retrospective effect. (See State of Bihar and Others vs. Mithilesh Kumar). Similarly in N.T. Devin Katti and Others vs. Karnataka Public Service Commission and Others, this Court held that a candidate has a limited right of being considered for selection in accordance with the Rules as they existed on the date of advertisement and he cannot be deprived of that limited right by amendment of the Rules during the pendency of the selection, unless the Rules are to be applied retrospectively.

14. If we proceed with the above enunciation of the law in Mithilesh Kumar (supra) and N.T.Devin Katti (supra), the conclusion is inevitable that for the current recruitment process for which advertisement was issued on 21.12.2018, the 2019 Procedure (which https://www.mhc.tn.gov.in/judis came into effect from 01.04.2019) can have no WP Nos. 26084 of 2023 etc. cases application, particularly when the first phase of the selection i.e. the screening test was conducted under the 2010 Rules.

16. In the present case, if the contention advanced by the respondents is accepted and the next segment of the process of selection is carried out under the 2019 Procedure, it will give rise to an anomalous situation inasmuch as the screening test which was conducted without negative marking, under the 2010 Rules, without provisions for negative markings, will have a major bearing in the final outcome of selection. This would definitely prejudice the candidates who have undertaken exams under 2010 Rules. The consistent law on the issue also makes it clear that recruitment process pursuant to the advertisement issued by the APSC on 21st December, 2018 must necessarily be conducted under the selection norms as applicable on the date of the advertisement. Moreover, having regard Rule 29 and Rule 30 of the 2010 Rules, it must also be said that merit of the candidates would definitely be assessed in the selection exercise, undertaken by the APSC. The APSC is also capable of conducting a fair selection and we believe that they will keep in mind, the lawful expectation and the constitutional mandate."

(xvi) Sivanandam CT & Others vs. High Court of Kerala and others in WP (c) No.229 of 2017 dated 12.07.2023:

"22. The doctrine of legitimate expectation was crystallized in common law jurisprudence by Lord Diplock in the locus classicus, Council of Civil Service Unions v. Minister for the Civil Service." Lord Diplock held that courts can exercise the power of judicial review of administrative decisions in situations where such decision

deprives a person of some benefit or advantage which:

https://www.mhc.tn.gov.in/judis (i) they had in the past been permitted by the WP Nos. 26084 of 2023 etc. cases decision-maker to enjoy and which they can legitimately expect to be permitted to continue until there has been communicated to them some rational grounds for withdrawing it on which they have been given an opportunity to comment; or

(ii) they have received assurance from the decision-maker that the advantage or benefit will not be withdrawn without giving them an opportunity of advancing reasons for contending that the advantage or benefits should not be with drawn."

(xvii) Brij Mohan Lal vs. Union of India (UOI) and others [2012 (6) SCC 502]:

"70. .....It is a settled principle of law that matters relating to framing and implementation of policy primarily fall in the domain of the Government. It is an established requirement of good governance that the Government should frame policies which are fair and beneficial to the public at large. The Government enjoys freedom in relation to framing of policies. it is for the Government to adopt any particular policy as it may deem fit and proper and the law gives it liberty and freedom in framing the same. Normally, the Courts would decline to exercise the power of judicial review in relation to such matter. But this general rule is not free from exceptions. The Courts have repeatedly taken the view that they would not refuse to adjudicate upon policy matters if the policy decisions are arbitrary, capricious or malafide in bringing out the distinction between policy matters amenable to judicial review and those where the Courts would decline to exercise their jurisdiction, this Court..... " https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases

(g) By relying on the above decisions, the learned counsel for the petitioners submitted that the impugned Government Order has arbitrarily declined the prospects of appointments to the writ petitioners. The legitimate expectation on the part of the writ petitioners, after subjecting themselves to the written examination, certificate verification and declaration of TET passed, cannot be ignored by the respondents. In the guise of taking a policy decision to conduct a written examination afresh, the writ petitioners cannot be compelled to take such examination once again and the writ petitioners must be given preference in the matter of appointment to the post of Secondary Grade Teacher/B.T. Assistants on the basis of their TET passed rank and year, failing which they will be highly prejudiced. The counsel for the writ petitioners therefore prayed for allowing the writ petitions as prayed for by declaring the eligibility of the writ petitioners to get orders of appointments for the post of Secondary Grade Teachers/B.T. Assistants without compelling them to undergo any other competitive examination on the basis of the impugned Government Order.

4. (ii) According to Mr.Sankarasubbu, learned counsel appearing for the petitioner in WP Nos. 32218 of 2023 and 35350 of 2023, the petitioners passed TET even during the year 2013 and also participated in the certificate https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases verification. They were eagerly waiting for the orders of appointment from the year 2013. However, the respondents have repeatedly changed the eligibility criteria by introducing various modalities of the examination. In any event, when the writ petitioners have already passed TET in the year 2013, they cannot be compelled to write the competitive examinations along with the candidates who are yet to pass the TET examination. The failure on the part of the respondents to take note of the fact that the petitioners have already passed TET and are eligible to get appointed to the post of Graduate Teacher is nothing short of discrimination. Therefore, the learned counsel for the petitioners prayed this Court to issue a Mandamus directing the respondents to appoint the petitioners as Graduate Teacher as per the TET marks secured by them within a time frame.

4. (iii)Mr.C.Munusamy, learned counsel for the petitioner in WP No. 32698 of 2023 submitted that the writ petitioner passed the mandatory TET exam during the year 2013 and from then on, she has been waiting for getting an order of appointment to the post of Secondary Grade Teacher or B.T. Assistant. The petitioner, at the time of writing the TET examination in the year 2013 was 28 years and now she has crossed the age of 38 years. Had the respondents appointed the writ petitioner in the year 2013 based on the declaration declaring that she has passed the TET examination, she would https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases have now completed ten years of service. On the other hand, the petitioner is made to grope in the dark without knowing the consequences that may befall her in the matter of securing appointment order for the post. Further, the issuance of G.O. Ms. No.149, School Education Department dated 20.07.2018 has jolted her inasmuch as the respondents have indirectly denied the writ petitioner of her appointment ignoring that she has already passed. Therefore, at this stage, based on G.O. Ms. No.149 dated 20.07.2018, if the writ petitioner is compelled to write the competitive examination along with the newly graduated candidates, she will be highly prejudiced. The fact that the respondents failed to take note of the fact that the petitioner has already passed TET is nothing short of discrimination. Therefore, the learned counsel for the petitioner submitted that the petitioner has to be declared that she is entitled to be appointed as B.T. Assistant based on the TET marks secured by her during August 2013 without compelling to undertake a competitive examination as per G.O. Ms. No.149 dated 20.07.2018.

5. Countering the submissions made by the respective counsel for the writ petitioners, Mr. R. Neelakandan, learned Additional Advocate General and Mr. U.M.Ravichandran, learned Special Government Pleader appearing for the respondents made the following submissions:

> (i) It is submitted that the writ petitioners claiming that they form a https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases separate class among themselves, had approached this Court as well as Supreme Court. However, merely because they have litigated before the Courts of law, it cannot be said that they have vested or statutory right to make a claim for appointment. There is no question of legitimate expectation or promissory estoppel on the part of the writ petitioners. Merely because a group of persons has challenged the decision of the

> Government, fixing the modalities to conduct a competitive examination and having lost the case before the Apex Court, it cannot, by any stretch of imagination, be stated that they form a separate class or they cannot be compelled to write the competitive examination along with other candidates. Continuing further, it is submitted that the various modalities adopted by the respondents for conducting the competitive examination were subjected to challenge before this Court by one or the other candidates. Earlier, the Government issued G.O. Ms. No.252, School Education Department dated 05.10.2012 whereby grading method was prescribed for awarding weightage marks. However, this Government Order was subjected to judicial scrutiny before this Court by some of the candidates.

This Court, in the order dated 29.04.2014 passed in WP Nos. 6648 of 2014 etc., batch, while setting aside G.O. Ms. No.252, School Education (Q) Department dated 05.10.2012, directed the Government to prescribe any other scientific and rational method for awarding weightage marks. As directed by https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases this Court, the Government also issued G.O. Ms. No.71, School Education Department dated 30.05.2014, cancelling G.O. Ms. No.252 dated 05.10.2012.

In the meantime, as against the order dated 29.04.2014, a batch of writ appeals has been filed before the Division Bench of this Court. Even the subsequent order in G.O. Ms. No.71, School Education Department dated 30.05.2014, which was passed on the basis of the order dated 29.04.2014 of this Court, was also subjected to challenge before this Court. The Division Bench of this Court had taken up all the cases together and disposed of by holding that unless a candidate acquires the qualifying mark, he or she shall not be considered further for the purpose of selection to the post. As against the order passed by the Division Bench of this Court, SLP (C) No. 33240 of 2014 (Civil Appeal No. 10737 of 2016) was filed and it was dismissed on 09.11.2016. Thus, the modalities worked out by the Government were subjected to challenge before this Court as well as the Honourable Supreme Court. As per the directions issued by the constitutional Court, in order to work out a lasting solution, the Government decided to conduct a competitive examination afresh by issuing G.O. Ms. No.149 dated 20.07.2018, which is questioned in these writ petitions.

(ii) It is also submitted that through various notifications dated https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases 07.03.2012, 14.07.2014, 27.04.2017, the Board has notified the number of vacancies in each subject and number of candidates selected and the balance remaining. Therefore, the contention of the learned counsel for the petitioners that the number of vacancies has not been notified, is erroneous, baseless and cannot be justified. The claim of the petitioners that they were called for the certificate verification and therefore, they are eligible to be considered for the post of Teacher, cannot be countenanced. The Supreme Court has held that merely because the appellants were called for certificate verification, it cannot be said that they have acquired a legal right to the posts. While so, the claim of the petitioners that the fundamental rights guaranteed to them under Articles 14 & 16 of the Constitution of India have been violated, is nothing but an illusion.

(iii) It is further submitted that the petitioners have stated that they have been waiting for all these years under the impression that they will be given appointment. Even assuming that the same procedure as in G.O. Ms. No. 71 dated 30.05.2014 was followed, there is no guarantee that the writ petitioners would get selected, as, those with higher marks, who were not able to get selected in 2014 or in 2017, would again be competing with these petitioners. When there was no guarantee that they would get selected, there was no promissory estoppel and legitimate expectation that they would get https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases appointment. Also there is no assurance or promise given by the Government that the persons who had participated in the certificate verification are entitled to selection. Thus, there was no substantive right for the petitioners to make such claim. The writ petitioners also have not made any case claiming that they had a substantive right which had been infringed by calling for competitive exam.

(iv) It is also submitted that the writ petitioners, who had participated in the certificate verification in the year 2014 and not selected, when called for certificate verification in the year 2017, had participated in it without protest stating that they have already participated in the year 2014 and that they should not be considered along with others in the 2017 certificate verification.

When it is the case of the petitioners that they had legitimate expectation that they will be automatically selected when vacancies arose, they ought to have challenged the action of the Government in the year 2017 itself, which has not been done so. They were fence sitters and watching the proceedings so that a favourable order, if passed, will be sought in their favour. In support of this contention, the learned Additional Advocate General placed reliance on the decision of the Honourable Supreme Court in the case of Union of India vs. Hindustan Development Corporation and others reported in (1993) 3 SCC https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases

(v) It is further submitted that when the petitioners have admitted that G.O. Ms. No. 149 dated 20.07.2018 was issued by the respondents after taking a policy decision to conduct the competitive examination in a particular manner, then, the writ petitioners cannot be heard to say that they should be given special treatment on the basis of their having passed TET in the year 2013. Even as admitted by the petitioners, none of those, who have passed TET in the year 2013 or 2017 has been given appointment. While so, the question of discrimination will not arise in this case. The writ petitioners were fence sitters from the year 2014 and all these years they were watching the proceedings. To their comfort and convenience, they have come forward with these writ petitions only in August 2023 stating that their legitimate expectation to get appointment is diluted by reason of G.O. Ms. No.149 dated 20.07.2018. The writ petitioners knew fully well about the contents of G.O. Ms. No.149 dated 20.07.2018. While so, there is no explanation forthcoming as to why they have filed the present writ petitions in the year 2023. Therefore, the writ petitions filed by the petitioners have to be dismissed on the ground of delay and laches. The present attempt on the part of the writ petitioners to seek for a declaration would only prolong the conduct of the competitive examination and the consequential selection and appointment to the post on the basis of merit. If the present writ petitions are entertained after five years https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases of issuing G.O. Ms. No.149 dated 20.07.2018, it would set a bad precedent and will be cited as a precedent by others. In any event, the plea of legitimate expectation or any legal right

vested with the petitioners is illusionary and it cannot be entertained.

(vi) It is also submitted that G.O. Ms. No. 149, School Education (TRB) Department dated 20.07.2018 came to be passed stipulating the modalities for conducting the competitive examination. Since the candidates who have passed TET had increased manifold, in order to draw more fair and acceptable mode of recruitment to cater the needs of the public at large, a policy decision has been taken to conduct the competitive examination in a rationale manner. The writ petitioners cannot be said to be aggrieved parties against the issuance of G.O. Ms. No.149 dated 20.07.2018 since the same is a policy decision of the Government. Such a policy decision of the Government cannot be said to be arbitrary and it does not fall within the scope of judicial review. The decision taken by the respondents is fair and intended to benefit the interest of the public at large.

(vii) It is further submitted that the selection process was not completed culminating in issuing appointment orders. Merely because the petitioners have completed the certificate verification, it will not ipso facto give rise to a presumption that the writ petitioners were selected to the post https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases applied for. The rule of game theory cannot be applied to the present case.

The facts of the case involved in the judgment relied upon by the petitioners in Tej Prakash Pathak and others vs. Rajasthan High Court are that the selection process was completed and the candidates were of the legitimate expectation of getting appointment but the Government suddenly changed the rule of the game. The above dictum would not support the case of the petitioners herein as the selection process was not completed in this case.

Merely because the certificate verification had taken place, it cannot be said that by virtue of G.O. Ms.No.149, a new selection process is introduced and the Rules of the games are altered in the midway. When the petitioners were not selected in the year 2014, they did not choose to challenge their non-

selection at the earliest point of time by stating that the selection process is over and they are entitled to appointment order. Similarly, in the year 2017, after the selection process is over by appointing the candidates, the writ petitioners kept quiet. Before the next selection process could start, the Government had introduced the competitive exam policy. Hence, to rely on the theory of change in the rule of the game in the midway would never be applicable to the facts of the present case.

(viii) It is also submitted that the Government has relaxed the age https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases restriction from 45 to 50 years and also the validity of the TET certificate. The Government vide G.O. Ms.No.147 dated 22.08.2023 had given concession as weightage mark to the candidates based on the year of passing the TET examination to compete themselves with others in open competition.

Therefore, the apprehension of the writ petitioners is allayed. However, the writ petitioners have completely failed to appreciate these benefits extended to the candidates and filed the present writ petitions.

(ix) In support of his contentions, the learned counsel placed reliance on the seven decisions, the relevant passage of which are extracted below:

(a) Vincent S. Vs. State of Tamil Nadu, Ref. WP(MD)No.2677 of 2014 etc., batch:

"41. The contention that the socially backward and deprived Sections of the society, have to be treated differently, loses sight of one important fact. The Teacher Eligibility Test is not a competitive examination. It is a qualifying examination. It is only in competitive examinations that different yardsticks could be provided, on the principle of affirmative action for achieving social justice. If 40 out of 100 happens to be a pass mark in school final examination, the same has to be taken by all candidates without exception, as the same is only a qualifying examination and not a competitive examination.

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

https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases

(b) State of Uttar Pradesh Vs. Karunesh Kumar and others, [(2022) SCC Online SC 1706]:

"20. We have already placed the relevant rules and considered their import. Clause 15(1) of the 1978 Rules deals with a Selection Committee, while we are concerned with the recruitment made by the Selection Commission statutorily created by an enactment, the 2014 Act. Under the 1978 Rules, no written examination was contemplated as against a mere interview. This was consciously given a go-by, to the knowledge of the candidates who willingly participated in the selection process by taking the written examination, and thereafter, the interview. This process was adopted in tune with the 2015 Rules, and in terms of the powers conferred to the Commission under the 2014 Act. Therefore, the 1978 Rules are put into cold storage qua a selection even at the time of conducting the written examination.

21. A candidate who has participated in the selection process adopted under the 2015 Rules is estopped and has acquiesced himself from questioning it thereafter, as held by this Court in the case of Anupal Singh (supra):

> "55. Having participated in the interview, the private respondents cannot challenge the Office Memorandum dated 12-10-2014 and the selection. On behalf of the appellants, it was contended that after the revised Notification dated 12-10-2014, the private respondents participated in the interview without protest and only after the result was announced and finding that they were not selected, the private respondents chose to challenge the revised Notification dated 12-10-2014 and the private respondents are estopped from challenging the selection process. It is a settled law that a person having consciously participated in the interview cannot turn around and challenge the selection process."

56. Observing that the result of the interview cannot be challenged by a candidate who has participated in the interview and has taken the chance to get selected at the said interview https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases and ultimately, finds himself to be unsuccessful, in Madan Lal v. State of J&K [(1995) 3 SCC 486 : 1995 SCC (L&S) 712], it was held as under : (SCC p. 493, para 9) "9. ... The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted."

22. In the case at hand, the un-selected candidates want to press into service a part of the 1978 Rules while accepting the 2015 Rules. Such a selective adoption is not permissible under law, as no party can be allowed to approbate or reprobate, as held by this Court in Union of India v. N. Murugesan, (2022) 2 SCC 25:

> "Approbate and reprobate
>
> 26. These phrases are borrowed from the Scots law.

They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm https://www.mhc.tn.gov.in/judis or disaffirm the transaction. This principle has to be WP Nos. 26084 of 2023 etc. cases applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have

already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally."

(c) Rakhi Ray and others Vs. High Court of Delhi, [(2010) 2 SCC 637]:

> "24. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate. In the instant case, once 13 notified vacancies were filled up, the selection process came to an end, thus there could be no scope of any further appointment.
>
> (d) State of Madhya Pradesh Vs. Sanjay Kumar Pathak and Others, [(2008) 1 SCC 456]:
>
> "18. The Tribunal as also the High Court did not call for the documents pertaining to the selection process. No finding of fact has been arrived at that the respondents herein were bound to be selected and consequently appointed. Whether all of them had fared better than the other candidates who had not approached the Tribunal had not been found. As the selection process itself was not complete, there was nothing before the Tribunal as also the High Court to indicate that they had acquired legal right of any kind whatsoever. Even where, it is https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases trite, the names of the persons appeared in the select list, the same by itself would not give rise to a legal right unless the action on the part of the State is found to be unfair, unreasonable or mala fide. The State, thus, subject to acting bona fide as also complying with the principles laid down in Articles 14 and 16 of the Constitution of India, is entitled to take a decision not to employ any selected (sic candidate) even from amongst the select list. Furthermore, we have noticed hereinbefore, that selections were made in four phases. It is not the contention of the respondents that the State Government acted mala fide. The dispute, as noticed hereinbefore related to appointment in Phase 3 and Phase 4 only."

(e) Sivanandan CT and Others Vs. High Court of Kerala & Others S.C. WP(C) No.229 of 2017, [(2023) IN SC 709]:

> "21. The doctrine of legitimate expectation received further impetus in the decision of the privy council in Attorney General of Hong Kong v. Ng Yuen Shiu. In that case, a senior immigration officer announced that each illegal entrant from China would be interviewed before passing deportation orders against them. The respondent, an illegal entrant from China, was detained and removal orders were passed against him without any opportunity of hearing. Therefore, the issue was whether the respondent had a legitimate expectation of the grant of a hearing before repatriation by the immigration officer. It was held that a public authority is bound by its undertakings.

lord Fraser explained the contours of legitimate expectations in the following terms:

" The expectations may be based upon some statement or undertaking by, or on behalf of, the public authority which has the duty of making the decision, if the authority has, through its officers, acted in a way that would make it unfair or inconsistent with good administration for him to be denied such an inquiry."

32. Moreover, Laws LJ held that a public authority can resile from its promise or future conduct if its decision : (i) is in pursuance of a legal duty; or (ii) is a proportionate response https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases having regard to the legitimate aim pursued by the public body in the public interest.

36. While dealing with the doctrine of legitimate expectation, another important aspect that the courts have had to grapple with is determining the "legitimacy" of the expectation. The Court can infer the legitimacy of an expectation only if it is founded on the sanction of law. In secretary, State of Karnataka v. Umadevi, a Constitution Bench of this Court held that a contractual or casual employee cannot claim a legitimate expectation to be regularized in service since such appointments could only be made after following proper procedures for selection including consultation with the Public Service Commission in certain situations. The legitimacy of expectation is a question of fact and has to be determined after weighing the claimant's expectation against the larger public interest."

(f) Sethi Auto Service Station and others vs. Delhi Development Authority and others, [2009 (1) SCC 180]:

"32. An examination of the aforenoted few decisions shows that the golden thread running through all these decisions is that a case for applicability of the doctrine of legitimate expectation, now accepted in the subjective sense as part of our legal jurisprudence, arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfil unless some overriding public interest comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles.

33. It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in the public interest unless the action taken https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases amounts to an abuse of power. The court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to

apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. Therefore, a legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. (Vide Hindustan Development Corpn. [(1993) 3 SCC 499])"

(g) Monnet Ispat & Energy Ltd., Vs. Union of India, [(2012) 11 SCC 1]:

"The following principles in relation to the doctrine of legitimate expectation are now well established.

1. The doctrine of legitimate expectation can be invoked as a substantive and enforceable right.

2. The doctrine of legitimate expectation is founded on the principle of reasonableness and fairness. The doctrine arises out of principles of natural justice and there are parallels between the doctrine of legitimate expectation and promissory estoppel.

3. Where the decision of an authority is founded in public interest as per executive policy or law, the court would be reluctant to interfere with such decision by invoking the doctrine of legitimate expectation. The legitimate expectation doctrine cannot be invoked to fetter changes in administrative policy if it is in the public interest to do so.

4. The legitimate expectation is different from anticipation and an anticipation cannot amount to an assertable expectation. Such expectation should be https://www.mhc.tn.gov.in/judis justifiable, legitimate and protectable."

WP Nos. 26084 of 2023 etc. cases

(x) By placing reliance on the above decisions, it is submitted that the petitioners, who participated in certificate verification are not entitled to seek appointment based on mere participation in the certificate verification. The petitioners cannot said to be having a vested right. They cannot, as a matter of right, seek to get appointed to the post. If the plea of the writ petitioners is accepted, it would open flood gates and it will be cited as precedent by others.

In such event, it would cause chaos in the administrative functioning of the respondents. The protection of legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to

public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit. With these submissions and case laws, the learned counsel prayed for dismissal of the writ petitions.

6. This Court has considered the submissions made by the parties and also perused the materials placed before it.

7. These writ petitions raise certain important legal issues concerning the rights of the petitioners to seek the positive relief of a https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases declaration that they are entitled to be appointed as teachers pursuant to the earlier selection method adopted, or to which they have been subjected in the year 2017, or on the basis of the marks obtained by them in the teacher eligibility test and in terms of their seniority of the year in which they became eligible for TET. It is not disputed that all the petitioners herein are eligible and qualified to be considered for appointment to the post of teachers i.e., secondary grade teachers or graduate assistant/BT Assistants, as the case may be. The case of the petitioners, in a nutshell, is that while the process of selection for appointment to teachers had begun in 2017 and all of them were considered by the State Government and the then existing method of selection was applied to them, no appointments pursuant thereto were made by the State Government and as such, all the petitioners like several other thousands of persons, who had also been subjected to the very same selection method in 2017, are aggrieved as the State Government abruptly stopped the process of selection, made no information or announcement about the same, did not make any direct recruitment till date and that there has been no clarity on the status of the recruitment being made by the State Government, or as to what method was going to be adopted by the State Government and if so, whether the writ petitioners herein would be subjected to a new method of recruitment or earlier method would be followed for their appointments. https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases

8. Having heard the learned counsels for both sides at length, the following issues arise for consideration in these writ petitions and they are answered in the following paragraphs.

A. Are these writ petitions hit by delay and laches?

9. Before delving into the merits of the case the first question that arises for consideration is, whether these writ petitions are in any way hit by delay and laches. Though the said point was not concretely addressed by the respondents while they have casually taken that stand, the case of the petitioners is that while they had been subjected to the weightage method in 2017, the State did not make any appointment and due to the subsequent development of events, the writ petitioners had been waiting all along for some clarity on the issue. It is also their case that while the State Government had issued G. O. Ms. 149 dated 20.07.2018, it is a matter of fact that the said Government order only spelt out the method of selection to be adopted by the State for the future, but the same is not put to use or operation up to the filing of these writ petitions. It is the further case of the petitioners that the cause of action for filing these writ petitions was only after the observation was made by this Bench in W.A. No.313 of 2022 etc., cases dated 02.06.2023, wherein the State was directed to make direct recruitment. Only on the basis of these

https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases observations, when the State Government was reasonably expected to start the process of direct recruitment afresh, the writ petitioners approached this Court with the present relief after it became clear that the State Government would now adopt GO.Ms.No.149. Such submissions came to be made during the course of the hearing of the previous writ petitions as well as during the course of the hearing in connected contempt petitions, when the State was attempting to make temporary appointments contrary to the observations made by this Bench. During that time, the State had made submissions that they would assure that a direct recruitment notification is issued at the earliest and fresh method of selection would be applied to everyone irrespective of whether they had already been considered pursuant to the earlier methods of selection.

Viewed from this angle, it can be said that these writ petitions, which came to be filed in August 2023, immediately after the judgement of this Bench on 02.06.2023, cannot be said to be hit by delay or laches. On the contrary, the State Government had not, by then, even clarified its stand. However, these 396 petitioners had come to the court without waiting for the State Government to act. It is in this context that the State Government's apprehension that if relief to these petitioners is considered by this court, the similarly placed thousands of persons would also rush to the court, is to be considered.

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10. It is also pertinent to mention that after the filing of these writ petitions, when the State had come up with a recruitment notification dated 25.10.2023, this Court had made it clear that fence-sitters who are now attempting to seek the same relief as that sought for in these writ petitions, would not be permitted by this court. Hence, at the very outset, it is made clear that these writ petitioners form one class and persons, who had waited up to December 2023 watching the proceedings of this court, waiting in the wings and filing the writ petitions on the basis of the oral observations made by this court during the course of the hearings, which had been published in the media, cannot be entertained.

11. Having accepted that the writ petitioners had a cause of action for filing these writ petitions seeking a positive relief in August 2023, and that they are not hit by laches, we proceed to consider the matter on merits. The lynchpin of the case would be whether the petitioners have a right that is rooted in law on account of the process of selection being adopted and abandoned midway and whether in the circumstances, it deserves interference from this Court pursuant to the principles of reasonableness, non-arbitrariness, proportionality, and the doctrines of promissory estoppel and legitimate expectation.

B. Had the selection process commenced in 2017 with the https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases certificate verification, and completed with application of the weightage method?

12. In order to answer this, the primary issue that would have to be decided is whether in the facts and circumstances of the case, the selection process had commenced in the year 2017, and the State

Government had consciously adopted a particular method of selection. In order to understand and analyse this issue for rendering a finding on it, narration of the factual background is not only necessary but also of immense significance here.

13. The Parliament enacted the Right of Children to Free and Compulsory Education Act 2009 viz Act 35 of 2009 with a view of providing free and compulsory education to all children of the age of six years to fourteen years, based on the rights guaranteed under Article 21-A of the Indian Constitution. The said Act came into effect from 01.04.2010. For better appreciation, Section 23 of the said Act reads as under:

> "Section 23. Qualifications for appointment and terms and conditions of service of teachers.-
>
> (1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.
>
> (2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it https://www.mhc.tn.gov.in/judis deems necessary, by notification, relax the minimum WP Nos. 26084 of 2023 etc. cases 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 .....
>
> (3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed.

14. By Notification dated 31.03.2010, the NCTE was designated as the academic authority to lay down the minimum qualifications for a person to be eligible to be appointed as a teacher. On 08.10.2010, the Union of India by virtue of powers conferred under Section 38 of the Act, framed Right of Children to Free and Compulsory Education Rules 2010.

15. The NCTE issued a notification dated 23.08.2010 prescribing minimum qualifications for being appointed as a teacher for teaching classes I to V (Secondary Grade Teachers in Tamilnadu) and classes VI to VIII (BT Assistants in Tamilnadu) which notification also prescribed Teachers Eligibility Test as the minimum qualification for said teachers. By another notification dated 29.07.2011, some amendments were made by the NCTE to the principal notification dated 23.08.2010. However, the prescription that https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases TET will be the minimum qualification for teachers to be appointed on or after

notification dated 23.08.2010 (later changed to 29.07.2011) remained intact.

16. As per paragraph 9 of the NCTE notification dated 11.02.2011, it has been mandated that the government "should give weightage to the TET scores in the recruitment process." The said guidelines in the NCTE notifications have been specifically adopted by the State Government in GO Ms.No.181 School Education (C2) Department dated 15.11.2011.

17. The Government framed the Tamil Nadu Right of Free Education and Compulsory Education Rules, 2011 vide GO. MS. No. 173 dated 08.11.2011. G.O.Ms.No. 181 dated 15.11.2011 came to be issued, appointing the Teachers Recruitment Board as the nodal agency to conduct TET exams.

The said GO makes it very clear in categorical terms that passing of TET is mandatory for all Secondary Grade Teachers and BT Assistants in Tamil Nadu.

18. Thereafter, the 1st respondent issued G.O.Ms.No.252 School Education (Q) Department dated 05.10.2012 wherein the Government has adopted a particular method of selection and directed the TRB to adopt the said method by giving weightage of marks for selection and appointment of Secondary Grade Teacher and Graduate Assistant(Graduate Teacher/BT https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases Assistant). The said method is extracted below for better understanding:-

> "The Government have examined the recommendation of the Committee and decided to accept the same. They accordingly direct the Teachers Recruitment Board to adopt the following modalities by giving weightage of marks for selection and appointment of Secondary Grade Teachers and Graduate Assistants.
>
> Tamilnadu Teacher Eligibility Test Weightage for Secondary Grade teachers
>
> a) There shall be 1000 marks in total as full marks.
>
> b) The computation of 100 marks will be in the following manner.
>
> i. Higher Secondary Exam : 15 Marks
> ii. D.T.Ed.,/D.E.Ed., Exam : 25 marks
> iii. Teacher Eligibility Test : 60 Marks
>
> c) Marks shall be given for item (i), (ii) and (iii) of clause
>
> (b), in the manner mentioned hereunder.
>
> i). For Higher Secondary Exam (12th Standard) Examination Weightage 90% 80% 70% 60% 50% Below passed of marks and and and and and 50% above above above above above but but but but below below below below 90% 80% 70% 60% 12th Std 15 15 12 9 6 3 0

ii) For D.T.Ed / D.E.Ed.

https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases Weightage of 70% and 50% and above Examination passed marks above but below 70%

iii). For TNTET Examination Weightage 90% and80% and70% and60% and passed of marks above above butabove butabove but below 90% below 80% below 70% Tamilnadu Teacher Eligibility Test Weightage for Graduate Assistants:

(a) There shall be 100 marks in total as full marks

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

i.	Higher Secondary Exam :	10 mar
ii.	Degree Exam :	15 mar
iii.	B.Ed. Exam :	15 mark
iv.	Teacher Eligibility Test :	60 mar
(c)	Marks shall be given for item i), ii),	

clause b), in the manner mentioned hereunder.

i). For Higher Secondary Exam (12th Standard) Examination Weightage 90% 80% 70% 60% 50% Below passed of marks and and and and and 50% above above above above above https://www.mhc.tn.gov.in/judis but but but but WP Nos. 26084 of 2023 etc. cases below below below below 90% 80% 70% 60% 12th Std 10 10 8 6 4 2 0

(ii). For Degree and B.Ed., Examination Weightage of 70% and 50% and above Below passed marks above but below 70% 50% B.Ed. 15 15 12 -

(iii) for TNTET Examination Weightage 90% and 80% and 70% and 60% passed of marks above above but above but and below 90% below 80% above but below 70% After computation of marks, based on the above selection criteria, if more than one candidate has the same mark, then preference in selection will be based on the date of birth.

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19. While so, as stated above, P. Jayabharathi and others filed writ petitions in WP No.5590/2014 before this Court challenging the Government order GO Ms.No.252, School Education (Q) Department dated 05.10.2012 which laid down the criteria for selection of candidates for appointment as Secondary Grade Teachers and Graduate Assistants in Government schools from among those who have cleared the Tamil Nadu Teacher Eligibility Test, the Government order GO Ms. No.25 School Education (TRB) Department dated 06.02.2014, which was issued for reducing the cut off marks from 60% to 55% for clearing the Tamilnadu Teacher Eligibility Test for candidates belonging to Scheduled Caste, Scheduled Tribes, Backward Classes, Backward Classes

(Muslims), Most Backward Classes, Denotified Communities and Persons With Disabilities (PWD) and GO Ms. No.29, School Education (TRB) Department dated 14.02.2014.

20. On 29.04.2014 this Court allowed the above writ petitions and passed the following order:-

> "In the result
>
> 1. (i) W.P.Nos.6648 and 10849 of 2014 relating to challenge made to G.O.Ms.No.25, School Education (TRB) Department, dated 06.02.2014 are dismissed. No costs. Consequently connected MPs are closed.

https://www.mhc.tn.gov.in/judis (ii) W.P.Nos.5591, 5680, 5842, 5843, 6361, 7626, 7859, WP Nos. 26084 of 2023 etc. cases 9008 and 10843 of 2014 wherein the petitioners have prayed for giving retrospective operation of G.O.Ms.No.25, School Education (TRB) Department, dated 06.02.2014 and G.O.Ms.No.29, School Education (TRB) Department, dated 14.02.2014 to the TET Examinations held in the year2012 are dismissed. No costs. Consequently connected MPs are closed.

(iii) W.P.Nos.2780, 2781, 2782, 4182, 4183, 4184, 5590, 5985, 7146, 7371, 7681, 8354 and 10850 relating to challenge made to G.O.Ms.No.252, School Education (Q) Department, dated 05.10.2012 prescribing the method for awarding weightage marks for selection of Secondary Grade Teachers and Graduate Assistants are all allowed and G.O.Ms.No.252, School Education (Q) Department, dated 05.10.2012 and G.O.Ms.No.29, School Education (TRB) Department, dated 14.02.2014 shall stand set aside only in respect of grading method prescribed for awarding weightage marks. No costs. Consequently connected MPs are closed.

(iv) W.P.Nos. 7213, 7315, 7316, 7317, 7754, 7755, 7756 and 7757 of 2014 are dismissed. No costs. Consequently connected MPs are closed.

2. The Government is directed to issue a Government Order expeditiously prescribing any other scientific rational method for awarding weightage marks for Higher Secondary, D.T.Ed.,/D.E.Ed.,/Degree/B.Ed.,/TET for Secondary Grade Teachers / Graduate Assistants, as the case may be and make selection accordingly.

3. I am hopeful that the Government will ensure that the selection process is completed and vacancies are filled up at least at the beginning of next academic year."

21. The State Government then introduced another method in G.O.Ms.No.71 School Education (TRB) Department dated 30.05.2014, where weightage marks are awarded on the actual percentage of marks scored by the https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases candidate. In the meantime i.e., after striking down of GO.Ms.No. 252 by order dated 29.04.2014 and before passing of GO Ms. No. 71 dated 30.05.2014, the Government had appointed 3202 candidates as BT Assistants without following any procedure between 06.05.2014 and 12.05.2014.

22. Pursuant to the above decision of this Court, the 1st respondent issued a G.O.Ms.No.71 School Education (TRB) Department dated 30.05.2014 and thereby cancelled the orders issued in G.O.Ms.No.252 School Education (Q) Department dated 05.10.2012. The Government thereafter issued revised orders for fixing the weightage and for distributing the weightage marks fixed in the light of the orders of this Court for selection of candidates for appointment to the post of Secondary Grade Teachers and Graduate Assistants in Government Schools from among those candidates, who have cleared the TNTET. The weightage of marks and the distribution of weightage of marks be fixed as follows:-

A) Tamilnadu Teacher Eligibility Test Weightage for Secondary Grade teachers.

(a) There shall be 100 amrks in total

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

i) Higher Secondary Exam : 15 marks

ii) D.T.Ed.,/D.E.Ed., Exam : 25 marks

iii) Teacher Eligibility Test : 60 marks https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases The weightage so assigned as indicated in (b) above to be distributed based on the actual percentage of marks obtained by the candidate in the qualifying examinations as shown below:-

Qualifying Examination	Weightage of marks	Percentage of marks obtained in the qualifying examination	Marks assigned
H.Sc.,	15	P%	P*15
D.T.Ed.,/D.E.Ed.,	25	Q%	Q*25
TET	60	R%	R*60
Total	100		xxx

B) Tamilnadu Teacher Eligibility Test Weightage for graduate Assistants

a) There shall be 100 marks in total

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

i) Higher Secondary Exam : 10 marks

ii) Degree Exam : 15 marks

iii) B.Ed., Exam : 15 marks

iv) Teacher Eligibility Test : 60 marks The weightage so assigned as indicated in (b) above to be distributed based on the actual percentage of marks obtained by the candidate in the qualifying examinations as https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases shown below:-

Qualifying Weightage of Percentage of Marks assigned Examination marks marks obtained in the qualifying examination H.Sc. 10 P% P*10/100 Degree 15 Q% Q*15/100 B.Ed., 15 R% R*15/100 TET 60 S% S*60/100 Total 100 xxxxxx The merit list of the candidates will be arrived at based on (A) above for Secondary Grade Teachers and (B) above for Graduate Assistants. If more than one candidate has the same marks, then preference in selection will be based on the date of birth.(the older person will be given priority).

D) The Teachers Recruitment Board to adopt the above procedure for appointment of candidates to the post of secondary Grade Teachers and https://www.mhc.tn.gov.in/judis graduate Assistants in Government Schools from WP Nos. 26084 of 2023 etc. cases among those candidates who have cleared the Tamilnadu Teacher Eligibility Test by following the rule of reservation and certificate verification.

23. As against the order dated 29.04.2014, passed in WP No.5590/2014 etc. cases, writ appeals were filed. Writ petitions had also been filed challenging the subsequent order passed in GO Ms. No.71 School Education (TRB) Department dated 30.05.2014. Both the writ appeals as well as the writ petitions were heard by the Division Bench, which dismissed them upholding the method of selection refusing to interfere with the same. On the question whether a TET is a qualifying examination or a competitive examination, this court held as follows:-

“6.2. Qualifying examination or Competitive examination:-

It is vehemently contended on behalf of the petitioners that the learned single Judge was not correct in holding that the Teacher Eligibility Test is a qualifying one as against a competitive one. Considering the said submission, we are of the view that the test conducted by the respondents is both qualifying and competitive in nature. It becomes a qualifying examination while fixing the qualifying marks. In other words, until and unless a candidate acquires the qualifying mark he or she shall not be considered further. It also becomes a competitive examination when the said qualifying marks are considered for the purpose of over all performance towards the

selection. ....”

24. As against the above said order, civil appeals were filed in the https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases Supreme Court and by judgment dated 09.11.2016, the said appeals were dismissed. Before the Supreme Court, the primary ground of attack on the validity of GO. Ms. No. 71 was that since the marking system is markedly different in different period of time and candidates belong to different systems and Boards of education, to give the same weightage for the marks obtained by them would result in discrimination. The State opposed this argument and ultimately, the Supreme Court rejected the challenge to the validity of the impugned Government orders, particularly, G.O.Ms.No.71 dated 30.05.2014, i.e. the weightage method of selection. After this, the State called the petitioners for certificate verification in 2017 applying this weightage method.

25. It is therefore seen that unlike usual selection made by the State for appointment in public employment where selection contemplates a recruitment notification, a written examination and an interview/viva-voce, in the field of teacher education, the State Government initially devised a weightage method vide GO Ms.No.252 School Education Department dated 05.10.2012 (i.e., the slab method of weightage) and thereafter another weightage vide GO Ms. No.71 School Education Department dated 30.05.2014 (the accurate method of weightage). In both these methods and more particularly in GO Ms.No.71 dated 30.05.2014, which contemplates https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases awarding of marks to candidates on the basis of marks obtained in HSC, Graduation, B.Ed., and TET, there is no written examination or interview or any other method of selection. In fact both in 2014 as well as in 2017 when the State Government wanted to recruit teachers, there was neither any specific notification pursuant to which eligible candidates could apply nor were the exact number of vacancies announced. Both in 2014 and in 2017, all eligible candidates were called for certificate verification and such certificate verification was, in effect, the first as well as the last stage of selection.

Nothing more other than participation in certification verification was required to be done on the part of candidates. In fact, it can be said that the process of selection commenced when the State Government has assessed the certificates and the comparative merit of the candidates by applying the weightage method as contemplated in GO. Ms.No.71 dated 30.05.2014 which has been in vogue since 30.05.2014 and which it came to be applied in certificate verifications conducted both in 2014 and 2017. Immediately after participation in the certificate verification, the weightage awarded to each candidate and the marks obtained by each of them are issued to be candidates which in turn decides whether they are in the zone of consideration for appointment to the post of teachers (Secondary Grade Teachers or BT Assistants) depending upon the available vacancies. When once the said method of selection i.e., https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases GO.Ms.No.71 dated 30.05.2014 has been applied to the candidates, the State has to proceed with the selection and conclude the same on the basis of the same method. Thus, there cannot be

any semblance of doubt that the process of selection had commenced in 2017 for all candidates who are eligible until then and depending upon the marks obtained by them applying the weightage method pursuant to GO Ms.No.71 dated 30.05.2014 they were to be considered on their merit in the available vacancies.

C. Was the process of selection abandoned at the final stage, and if yes, was the same arbitrary, and against the legitimate expectation of the petitioners?

26. It is seen that as a fallout of the judgement of the Supreme Court on 09.11.2016, the State government had proceeded with the next selection in the year 2017 by calling for further candidates for certificate verification. It is also seen that during the process of certificate verification, the merit of the candidates was assessed by applying the method of selection as envisaged in G.O.Ms.No.71 dated 30.05.2014 and depending upon the number of available vacancies to be filled up, the selected candidates would be appointed on the basis of their merit ranking arrived at by application of the weightage method. https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases It is pertinent to note that since GO Ms.No.71 came into force on 30.05.2014, it has been in vogue and been applied ever since including in 2017. As many as 10817 had applied in 2014 as per GO Ms.No.71 and those, who were not appointed in 2014, did not apply or called for certificate verification in 2017.

In other words, every person who was eligible for the post and who had completed TET and for whom certificate verification was done, applying the weightage method either in 2014 or in 2017 were eligible to be considered for the post of teacher depending upon their merit and the available vacancies.

This Court specifically got this position clarified from both sides and it is clear from their respective stands as well as from the records that all eligible persons were to be considered in 2017 on the basis of the weightage method against the vacancies available.

27. The important turn of events is at this stage. The selection process started in 2017 was not taken to its logical end and no appointments were made pursuant to the method of selection applied in 2017, i.e., the weightage method as specified in G.O. Ms. No. 71 dated 30.05.2014. Instead of going ahead with the appointments, GO Ms. NO.149 School Education (TRB) Department dated 20.07.2018 was issued wherein it has been stated that the earlier methods are now done away with, and that the State Government has https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases now introduced a competitive examination, meaning thereby that the selection will be made only among the eligible candidates on the basis of a competitive examination, based on the above GO. The said GO seeks to cancel the method selection existing immediately prior to the passing of the GO, after having defended the validity of the said method upto the Supreme Court.

28. Two important facts surface from the above narration. One, that the process of selection and appointment had commenced and should have been completed on the basis of the certificate verification by application of the weightage method; Two, such commencement of selection process was not taken to its logical end, the selection process was abandoned midway and the reason for the

same has not been sufficiently and validly been explained by the State Government. It is trite law that the State is expected to behave in a consistent, transparent and predictable manner, that together will amount to reasonableness in State administrative action. After having taken a firm stand earlier that the method devised as per the previous method of selection is valid and legal, the rebounding in abandoning the said method, dropping the process of selection when it had reached its final stages, smack of arbitrariness that is rather too glaring to be sanctified under the pretext of being called a change in policy decision. Further, the fact that the State government did not choose to make any recruitment even pursuant to the 2018 Government order adopting a https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases new selection method, is also of significance and has a bearing on the case at hand. It is also pertinent to point out that several of the candidates have undergone the process of certificate verification twice i.e., once in 2014 and again in 2017. Also, on the basis of the specific stand taken and promise given by the State Government in adopting the weightage method in GO Ms. No.71 School Education (TRB) Department dated 30.05.2014, several of the candidates have completed the Teacher Eligibility Test more than once to improve their score. However, the Government has now introduced a new method and not made any appointment on the basis of the earlier methods espoused by them. The State Government has not furnished any reason for not making appointments and changing the methods from time to time. The action of the State Government is clearly arbitrary and in the absence of any reason for not making the appointments while proceeding upto the stage of certificate verification, and in the absence of any overbearing public interest to substantiate the change in method of selection, when it is the government that has not made any direct recruitment in spite of availability of vacancies as well as availability of qualified candidates, the State's action fails test of reasonableness and non-arbitrariness, apart from being against the doctrine of legitimate expectation.

29. It is well-established that selection does not confer any https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases indefeasible right to appointment. However, it is equally trite that in abandoning an on-going selection without taking it to its logical end, the State cannot act in an unreasonable, arbitrary, whimsical or capricious manner.

When the State drops or abandons an on-going selection, the same must be supported by proper reason and such reason should stand the test of non-

arbitrariness and proportionality in order to be legally sustainable. In the present case, after having applied the method of selection, when the candidates have been awaiting employment, the State arbitrarily and without any reason dropped the process of selection, and the selection could not be taken to its logical end. No appointment was made in 2017 or any time thereafter till date.

It can therefore be said that arbitrariness is writ large in the State's action of abandoning the process of selection commenced in 2017. While not providing any legally sustainable reason for abruptly abandoning the process of selection, all appointments were stopped and there was no development whatsoever until G.O.Ms.No.149 School Education (TRB) Department dated 20.07.2018 came to be issued which spelt out a new method of selection.

Nowhere was it mentioned in Go. Ms. No. 149 if it was to be applied for the future selection or for selection that had already commenced in 2017 which was simply not concluded. Since there was no clarity, predictability or information about the State's action, the necessity to challenge the validity of https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases GO. Ms. No. 149, which contemplates a competitive examination, junking the weightage method, did not arise. The new method of selection may or may not be amenable to challenge in law. The case at hand is focused on the challenge to the State's action dehors the correctness, validity or otherwise of the new selection method embodied and introduced vide Go. Ms. No. 149 dated 20.07.2018. The contention of the Government that non-challenge to the GO Ms.No.149 dated 20.07.2018 is fatal to the present case, is liable to be rejected for this reason alone. On the contrary, it can be said that the action of the State in first issuing G.O. Ms. No.71 dated 30.05.2014 on the basis of the striking down of the earlier slab method of weightage in GO Ms.No.252 School Education (Q) Department dated 05.10.2012 by this Court, and thereafter defending the validity of G.O Ms.No.71 dated 30.05.2014 upto the Supreme Court whereby the Supreme Court by its judgment dated 09.11.2016 had upheld the validity of G.O. Ms.No.71 dated 30.05.2014, and where the State has specifically taken the stand that difference in the marking system of the different boards of education will not make the weightage method under GO Ms.No.71 arbitrary or bad in law and further, when the State itself made as many as 10,817 appointments in 2014 on basis of the said GO Ms.No.71 dated 30.05.2014, is arbitrary, and the selection process that began in 2017 cannot now be abandoned by the State and it cannot now adopt another https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases method, taking shelter under the garb of it being a policy decision. In fact, the above narration of events has also given rise to a legitimate expectations to the participants to be considered under the method of selection, which was the established practice, to which they had been subjected to by the State. The peculiar factual background in which G.O. Ms.No.71 dated 30.05.2014 came to be applied by the State, its own stand before this Court and the Hon'ble Supreme Court, and its sudden abandoning of the said method of selection and dropping of the selection in 2017 without making any appointment whatsoever, are clear instances of arbitrariness and violation of doctrine of legitimate expectation.

30. At this juncture, it is relevant to extract recent exposition of the concept of legitimate expectation, non-arbitrariness and reasonableness in State's action, which reads as under:

> (i) Food Corporation of India Vs. Kamdhenu Cattle Feed industries, (MANU/SC/0257/1993 = 1993 (1) SCC 71):
>
> "8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a Legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation https://www.mhc.tn.gov.in/judisis a relevant factor requiring due consideration a fair WP Nos. 26084 of 2023 etc. cases decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more

important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.

9. In Council of Civil Service Unions and Others v. Minister for the Civil Service, 1985 A.C. 374 (H.L.) the House of Lords indicated the extent to which the legitimate expectation interfaces with exercise of discretionary power. The impugned action was upheld as reasonable, made on due consideration of all relevant factors including the legitimate expectation of the applicant, wherein the considerations of national security were found to outweigh that which otherwise would have been the reasonable expectation of the applicant. Lord Scarman pointed out that `the controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject-matter'. Again in In re preston 1985 A.C. 835 (H.L.) it was stated by Lord Scarman that `the principle of fairness has an important place in the law of judicial review' ant `unfairness in the purported exercise of a power can be such that it is an abuse of excess of power'. These decisions of the House of Lords give a similar indication of the significance of the doctrine of legitimate expectation. Shri A.K. Sen referred to Shanti Vijay & Co. etc. v. Princess Fatima Fouzia & Ors. etc., [1980] 1 S.C.R. 459, which holds that court should interfere where discretionary power is not exercised reasonably and in good faith."

(ii) Union of India and Ors. Vs. Hindustan Development Corp. and Ors.) [MANU/SC/0219/1994 = 1993 (3) SCC 499] :

https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases "20. In Food Corporation of India v. M/s Kamdhenu Cattle Feed Industries JT (1992) 6 S.C. 259 Justice J.S. Verma Speaking for the Bench observed as under:

"In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrari- ness is a significant facet. There is no unfettered discretion in public law. A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the state and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bonafides of the decision in a given case. The decision so made would be exposed to challenge on the ground of

arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by it self be a distinct enforceable right; but failure to consider and give due weight to it may render the decision arbitrary and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. Whether the expectation of the claimant is reasonable or Legitimate in the context is a question of https://www.mhc.tn.gov.in/judisfact in each case. Whenever the question arises, it is to be WP Nos. 26084 of 2023 etc. cases determined not according to the claimant's perception but in larger public interest wherein other more important considerations, may outweigh what would otherwise have been the legitimate expectation of the claimant. A bonafide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in. our legal system in this manner and to this extent." (emphasis supplied)

21. In Navjoti coo-Group Housing Society etc. v. Union of India & Others (1992) 2 SCALE 548,justice G.N. Ray speaking for the Bench observed as under: "In the aforesaid facts, the Group Housing Societies were entitled to legitimate expectation of following consistent past practice in the matter of allotment, even though they may not have any legal right in private law to receive such treatment. The existence of legitimate expectation' may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the 'legitimate expectation without some overriding reason of public policy to justify its doing so. In a case of 'legitimate expectation' if the authority proposes to defeat a person's 'legitimate expectation' it should afford him an opportunity to make representations in the matter. In this connection reference may be made to the discussions on 'legitimate expectation' it page 151 of volume 1(1) of Halsbury's Laws of England Fourth Edition (Re- issue). We may also refer to a decision of the House of Lords in Council of civil Service Union and others versus Minister for- Civil Service reported in [1985] 3 All England Reporter page 935. It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted https://www.mhc.tn.gov.in/judis to continue to enjoy either until he was given reasons for WP Nos. 26084 of 2023 etc. cases withdrawal and the opportunity to comment on such reasons.

It may be indicated here that the doctrine of 'legitimate expectation imposes in essence a dun, on- public authority to act fairly, by taking into consideration all

relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent passed policy, come in. We have not been shown any compelling reasons taken into consideration by the Central Government to make a departure from the existing policy of allotment with reference to seniority in Registration by introducing a new guideline." ` (emphasis supplied)

21. Relying on these decisions, it was contended that the decision of the Railways in fixing the price and in allotment of the quantities is arbitrary and unreasonable affecting the right to such legitimate expectation.

.....

24. In Halsbury's Laws of England, Fourth Edition, Volume 1(1) 151 a passage explaining the scope of "legitimate expectations" runs thus:

"81. Legitimate expectations. A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. The existence of a legitimate expectation may have a number of different consequences'; it may give locus standi to seek leave to apply for `judicial review; it may mean that the authority ought not to act so as to defeat the expectation without some overriding reason of public policy to justify its doing so; or it may mean that, if the authority proposes to defeat a person's legitimate expectations, it must afford him an opportunity to make representation on the matter. https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases The courts also distinguish, for example in licensing cases, between original applications, to renew and revocations; a party who has been granted a licence may have legitimate expectation that it will be renewed unless there is some good reason not to do so, and may therefore be entitled to greater procedural protection than a mere applicant for a grant."

(emphasis supplied)

25. We find that the concept of legitimate expectation first stepped into the English Law in Schmidt v. Secretary, of State for Home Affairs (1969) 2 Ch. 149 wherein it was observed that an alien who had been given leave' to enter the United Kingdom for a limited period had a legitimate expectation of being allowed to stay for the permitted time and if that permission was revoked before the time expires, that alien ought to be given an opportunity of making representations. Thereafter the concept has been Considered in a number of cases. In A.G. of Hong Kong v. Ng Yeun shiu, [1983] 2 A.C. 629 Lord Fraser said that "the principle that public authority is bound by its undertakings as to the procedure it will follow, provided they do not conflict with its duty, is applicable to the

undertaking given by the government of Hong Kong to the respondent..... that each case- would be considered on its merits."

28. Of late the doctrine of legitimate expectation is being pressed into service in many cases particularly in contractual sphere while canvassing the implications underlying the administrative law. Since we have not come across any pronouncement. of this court on this subject explaining the meaning and scope of the doctrine of legitimate expectation, we would like to examine the same a little more elaborately at this stage. Who is the expectant and what is the nature of the expectation? When does such an expectation become a legitimate one and what is the foundation for the same? What are the duties of the administrative authorities while taking a decision in cases attracting the doctrine of legitimate expectation.

29. This is a three-fold present: the present as we experience it, the past as a present memory and future as a https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases present expectation. For legal purposes, the expectation can not be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves can not amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation can not amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.

30. It has to be noticed that the concept of legitimate expectation in administrative law has now, undoubtedly, gained sufficient importance. It is stated that "Legitimate expectation" is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action and this creation takes its place beside such principles as the rules of natural justice, unreasonableness, the fiduciary duty of local authorities and "in future, perhaps, the principle of proportionality." A passage in Administrative Law, Sixth edition by H.W.R. Wade page 424 reads thus:

> "These are revealing decisions. They show that the courts now expect government departments to honour their published statements or else to treat the citizen with the fullest personal consideration. Unfairness in the form of unreasonableness here comes close to unfairness in the form of violation of natural justice, and the doctrine of legitimate expectation can operate in both contexts. It is obvious, furthermore, that this principle of substantive, as opposed to procedural, fairness may undermine some of the established rules about estoppel and misleading advice, which tend to operate unfairly. Lord Scarman has stated emphatically that unfairness in the purported exercise of a power can amount to an abuse or excess of https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases power, and this seems likely to develop into an important general doctrine."

Another passage at page 522 in the above book reads thus:

> "It was in fact for the purpose of restricting the right to be heard that legitimate expectation was introduced into the law. It made its first appearance in a case where alien students of 'scientology were refused extension of their entry permits as an act of policy by the Home Secretary, who had announced that no discretionary benefits would be granted to this Sect, The Court of Appeal held that they had no legitimate expectation of extension beyond the permitted time, and so no right to a hearing, though revocation of their permits within that time would have been contrary to legitimate expectation. Official statements of policy, therefore, may cancel legitimate expectation, just as they may create it, as seen above. In a different context, where car-hire drivers had habitually offended against airport bye-laws, with many convictions and unpaid fines, it was held that they had no legitimate expectation of being heard before being banned by the airport authority.
>
> There is some ambiguity in the dicta about legitimate expectation, which may mean either expectation of a fair hearing or expectation of the licence or other benefit which is being sought. But the result is the same in either case; absence of legitimate expectation will absolve the public authority from affording a hearing.
>
> (emphasis supplied)

31. In some cases a question arose whether the concept of legitimate expectation is an impact only on the procedure or whether it also can have a substantive impact and if so to what extent. Att. Gen. For New South Wales v. Quin (1990) Vol. 64 Australian Law Journal Reports 327 is a case from Australia in which this aspect is dealt with. In that case the Local Courts Act abolished Courts of Petty Sessions and replaced them by Local Courts. Section 12 of the Act empowered the Governor to appoint any qualified person to be a magistrate in the new Courts System, Mr. Quin, who had https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases been a Stipendiary Magistrate in charge of a Court of petty Sessions under the old system, applied for, but was refused, an appointment under the new system. That was challenged. The challenge was upheld by the appellate court on the ground that the selection committee had taken into account an adverse report on him without giving a notice to him of the contents of the same. In the appeal by the Attorney General against that order before the High Court it was argued on behalf of Mr. Quin that he had a legitimate expectation that he would be treated in the same way as his former colleagues considering his application on its own merits. Coming to the nature of the substantive impact of the doctrine, Brennan, J. observed that the doctrine of legitimate expectations ought not to " unlock the gate which shuts the court out of review on the merits," and that the Courts should not trespass "into the forbidden field of the merits" by striking down administrative acts or decisions which failed to fulfill the expectations. In the same case Mason, C.J. was of the view that if substantive protection is to be accorded to legitimate expectations that would encounter the objection of entailing "curial interference with administrative decisions on the merits by precluding the decision-maker from ultimately making the decision which he or she considers most appropriate in the circumstances."

32. In R v. Secretary of State for the Home Department. ex parte Ruddock and others [1987] 2 All E R 518, Taylor, J. after referring to the ratio laid down in some of the above cases held thus:

> "On these authorities I conclude that the doctrine of legitimate expectation in essence imposes a duty to act fairly. Whilst most of the cases are concerned, as Lord Roskill said, with a right to be heard, I do not think the doctrine is so confined. Indeed, in a case where ex hypothesis there is no right to be heard, it may be thought the more important to fair dealing that a promise or undertaking given by a minister as to how he will proceed should be kept. Of course such promise or undertaking must not conflict with his statutory duty, or her duty as here, in the exercise of a preroga-tive power. I accept the submission of counsel for the Secretary of State that the https://www.mhc.tn.gov.in/judis respondent cannot fetter his discretion. By declaring a WP Nos. 26084 of 2023 etc. cases policy he does not preclude any possible need to change it. But then if the practice has been to publish the current policy, it would be incumbent on him in dealing fairly to publish the new policy, unless again that would conflict with his duties. Had the criteria here needed changing for national security reasons, no doubt the respondent could have changed them. Had those reasons prevented him also from publishing the new criteria, no doubt he could have refrained from doing so. Had he even decided to keep the criteria but depart from them in this single case for national security reasons, no doubt those reasons would have afforded him a defence to judicial review as in the GCHQ case."

(emphasis supplied) In Breen v. Amalgamated Engineering Union and Others [1971] 2 Law Reports Queen Bench Division 175, Lord Denning observed as under:

> "if a man seeks a privilege to which he has no particular claim such as an appointment to some post or other- then he can be turned away without a word. He need not be heard. No explanation need be given; see the cases cited in Schmidt v. Secretary of State for Home Affairs (1969) 2 Ch. 149, 170-171. But if he is a man whose property is at stake, or who is being deprived of his livelihood, then reasons should be given why he is being turned down, and he should be given a chance to be heard. I go further If he is a man who has some right or interest, or some legitimate expectation, of which it would not be fair to deprive him without a hearing, or reasons given, then these should he afforded hint, according as the case may demand".

(emphasis supplied)

33. At this stage it is necessary to consider the scope of judicial review when a challenge is made on the basis of the doctrine of legitimate expectation. In Findlay v. Secretary of State for the Home Department, 19841 3 All E R 801 it was observed as under:

> "The doctrine of legitimate expectation has an important https://www.mhc.tn.gov.in/judis place in the developing law of judicial review. It is, WP Nos. 26084 of 2023 etc. cases however, not necessary to explore the doctrine in this case, it is enough merely to note that a legitimate expectation can provide a sufficient interest to enable one who cannot point to the existence of a substantive right to obtain the leave of the court to apply for judicial review. These two applicants obtained leave. But their submission goes further. It is said that the refusal to accept them from the new policy was an unlawful act on the part of the Secretary of State in that his decision frustrated their expectation. But what was their legitimate expectation? Given the substance and purpose of the legislative provisions governing parole, the most that a convicted prisoner can legitimately expect is that his case will he examined individually in the light of whatever policy the State sees fit to adopt, provided always that the adopted policy is a lawful exercise of the discretion conferred on him by the statute. Any other view would entail the conclusion that the unfettered discretion conferred by the Statute on the minister can in some cases be restricted so as to hamper, or even prevent. changes of policy. Bearing in mind the complexity of the issues which the Secretary of State has to consider and the importance of the public interest in the administration of parole, I cannot think that Parliament intended the desecration to be restricted in this way."

In Council of Civil Service Unions case Lord Diplock observed thus:

> "To qualify as a subject for judicial review the decision must have consequences which affect some person (or body of persons) other than the decisions, although it may affect him too. It must affect such other person either (a) by altering rights or obligations of that person which are enforceable by or against him in private law or (b) by depriving him of some benefit or advantage which either (i) he has in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational ground for withdrawing it on which he has been given an https://www.mhc.tn.gov.in/judis opportunity to comment or (ii) lie has received WP Nos. 26084 of 2023 etc. cases assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. (1) prefer to continue to call the kind of expectation that qualifies a decision for inclusion in class (b) a 'legitimate expectation' rather than a 'reasonable expectation in order thereby to indicate that it has consequences to which effect will be given in public law, whereas an expectation or hope that some benefit or advantage would continue to he enjoyed, although it might well be entertained by a 'reasonable' man, would not necessarily have such consequences."

In Attorney General for New South Wales case it is observed as under:

"Some advocates of judicial intervention would encourage the courts to expand the scope and purpose of judicial review, especially to provide some check on the Executive Government which nowadays exercises enormous powers beyond the capacity of the parliament to supervise effectively. Such advocacy is misplaced. If the courts were to assume a jurisdiction to review administrative acts or decisions which are "unfair" in the opinion of the court not to product of procedural fairness, but unfair on the merits- the courts would be assuming a jurisdiction to do the very thing which is to be done by the repository of an administrative power, namely, choosing among the courses of action upon which reasonable minds might differ xxxxxx xxxxx If judicial review were to trespass on the merits of the exercise of administrative power, it would put its own legitimacy at risk. The risk must be acknowledged for a reason which Frankfurter J. stated in Trop v. Dulles [1958] 356 US 86 at 119:

All power is .in Madison's phrase of an encroaching nature..... Judicial power is not immune against this human weakness. It also must he on guard against encroaching beyond its proper bounds and not he less https://www.mhc.tn.gov.in/judis so since the only restraint upon it is sell- restraint.

WP Nos. 26084 of 2023 etc. cases If the courts were to postulate rules ostensibly related to limitations on administrative power but in reality calculated to open to the gate into the forbidden field of the merits of its exercise, the function of the courts would be exceeded of R v. Nat Bell Liquors Ltd. [1992] 2 A C 128 at 156. If the courts were to define the destine of legitimate expectations as something less than a legal right and were to protect what would be thus defined by striking down administrative acts or decisions which failed to fulfil the expectations, the courts would be truncating the power which are naturally apt to affect those expectations. 70 strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adript on a featureless sea of pragmatism. Moreover the notion of a legitimate expectation (falling short o a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law. The authority of the courts and their salutary capacity judicially to review the exercise of' administrative power depend in the last analysis on their fidelity to the rule of law, exhibited by the articulation of general principles.

To lie within the limits of judicial power the nation of "legitimate expectation " must be restricted to the illumination of what is the legal limitation on the exercise of administrative power tit a particular case. of course, if a legitimate expectation were to amount to a legal right, the court would define the respective limits of the right and any power which might be exercised to infringe it so as to accommodate in part both the right and the power or so as to accord to one priority over the other (That is a common place of cruial declarations.) but a power which might be so exercised as to affect a legitimate expectation falling short of a legal right cannot be truncated to accommodate the expectation.

> So long as the notion of legitimate expectation is seen merely as indicating "the factors and kinds of factors which are relevant to any consideration of what are the things which must be done or afforded" to accord procedural fairness to an applicant for the exercise of an administrative power (see per https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases Mahoney IA in Macrae, at 285), the notion can, with one important proviso, be useful. If. but only if, the power is so created that the according of natural justice conditions its exercise, the notion of legitimate expectation may useful focus attention on the content of natural justice in a particular case; that is, on what must be done to give procedural fairness to a person whose interests might he affected by an exercise of the power. But if the according of natural justice does not condition the exercise of the power, the notion of legitimate expectation can have no role to play. If it were otherwise, the notion would become a stalking horse for excesses of judicial review."

(emphasis supplied) In this very case, Brennan J. after referring to Schmidt's case (supra) observed thus: "Again, when a court is decidsing what must be done in order to accord procedural fairness in a particular case it has regard to precisely the same circumstances as those to which the court might refer in considering whether the applicant entertains a legitimate expectation, but the inquiry whether the, applicant entertains a legitimate expectation is superfluous. Again if an express promise be given or a regular practice be adopted by a public authority, and the promise or practice is the source of a legitimate expectation, the repository is bound to have regard to the promise or practice in exercising the power, and it is unnecessary to inquire whether those factors give rise to a legitimate expectation. But the Court must stop short of compelling fulfillment of the promise or practice unless the statute so requires or the statute permits the repostitory of the power to hind itself as to the manner of the future exercise of the power. It follows that the notion of legitimate expectation is not the key which unlocks the treasury of natural justice and it ought not unlock the gate which shuts the court out of review on the merits. The notion of legitimate expectation wits introduced at a time when the courts were developing the common law to suit modern conditions and were sweeping away the unnecessary archaisms of the prerogative writs, but it should not be used to subvert the principled justification I-or curial intervention in the exercise of administrative power." https://www.mhc.tn.gov.in/judis (emphasis supplied) WP Nos. 26084 of 2023 etc. cases In the same case, Dawsom. J. observed thus:

> "It also follows that the required procedure may very according to the dictates of fairness in the particular case.
>
> Thus, in order to succeed. the respondent must be able to point to something in the circumstances of the case which would make it unfair not to extend to him the procedure which he seeks. There is no doubt that the respondent had a legitimate expectation of continuing in his position as a stipendiary magistrate such that it should, apart from statute, have been unfair to remove him from that position without according him a hearing. If the principle of judicial independence expended to a stipendiary magistrate, then, no doubt, that would have strengthened his expectation. But the respondent was not removed from his position of stipendiary

> magistrate by administrative decision. He was removed by a statute which abolished the position of stipendiary magistrate and established the new position of magistrate. Not only that, the statute, the Local Courts Act. clearly contemplated that not all the former stipendiary magistrates would be appointed as magistrates pursuant to its terms. Accordingly it made provision for those who where not so appointed. It may be possible to deprecate the manner in which the statute removed the respondent from office, but it is not possible to deny its effect. Any unfairness was the product of the legislation which conferred no right upon the respondent to a procedure other than that which it laid down."

(emphasis supplied)

34. On examination of some of these important decisions it is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negativing a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular then decision- maker should justify the denial of such expectation by showing some overriding public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfill. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the court is satisfied that a case of legitimate expectation is made out then the next question Would be whether failure to give an opportunity of hearing before the decision affect such legitimate expectation is taken has resulted in failure of' justice and whether on that ground the decision should he quashed. If that be so then what should be the relief is again a matter which depends on several factors. 35. We find in Attorney General for New South wales' case that the entire case law on the doctrine of legitimate expectation has been considered. We also find that on an elaborate an erudite discussion it is held that the courts' jurisdiction to interfere is very much limited and much less in granting any relief in a claim based purely on the ground of 'legitimate expectation'. In Public Law and Politics edited by Carol Harlow, we find an https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases article by Gabriele Ganz in which the learned author after examining the views expressed in the cases decided by

eminent judges to whom we have referred to above, concluded thus:

> "The confusion and uncertainty at the heart of the concept stems from its origin. It has grown from two separate roots, natural justice or fairness and estoppel., but the stems have become entwined to such an extent that it is impossible to disentangle them. This makes it that it is very difficult to predict how the hybrid will develop in future.This could be regarded as giving the concept a healthy flexibility, for the intention behind it is being it has been fashioned to protect the individual against administrative action which is against his interest. On the other hand, the uncertainty of the concept has led to conflicting decisions and conflicting interpretations in the same decision."

However, it is generally accepted and also clear that legitimate expectation beings less than right operate in the field of public and not private law and that to some extent such legitimate expectation ought to be protected though not guaranteed.

36. Legitimate expectations may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fast expansion of the governmental activities. They shift and change so fast that the start of our list would be obsolete before we reached the middle. By and large they arise in cases of promotions which are in normal course expected, though not guaranteed by way of a statutory right, in cases of contracts, distribution of largest by the Government and in somewhat similar situations. For instance in cases of discretionary grant of licences, permits or the like, carries with it a reasonable expectation, though not a legal right to renewal or non-revocation, but to summarily disappoint that expectation may be seen as unfair without the expectant person being heard. But there again the court has to see whether it was done as a policy or in the public interest either by way of G.O., rule or by way of a legislation. If that be so. a decision denying a legitimate expectation based on such (,rounds does not qualify for interference unless in a given case, the decision or action taken amounts to an abuse of power. Therefore the https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases limitation is extremely confined and if the according of natural justice does not condition the exercise of the power, the concept of legitimate expectation can have no role to play and the court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply and objective standard which leaves to the decising authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. For instance if an authority who has full discretion to grant a licence and if he prefers an existing licence holder to a new applicant, the decision can not be interfered with on the ground of legitimate expectation entertained by the new applicant applying the principles of natural justice. It can therefore be seen that legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. It would thus appear that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected. In other words such a legal obligation

exists whenever the case supporting the same in terms of legal principles of different sorts, is stronger than the case against it. As observed in Attornry General for New South Wales' case "To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of power when its exercise otherwise accords with law." If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory unfair or based, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim biased on mere legitimate expectation without anything more cannot ipso facto https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases give a right to invoke these principles. It can be one of the ground to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is "not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits," particularly when the element of speculation and uncertainty is inherent in that very concept. As cautioned in Attorney General for New South Wales' case the courts should restrain themselves and restrict such claims duty to the legal limitations. It is a well- meant caution. Otherwise a resourceful litigant having vested interests in contracts. licences etc,. can successfully indulge in getting welfare activities mandated by directive principles thwarted to further his own interests. The caution, particularly in the changing scenario, becomes all the more important.

37. In view of our conclusions in respect of the quantities allotted and the price fixed it may not be necessary for us to enter into further discussion on this aspect. We have already directed othat the Tender Committee should consider afresh as to what should be the reasonable price and to that extent the price of Rs. 67,000 fixed in respect of smaller manufacturers is set aside and directed to be revised. So far these three big manufacturers are concerned, we held that on their own commitment they are bound to supply at the rate of Rs. 67,000 per bogie. So far the quantities are concerned, we held that these three big manufacturers should be allotted the quantities as per the recommendations of the Tender Committee. However, we considered this aspect to some extent only to show that the decision in respect of price fixation as well as allotment of quantities even though to some extent at variation with the procedure followed during the previous years, was not based on any irrelevant consideration. The https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases Railways particularly the Financial Commissioner as well as the Minister and initially the Tender Committee formed an opinion that these three big manufacturers formed a cartel and also quoted and unworkable predatory price at the post-tender stage. Therefore from the point of view of preventing monopoly in the public interest the decision in question was taken in a bonafide manner. However, on a factual basis we held that the alleged formation of cartel was only in the realm of suspicion and in that view the decision was modified, as already indicated. However, we make it clear that the said modifications by way of judicial review is not on the ground of

legitimate expectation and violative of principles of natural justice but on the other ground namely the decision of the authorities was based on wrong assumption of formation of a cartel."

(iii) Asha Kaul and Ors. Vs. State of Jammu and Kashmir and Ors.

[MANU/SC/0499/1993 = 1993 (2) SCC 573] :

> "8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment State of Haryana v. Subhash Chandra Marwaha A.I.R. 1973 S.C.2216; M.S, Jain v.State of Haryana A.I.R. 1977 S.C. 276 and State of Kerala v. A. Lakshmikutty A.I.R. 1987 S.C 331 but that is only one aspect of the matter. The other aspect is the obligation of the government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the commission to select a particular number of candidates for a particular category, in pursuance of which the commission issues a notification, holds a written test, conducts a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the government-the government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any government can adopt such a stand with any justification today. This aspect has been dealt with by a Constitution Bench of this Court in Shankarsan Dash v. Union of India 1991 1 3 S.C.C.47 where the earlier decisions of this court are also noted. The following observations of the court are apposite:
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> https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases "It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to he taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwahs, Neelima. Shangla v. State of Haryana or Jatendra Kumar v. State of Punjab."

(iv) R.S.Mittal Vs. Union of India (MANU/SC/1009/1995 = 1995 Supp (2) SCC 230):

> "10. The Tribunal dismissed the application by the impugned judgment on the following reasoning:

> (a) The selection-panel was merely a list of person found suitable and does not clothe the applications with any right of appointment. The recommendations of the Selection Board were directory and not therefore enforceable by issue of a writ of mandamus by the Court.
>
> (b) The letter of Ministry of Home Affairs dated February 8, 1982 which extends the life of panel till exhausted is not relevant in the present case. In,, the circumstances the life of the panel in this case cannot go beyond 18 months and as such expired in July, 1989.

https://www.mhc.tn.gov.in/judis It is no doubt correct that a person on the select- panel WP Nos. 26084 of 2023 etc. cases has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select-panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select-panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgod within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.

(v) A.P.Aggarwal Vs. Govt. of N.C.T. of Delhi and Ors.

(MANU/SC/0722/1999 = 2000 (1) SCC 600):

> "11. In our opinion, this is a case of confirment of power together with a discretion which goes with it to enable proper exercise of the power and therefore it is coupled with a duty to shun arbitrariness in its exercise and to promote the object for which the power is conferred which undoubtedly is public interest and not individual or private gain, whim or caprice of any individual. Even if it is to be said, that the instructions contained in the Office Memorandum dated 14.5.87 are discretionary and not mandatory, such discretion is coupled with the duty to act in a manner which will promote the object tor which the power is conferred and also satisfy the mandatory' 'requirement of the Statute. It is not therefore open to the Government .to ignore .the panel .which, was already- approved and accepted by it and resort to a fresh, selection process without giving any proper reason for resorting to the same. It is not the case of the Government at any stage that the appellant is not fit to occupy the post. No attempt was made https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases before the Tribunal or betore this Court to place any valid reason for ignoring the appellant and launching a fresh process of selection.

12. It is well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs ns. (vide Shrilekha Vtdyarthi versus State of U.P. ((1991) I S.C.C. 212).

13.....

14. In R.S. Mittal versus Union of India (1995 Supp. (2) S.C.C. 230) the question arose with regard to selection of candidates to the post of Judicial Member, income-tax Appellate Tribunal. The selection was made by a Selection Board consisting of a sitting Judge of this Court. The Selection Board prepared a. panel of selected candidates which included the name of the appellant before this Court and sent its recommendations. The candidates who were at numbers I and 2 in the panel did not accept the appointment. The Bench observed that though a person on the select panel has no vested right to be appointed to the post for which he has been selected has a right to be considered for appointment and at the same time the appointing authority cannot not ignore the select panel or decline to make an appointment on its whims. The Court said that when a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, ordinarily there is no justification to ignore him for appointment and that there has to be a justifiable reason to decline to appoint a. person who is on the select panel. However, on the facts of the case. the Bench did not give any relief to the appellant as he was only No.4 and no information was available about the stand of the person who was at No.3 of the select panel. While reversing the findings given by the Central Administrative Tribunal to the extent indicated in the judgment the Bcnch dismissed the appeal but directed the Government to pay cost of the proceedings to the appellant which was quantified at Rs.30.000/-.

https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases

(vi) Chanchal Goyal Vs. State of Rajasthan (MANU/SC/0133/2003 = 2003 (3) SCC 485):

"14. What remains to be considered is the plea of legitimate expectation. The principle of 'legitimate expectation' is still at a stage of evolution as pointed out in De Smith Administrative Law (5th Edn. Para 8.038). The principle is at the root of the rule of law and requires regularity, predictability and certainty in governments' dealings with the public. Adverting to the basis of legitimate expectation its procedural and substantive aspects, Lord Steyn in Pierson v. Secretary of State for the Home Department (1997 (3) All ER 577, at p.606)(HL) goes back to Dicey's description of the rule of law in his "Introduction to the study of the Law of the Constitution"

(10th Edn. 1968 p.203) as containing principles of enduring value in the work of a great jurist. Dicey said that the constitutional rights have roots in the common law. He said:

> "The 'rule of law', lastly, may be used as a formula for expressing the fact that with us, the law of constitution, the rules which in foreign countries naturally form part of a constitutional code, are not the source but the consequence of the rights of individuals, as defined and enforced by the courts; that, in short, the principles of private law have with us been by the action of the courts and Parliament so extended as to determine the position of the Crown and its servants; thus the constitution is the result of the ordinary law of the land".

15. This, says Lord Steyn, is the pivot of Dicey's discussion of rights to personal freedom and to freedom of association and of public meeting and that it is clear that Dicey regards the rule of law as having both procedural and substantive effects. "The rule of law enforces minimum standards of fairness, both substantive and procedural". On the facts in Pierson, the majority held that the Secretary of State could not have maintained a higher tariff of sentence that recommended by the judiciary when admittedly no aggravating circumstances existed. The State could not also increase the tariff with retrospective effect.

https://www.mhc.tn.gov.in/judis 16. The basic principles in this branch relating to WP Nos. 26084 of 2023 etc. cases 'legitimate expectation' were enunciated by Lord Diplock in Council of Civil Service Unions and Ors. v. Minister for the Civil Service (1985 AC 374 (408-409) (Commonly known as CCSU case). It was observed in that case that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision- maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn. The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. The substantive part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit that it will be continued and not be substantially varied, then the same could be enforced. In the above case, Lord Fraser accepted that the civil servants had a legitimate expectation that they would be consulted before their trade union membership was withdrawn because prior consultation in the past was the standard practice whenever conditions of service were significantly altered. Lord Diplock went a little further, when he said that they had a legitimate expectation that they would continue to enjoy the benefits of the trade union membership, the interest in regard to which was protectable. An expectation could be based on an express promise or representation or by established past action or settled conduct. The representation must be clear and unambiguous. It could be a representation to the individual or generally to class of persons.

17. The principle of a substantive legitimate expectation, that is, expectation of favourable decision of one kind or another, has been accepted as part of the English Law in several cases. (De Smith, Administrative Law, 5th Ed.) (Para 13.030), (See also Wade, Administrative Laws, 7th Ed.) (pp. 418-419). According to Wade, the doctrine of substantive https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases legitimate expectation has been "rejected" by the High Court of Australia in Attorney General for N.S.W. vs. Quin (1990) 93 ALL E.R. 1 (But see Teon's case referred to later) and that the principle was also rejected in Canada in Reference Re Canada Assistance Plan (1991) 83 DLR (4th 297, but favoured in Ireland: Canon vs. Minister for the Marine 1991(1) I.R. 82. The European Court goes further and permits the Court to apply proportionality and go into the balancing of legitimate expectation and the Public interest.

18. Even so, it has been held under English law that the decision maker's freedom to change the policy in public interest, cannot be fettered by the application of the principle of substantive legitimate expectation. Observations in earlier cases project a more inflexible rule than is in vogue presently. In R. v. IRC, ex p Preston (1985 AC 835) the House of Lords rejected the plea that the altered policy relating to parole for certain categories of prisoners required prior consultation with the prisoner, Lord Scarman observed:

> "But what was their legitimate expectation. Given the substance and purpose of the legislative provisions governing parole, the most that a convicted prisoner can legitimately expect is that his case be examined individually in the light of whatever policy the Secretary of State sees fit to adopt provided always that the adopted policy is a lawful exercise of the discretion conferred upon him by the statute. Any other view would entail the conclusion that the unfettered discretion conferred by statute upon the minister can in some cases by restricted so as to hamper or even to prevent changes of policy."

19. To a like effect are the observations of Lord Diplock in Hughes vs. Department of Health and Social Security (HL) 1985 AC 776 (788):

> "Administrative policies may change with changing circumstances, including changes in the political complexion of governments. The liberty to make such changes is something that is inherent in our constitutional form of government."

20. (See in this connection Mr. Detan's article "Why Administrators should be bound by their policies" (Vol. 17) https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases 1997 Oxford Journal of Legal Studies, p. 23). But today the rigidity of the above decisions appears to have been somewhat relaxed to the extent of application of Wednesbury rule, whenever there is a change in policy and we shall be referring to those aspects presently.

21. Before we do so, we shall refer to some of the important decisions of this Court to find out the extent to which the principle of substantive legitimate expectation is accepted in our country In Navjyoti Co-op. Group Housing Society vs. Union of India (1992 (4) SCC 477), the principle of procedural fairness was applied. In that case the seniority as per the existence list of co-operative

housing societies for allotment of land was altered by subsequent decision. The previous policy was that the seniority amongst housing societies in regard to allotment of land was to be based on the date of registration of the society with the Registrar. But on 20.1.1990, the policy was changed by reckoning seniority as based upon the date of approval of the final list by the Registrar. This altered the existing seniority of the societies for allotment of land. This Court held that the societies were entitled to a 'legitimate expectation' that the past consistent practice in the matter of allotment will be followed even if there was no right in private law for such allotment. The authority was not entitled to defeat the legitimate expectation of the societies as per the previous seniority list without some overriding reason of public policy as to justify change in the criterion. No such overriding public interest was shown. According to the principle of 'legitimate expectation', if the authority proposed to defeat a person's legitimate expectation, it should afford him an opportunity to make a representation in the matter. Reference was made to Halsbury's Laws of England (p.151, Vol.1 (1) (4th Ed. re-issue) and to the CCSU case. It was held that the doctrine imposed, in essence, a duty on public authority to act fairly by taking into consideration all relevant factors, relating to such legitimate expectation. Within the contours of fair dealing, the reasonable opportunity to make representation against change of policy came in.

22. The next case in which the principle of 'legitimate expectation' was considered is the case in Food Corporation of https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases India vs. M/s Kamdhenu Cattle Feed Industries, (1993 (1) SCC

71). There the Food Corporation of India invited tenders for sale of stocks of damaged food grains and the respondent's bid was the highest. All tenderers were invited for negotiation, but the respondent did not raise his bid during negotiation while others did. The respondent filed a writ petition claiming that it had a legitimate expectation of acceptance of its bid, which was the highest. The High Court allowed the writ petition. Reversing the judgment, this Court referred to CCSU case and to R. v. IRC ex p Preston (1985 AC 835). It was held that though the respondent's bid was the highest, still it had no right to have it accepted. No doubt, its tender could not be arbitrarily rejected, but if the Corporation reasonably felt that the amount offered by the respondent was inadequate as per the factors operating in the commercial field, the non- acceptance of bid could not be faulted. The procedure of negotiation itself involved the giving due weight to the legitimate expectation of the highest bidder and this was sufficient.

23. This Court considered the question elaborately in Union of India and Ors. vs. Hindustan Development Corporation and Ors. (1993 (3) SCC 499). There tenders were called for supply of cast-steel bogies to the railways. The three big manufacturers quoted less than the smaller manufacturers. The Railways then adopted a dual pricing policy giving counter offers at a lower rate to the bigger manufacturers who allegedly formed a cartel and a higher offer to others so as to enable a healthy competition. This was challenged by the three big manufacturers complaining that they were also entitled to a higher rate and a large number of bogies. This Court held that the change into a dual pricing policy was not vitiated and was based on 'rational and reasonable' grounds. In that context, reference was made to Halsbury's Laws of England (4th Ed.) (Vol.1 (I) p.151), Schmidt vs. Secretary to State for Home Affairs (1969 (2) Ch 149) which required an opportunity to be given to an alien if the leave given to him to stay in UK was being revoked before expiry of the time and to

Attorney-General of Hong Kong. vs. Ng Yuen Shiu (1983 (2) AC 629) which required the Government of Hong Kong to honour its undertaking to treat each deportation case on its merits, and CCSU's case (supra) which related to alteration of conditions https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases relating to membership of trade unions and the need to consult the unions in case of change of policy as was the practice in the past, and to Food Corporation of India's case (supra) and Navjyoti Co-op. Group Housing Society's case (supra). It was then observed that legitimate expectation was not the same thing as anticipation. It was also different from a mere wish to desire or hope; nor was it a claim or demand based on a right. A mere disappointment would not given rise to legal consequence. The position was indicated as follows:

> "The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Such expectation should be justifiably legitimate and protectable."

24. After (sic) Wade/Administrative Law (6th Ed.) (p.424, 522), reference was also made to the judgment of the Australian High Court in Attorney General for New South Wales vs. Quin (1990) 64 Aust. LJR 327) in which the principle itself, according to Wade, did not find acceptance. In that case a Stipendiary Magistrate incharge of a Court of Petty Sessions under the old court system was refused appointment to the system of local courts which replaced the previous system of Petty Sessions Courts. In 1987, the Attorney General who was hitherto recommending former magistrates on the ground of 'fitness' for appointment to the new local courts, deviated from that policy and decided to go by assessment of merit of the competing applicants. The Court of Appeal had directed that the case of Mr. Quin must be considered separately and not in competition with other applicants, but it was reversed by the majority of the High Court of Australia (Mason, CJ, Brennan & Dawson, JJ.) (Deans and Toobey, JJ dissenting). Mason, CJ held that the Court could not fetter the executive discretion to adopt a different policy which was better calculated to serve the administration of justice and make it more effective. The grant of substantive relief in such a case would effectively prevent the executive from giving effect to the new policy which it wished to pursue in relation to the appointment of magistrates. Brennan, J. observed very clearly that the notion of legitimate expectation (falling short of a legal right) was too nebulous to form a basis for invalidating the exercise of power. He said that such a principle would "set the courts adrift on a featureless sea of https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases pragmatism." Dawson, J. held that the contention of the respondent exceeded the bound of procedural fairness and intruded upon the freedom of the executive. In Hindustan Development Corporation's case (supra) R. vs. Secretary of State for the Home Department ex parte Ruddock (1987 2 All E.R. 518) and Findlay vs. Secretary of State for the Home Department (1984) 3 All E.R. 801) and Breen vs. Amalgamated Engineering Union, (1971) 1 All. E.R. 1148 were considered. It was accepted that the principle of legitimate expectation gave the applicant sufficient locus standi to seek judicial review and that the doctrine was confined mostly to a right to fair hearing before a decision which resulted in negativing a promise or withdrawing an undertaking, was taken. It did not involve any crystallized right. The protection of such legitimate expectation did not require the fulfillment of the expectation where an overriding public interest required otherwise. However, the burden lay on the decision maker to show such an overriding public interest. A case of substantive legitimate expectation would arise when a body by representation or by past practice aroused expectation

which it would be within its powers to fulfill. The Court could interfere only if the decision taken by the authority was arbitrary, unreasonable or not taken in public interest. If it is established that a legitimate expectation has been improperly denied on the application of the above principles, the question of giving opportunity can arise if failure of justice is shown. The Court must follow an objective method by which the decision- making authority is given the full range of choice which the legislature is presumed to have intended. If the decision is reached fairly and objectively, it cannot be interfered with on the ground of procedural fairness. An example was given that if a renewal was given to an existing licence holder, a new applicant cannot claim an opportunity based on natural justice. On facts, it was held that legitimate expectation was denied on the basis of reasonable considerations.

25. The next case in which the question was considered is Madras city Wine Merchants' Association vs. State of Tamil Nadu, 1994 (5) SCC 509. In that case the rules relating to renewal of liquor licences were statutorily altered by repealing https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases existing rules. It was held that the repeal being the result of a change in the policy by legislation, the principle of non- arbitrariness was not invocable.

26. In M.P. Oil Extraction vs. State of M.P. (1997 (7) SCC 592) the question was again considered. In that case, it was held that the State's policy to extend renewal of an agreement to selected industries which came to be located in Madhya Pradesh on invitation of State, as against other local industries was not arbitrary and the said selected industries had a legitimate expectation of renewal under renewal claims which should be given effect to according to past practice unless there was any special reasons not to adhere to the practice. It was clearly held that the principle of substantive legitimate expectation was accepted by the Court earlier. Reference was made to Food Corporation's case (supra), Navjyoti Co-op. Group Housing Society's case (supra) and to Hindustan Development Corporation's case (supra).

27. Lastly we come to the three judge judgment in National Building Construction Corporation vs. S. Raghunathan & Others. (1998 (7) SCC 66). This case has more relevance to the present case, as it was also a service matter. The respondents were appointed in CPWD and they went on deputation to the NBCC in Iraq and they opted to draw, while on deputation, their grade pay in CPWD plus deputation allowance. Besides that, the NBCC granted them Foreign Allowance at 125% of the basic pay. Meanwhile their Basic Pay in CPWD was revised w.e.f. 1.1.1986 on the recommendation of the 4th Pay Commission. They contended that the abovesaid increase of 125% should be given by NBCC on their revised scales. This was not accepted by NBCC by orders dated 15.10.1990. The contention of the respondents based on legitimate expectation was rejected in view of the peculiar conditions under which NBCC was working in Iraq. It was observed that the doctrine of 'legitimate expectation' had both substantive and procedural aspects. This Court laid down a clear principle that claims on legitimate expectation required reliance on representation and resultant detriment in the same way as claims based on promissory estoppel. The principle was developed in the context of 'reasonableness' and in the context of 'natural justice'. Reference was made to IRC exp. Preston's case https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases (supra); Food Corporation's case (supra); Hindustan Development Corporation's case (supra); the Australian Case in Quin (1990) 64 Aust. IJR 327; M.P. Oil Extraction's case (supra), CCSU's case (supra) and

Navjyoti's case (supra)."

(vii) Teri Oat Estates (P) Ltd., Vs. U.T., Chandigarh and Ors.

(MANU/SC/1098/2003 = 2004 (2) SCC 130):

> PROPORTIONALITY :
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> 40. The issue in the light of the decision of the full Bench of the Punjab & Haryana High Court in Ram Puri v.

Chief Commissioner, Chandigarh, AIR (1982) P & H 301 (supra) as affirmed by this Court in Babu Singh Bains & Ors. v. Union of India A Ors., [1996] 6 SCC 565 (supra) may have to be considered from another angle.

41. By reason of the auction held, the land in question has been sold in favour of the appellant. A letter of allotment has been issued in terms thereof. The appellant has been put in possession of the purchased property. In law he was entitled to raise constructions and in fact he has raised a six storied building. He has paid a part of the first instalment and during pendency of the proceeding before the High Court has paid a substantial amount together with interest @ 12% p.a. as enhanced from time to time.

42. The respondents were entitled to pay interest on the unpaid amount @ 7% p.a. which in the event of non-payment was to be paid at a penal rate of 12% and subsequently enhanced to 15 per cent and then to 24 per cent as well the amount of penalty to be levied thereupon. The entire amount was recoverable through the process of law. In a situation of this nature, having regard to the rival claims made by the parties, if the default is not absolute wilful or a dishonest one but occasioned due to situation which may be beyond one's control, the statutory right of the respondent in resuming the land may not be appropriate, if the entire dues stand discharged.

43. In terms of the provisions of the Act, the respondents are entitled to, (1) resumption of the land, (2) resumption of the building and (3) forfeiture of the entire https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases amount paid or deposited. Having regard to the extreme hardship which may be faced by the parties, the same shall not ordinarily be resorted to.

44. The situation, thus, in our opinion, warrants application of the doctrine of proportionality.

45. The said doctrine originated as far back as in 19th century in Russia and later adopted by Germany, France and other European countries as has been noticed by this Court in Om Kumar v. Union of India, [2001] 2 SCC 386.

46. By proportionality, it is meant that the question whether while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the

administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority "maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve."

47. This Court as far back as in 1952 in the State of Madras v. KG. Row, AIR (1952) SC 196, observed :

> "The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby the disproportion of the imposition, the prevailing conditions at the time should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and limit to their interferences with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflecting that the Constitution is meant not only for the people of their way of thinking but for all, and that https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions, considered them to be reasonable."

48. The principle started gaining momentum in other countries and it was applied and developed in England as noticed by Lord Diplock in R. v. Secretary of State for the Home Department, ex Brind, (1991) 1 Appeal case 696. This Court in Tata Cellular v. Union of India, [1994] 6 SCC 651 while opining in concurrence with the judgment of the House of Lords in Council of Civil Services Union v. Minister of Civil Service, [1985] 1 Appeal Cases 374 that the extent of judicial review should ordinarily be limited to illegality, irrationality and procedural impropriety observed that they are only the broad grounds but did not rule out addition of further grounds in the course of time and also noticed 'Brind' (supra).

49. Ever since 1952, the principle of proportionality has been applied vigorously to legislative and administrative action in India. While dealing with the validity of legislation infringing fundamental freedoms enumerated in Article 19(1) of the Constitution of India, this Court had occasion to consider whether the restrictions imposed by legislation were disproportionate to the situation and were not the least restrictive of the choices. In cases where such legislation is made and the restrictions are reasonable yet, if the statute concerned permitted administrative authorities to exercise power or discretion while imposing restrictions in individual situations, question frequently arises whether a wrong choice is made by the administrator for imposing the restriction or whether the administrator has not properly balanced the fundamental right and the need for the restriction or whether he has imposed the least of the restrictions or the reasonable quantum of restrictions etc.

in such cases, the administrative action in our country has to be tested on the principle of proportionality, just as it is done in the case of main legislation. This, in fact, is being done by the courts. Administrative action in India affecting the Fundamental Freedoms has always been tested on the anvil of the proportionality in the last 50 years even though it has not been expressly stated that the principle that is applied is the proportionality principle. [See Om Kumar (supra)].

https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases

50. In Om Kumar (supra), however, this Court evolved the principle of Primary and Secondary Review. The doctrine of primary view was held to be applicable in relation to the statutes or statutory rules or any order which has the force of statute. The secondary review was held to be applicable inter alia in relation to the action in a case where the executive is guilty of acting patently arbitrarily. This Court noticed E.P. Royappa v. State of Tamil Nadu, [1974] 4 SCC 3 and observed that in such a case Article 14 of the Constitution of India would be attracted. In relation to other administrative actions as for example punishment in a departmental proceeding, the doctrine of proportionality was equated with Wednesbury Unreasonableness.

51. We may, however, notice that the said doctrine in principle or the spirit thereof has recently been applied by the Court of Appeals.

52. In Edore v. Secretary of State for the Home Department, [2003] 3 All ER 1265, the appellant was a citizen of Nigeria who had entered into the United Kingdom and remained back after her visa had expired. She had two children, born to a British citizen. The children were emotionally dependent on him and he was a stabling influence on their lives. If the appellant and her children were returned to Nigeria, their relationship with their father would end. The Court trying to resolve the conflict at hand opined :

> "Where the essential facts were not in doubt or dispute, the adjudicator's task was to determine whether the decisions under appeal was properly one with the decision-makers discretion, namely that it was a decision which could reasonably be regarded as striking a fair balance between the competing interests in law. If it were, then the adjudicator could not characterize it as a decision 'not in accordance with the law' and so, even if he personally would have preferred the balance to have been struck differently, he could not substitute his preference for the decision in fact taken. However, there would be occasions where it could be properly be said that the decision reached was outside the range of permissible responses open to him, in that the balance struck was simply wrong."

https://www.mhc.tn.gov.in/judis 53. In a later case although the doctrines of the WP Nos. 26084 of 2023 etc. cases proportionality was not expressly referred to but the spirit thereof was applied, in R. v. Levisham London Borough Council, [2003] 3 All ER 1277, wherein it was held :

> "When the decision maker comes to balance the factors he is entitled to a place in the scales. Thus, even though the length of delay and reasons for it are often balanced

> against the prospect of success, it is possible to envisage circumstances in which an authority can rationally and properly conclude that even short delay for which there is a good explanation is not enough to justify a an extension of time for review."

CONCLUSION:

> 54. Keeping in view the aforementioned principles in mind would it be proper for us to take a view as has been suggested by Ms. Jaiswal? The answer to the said question must be rendered in the negative, if the competing interests can be balanced.
>
> 55. The appellants had sought to show their bona fide in making their payments before the High Court. They had also shown their willingness to make the payments on the difference of amount of interest. They pursuant to the order of this Court not only paid the entire amount due but also paid ground rent upto 1988-1999 and further paid 10% penalty on the forfeited amount of entire consideration money amounting to Rs. 2,87,000.
>
> 56. The land in question for all intent and purport had been transferred in favour of the appellants. They were merely to pay the balance amount of 75% of the consideration amount in instalments. The rate of interest, as noticed hereinbefore, had been increased from 7% to 24%. Penalty was levied by the appellant authority at 1% and the revisional authority at 2%.

Contrary thereto the Estate Officer, however, in terms of his original order directed payment of penalty at 10% F.F.

57. We may, however, hasten to add that we do not intend to lay down a law that the statutory right conferring the right of the respondent should never be resorted. We have merely laid down the principle giving some illustrations where it may not be used. There cannot be any doubt whatsoever that if https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases the intention of the allottee is dishonest or with an ill motive and if the allottee does not make any payment in terms of the allotment or the statute with a dishonest view or any dishonest motive, then Section 8(1) can be taken recourse to.

58. We, however, cannot but deprecate the conduct of the appellants in not making an endeavour to pay the instalments within a reasonable period. They, thus, did not pay the entire amount of the first instalment within the stipulated period; only a part payment was made in the year 1990 and 1992 by that time even the second instalment became due. They did not make any payment before the revisional authority despite the order passed by the appellate authority. We, therefore, are of the opinion that the appellant in C.A. No. 49 of 1999 should deposit a further sum of Rs. 15,00,000 (Rupees fifteen lacs) with the Estate Officer, Chandigarh within a period of ten weeks from date of receipt of a copy of this order, which, in our opinion would meet the ends of justice. However, so far as the other matters are concerned, having regard to the facts and circumstances obtaining in their cases, we do not intend to direct levy of any penalty on them.

59. These appeals are disposed of in the above terms. No costs."

(viii) State of U.P. Vs. Sheo Shanker Lal Srivastava and Ors.

(MANU/SC/8066/2006 = 2006 (3) SCC 276):

> "17. It is now well-settled that principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well-settled that the High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience.
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> 18. In V. Ramana v. S.P. SRTC and Others [(2005) 7 SCC 338], this Court upon referring to a large number of decisions held :
>
> "The common thread running through in all these decisions https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

[See also Hombe Gowda Edn. Trust & Anr. v. State of Karnataka & Ors. 2005 (10) SCALE 307] : 2006 (1) SCC 430] & State of Rajasthan & Anr. Vs. Mohammed Ayub Naz [2006 (1) SCALE 79 : (2006) 1 SCC 589].

19. While saying so, we are not oblivious of the fact that the doctrine of unreasonableness is giving way to the doctrine of proportionality. It is interesting to note that the Wednesbury principles may not now be held to be applicable in view of the development in constitutional law in this behalf. [See e.g. Huang and Others v. Secretary of State for the Home Department [(2005) 3 All. ER 435], wherein referring to R. v. Secretary of State of the Home Department, ex. P Daly [(2001) 3 All ER 433], it was held that in certain cases, the adjudicator may require to conduct a judicial exercise which is not merely more intrusive than Wednesbury, but involves a full-blown merits judgment, which is yet more than Ex p. Daly requires on a judicial review where the court has to decide a proportionality issue."

(ix) Jitendra Kumar and Ors. Vs. State of Haryana and Ors.

(MANU/SC/8192/2007 = 2008 (2) SCC 161):

> 30. The legal principle obtaining herein is not in dispute that the selectees do not have any legal right of appointment subject, inter alia, to bona fide action on the part of the State. We may notice some of the precedents operating in the field.

https://www.mhc.tn.gov.in/judis In Shankarsan Dash v. Union of India [(1991) 3 SCC 47], WP Nos. 26084 of 2023 etc. cases this Court held:

> "7 . It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha, Neelima Shangla v. State of Haryana, or Jatendra Kumar v. State of Punjab."

Yet again in R.S. Mittal v. Union of India [1995 Supp (2) SCC 230], this Court held:

> "It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified."

https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases (Emphasis supplied) In Asha Kaul (Mrs.) and Another v. State of Jammu and Kashmir [(1993) 2 SCC 573], this Court held:

> "8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment (State of Haryana v. Subhash

> Chander Marwaha; Mani Subrat Jain v. State of Haryana; State of Kerala v. A. Lakshmikutty) but that is only one aspect of the matter. The other aspect is the obligation of the Government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the Commission to select a particular number of candidates for a particular category, in pursuance of which the Commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the Government the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any Government can adopt such a stand with any justification today"

[See also A.P. Aggarwal v. Govt. of NCT of Delhi and Another (2000) 1 SCC 600] In Food Corpn. Of India and Others v. Bhanu Lodh and Others [(2005) 3 SCC 618], this Court held:

> "14 . Merely because vacancies are notified, the State is not obliged to fill up all the vacancies unless there is some provision to the contrary in the applicable rules. However, there is no doubt that the decision not to fill up the vacancies, has to be taken bona fide and must pass the test of reasonableness so as not to fail on the touchstone of Article 14 of the Constitution. Again, if the vacancies are proposed to be filled, then the State is obliged to fill them in accordance with merit from the list of the selected candidates. Whether to fill up or not to fill up a post, is a policy decision, and unless it is infected with the vice of arbitrariness, there is no scope for interference in judicial review."

31. It is, therefore, evident that whereas the selectee as such has no legal right, the superior court in exercise of its judicial review would not ordinarily direct issuance of any writ in absence of any pleading and proof of malafide or arbitrariness on its part. Each case, therefore, must be considered on its own merit.

https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases

32. Dr. Rajeev Dhawan would submit that the negative right contemplated by reason of the aforementioned decisions should be held to have conferred a positive right on the selectee so as to hold that if there was no bonafide on the part of the State or if the State had not assigned any sufficient or cogent reasons for not appointing the selected candidates, the same would give rise to a legal right in the selectees which is although not an unqualified one. It was further submitted that the right become stronger when the selection process is completed and the candidates are selected.

Whether we apply the negative test or the positive test, the decision making process should veer round the question in regard to the lack of bona fide or an act of arbitrariness on the part of the State. If lack of bonafide or arbitrariness on the part of the State is proved, whether the right is considered to be a vested or accrued right, or otherwise a negative right, the superior court may exercise its power of judicial review. The judicial intervention would, thus, be possible only when a finding of fact is arrived at in regard to the aforementioned acts of omissions and commission on the

part of the State and not otherwise."

(x) Sethi Auto Service Station and Ors. Vs. Delhi Development Authority and Ors. (MANU/SC/8127/2008 = 2009 (1) SCC 180):

> "18. We may, now, consider the plea relating to the legitimate expectation of the appellants in terms of DDA's policy dated 14th October, 1999 and the impact of change of the policy, in June, 2003, thereon.
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> 19. The protection of legitimate expectations, as pointed out in De Smith's Judicial Review (Sixth Edition), (para 12-001), is at the root of the constitutional principle of the rule of law, which requires regularity, predictability, and certainty in government's dealings with the public. The doctrine of legitimate expectation and its impact in the administrative law has been considered by this Court in a catena of decisions but for the sake of brevity we do not propose to refer to all these https://www.mhc.tn.gov.in/judiscases. Nevertheless, in order to appreciate the concept, we WP Nos. 26084 of 2023 etc. cases shall refer to a few decisions. At this juncture, we deem it necessary to refer to a decision by the House of Lords in Council of Civil Service Unions & Ors. Vs. Minister for the Civil Service5, a locus classicus on the subject, wherein for the first time an attempt was made to give a comprehensive definition to the principle of legitimate expectation. Enunciating the basic principles relating to legitimate expectation, Lord Diplock observed that for a legitimate expectation to arise, the decision of the administrative authority must affect such person either (a) by altering rights or obligations of that person which are enforceable by or against him in private law or (b) by depriving him of some benefit or advantage which either: (i) he has in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until some rational ground for [1984] 3 All ER 935 withdrawing it has been communicated to him and he has been given an opportunity to comment thereon or (ii) he has received assurance from the decision-maker that they will not be withdrawn without first giving him an opportunity of advancing reasons for contending that they should be withdrawn.
>
> 20. In Attorney General of Hong Kong Vs. Ng Yuen Shiu6, a leading case on the subject, Lord Fraser said: "when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as the implementation does not interfere with its statutory duty".

21. Explaining the nature and scope of the doctrine of legitimate expectation, in Food Corporation of India Vs. M/s Kamdhenu Cattle Feed Industries7, a three-Judge Bench of this Court had observed thus:

> "The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due

> weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. https://www.mhc.tn.gov.in/judisWhether the expectation of the claimant is reasonable or WP Nos. 26084 of 2023 etc. cases legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

22. The concept of legitimate expectation again came up for consideration in Union of India & Ors. Vs. Hindustan Development Corporation & Ors.8. Referring to a large number of foreign and Indian decisions, including in Council of Civil Service Unions and Kamdhenu Cattle Feed Industries (supra) and elaborately explaining the concept of legitimate expectation, it was observed as under:

> "If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is "not the key which unlocks the treasury of natural justice and it ought not unlock the gate which shuts the court out of review on the merits", particularly https://www.mhc.tn.gov.in/judiswhen the element of speculation and uncertainty is inherent in WP Nos. 26084 of 2023 etc. cases that very concept."

23. Taking note of the observations of the Australian High Court in Attorney General for New South Wales Vs. Quinn9 that "to strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the Courts adrift on a featureless sea of pragmatism", speaking for the Bench, K. Jayachandra Reddy, J. said that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected. The caution sounded in the said Australian case that the Courts should restrain themselves and restrict such claims duly to the legal

limitations was also endorsed.

24. Then again in National Buildings Construction Corporation Vs. S. Raghunathan & Ors.10, a three-Judge Bench of this Court observed as under:

> "The doctrine of "legitimate expectation" has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of "legitimate expectation" was evolved which has today become a source of substantive as well as procedural rights. But claims based on "legitimate expectation" have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel."

25. This Court in Punjab Communications Ltd. Vs. Union of India & Ors.11, referring to a large number of authorities on the question, observed that a change in policy can defeat a substantive legitimate expectation if it can be justified on "Wednesbury" reasonableness. The decision maker has the choice in the balancing of the pros and cons relevant to the change in policy. Therefore, the choice of the policy is for the decision maker and not for the Court. The legitimate https://www.mhc.tn.gov.in/judissubstantive expectation merely permits the Court to find out if WP Nos. 26084 of 2023 etc. cases the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. (Also see: Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer & Ors.. MANU/SC/0994/2004 : (2004) 192 CTR (SC) 492)

26. Very recently in Jitendra Kumar & Ors. Vs. State of Haryana & Anr.13, it has been reiterated that a legitimate expectation is not the same thing as an anticipation. It is distinct and different from a desire and hope. It is based on a right. It is grounded in the rule of law as requiring regularity, predictability and certainty in the Government's dealings with the public and the doctrine of legitimate expectation operates both in procedural and substantive matters.

27. An examination of the afore-noted few decisions shows that the golden thread running through all these decisions is that a case for applicability of the doctrine of legitimate expectation, now accepted in the subjective sense as part of our legal jurisprudence, arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfill unless some overriding public interest comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate

expectation without anything more cannot ipso facto give a right to invoke these principles. It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in the public interest unless the action taken amounts to an abuse of power. The court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature https://www.mhc.tn.gov.in/judisis presumed to have intended. Even in a case where the WP Nos. 26084 of 2023 etc. cases decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. Therefore, a legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. [Vide Hindustan Development Corporation (supra)]

(xi) Sivanandan CT and Others Vs. High Court of Kerala and Others (2024) 3 SCC 799):

> "ii. Legitimate Expectation
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> 17. Another important aspect that arises for our consideration in these batch of petitions is whether the High Court's decision frustrates the legitimate expectation of the petitioners. Article 233 of the Constitution provides that the appointment of persons to be posted as district judges in any state shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such state. Further, Article 235 vests with the High Court the control over district courts including the posting and promotion of district judges. The maintenance of efficiency of judicial administration is entirely within the control and jurisdiction of the High Court.6 The Governor, in consultation with the High Court, prescribes rules laying down the method of appointment and the necessary eligibility criteria for the selection of suitable candidates for the post of district judges. According to the 1961 Rules, the High Court of Kerala was designated as the appointing authority and tasked with the responsibility of conducting the written examination and the viva voce. The actions of the High Court, in pursuance of its public duty, would give rise to the legitimate expectation that the process of selection of candidates will be fair and non-arbitrary.

a. Doctrine of legitimate expectation under common law https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases

18. The basis of the doctrine of legitimate expectation in public law is founded on the principles of fairness and non- arbitrariness in government dealings with individuals. It recognizes that a public authority's promise or past conduct will give rise to a legitimate expectation. The doctrine is premised on the notion that public authorities, while performing their public duties, ought to honor their promises or past practices. The legitimacy of an expectation can be inferred if it is rooted in law, custom, or established procedure.7

19. The origin of the doctrine in the modern sense could be authoritatively traced to the opinion of Lord Denning in Schmidt v. Secretary of State for Home Affairs. 8 In that case, the Home Secretary granted a limited permit to the petitioners to enter the United Kingdom for the purposes of study at the College of Scientology. After the expiration of the time period, the petitioners applied to the Home Secretary for an extension of their permits. The Home Secretary refused to grant the extension. Although the Court rejected the claim brought by the petitioners, Lord Denning observed that the petitioner would have a legitimate expectation of being allowed to stay for the permitted time. In such situation, it 6 State of Bihar v. Bal Mukund Sah, (2000) 4 SCC 640 7 Salemi v. Mackellar, [1977] HCA 26 8 [1969] 2 WLR 337 7 was observed that the petitioner ought to have been given an opportunity of making a representation if his permit was revoked before the expiration of the time period. Lord Denning's conception of the doctrine of legitimate expectation was a procedural protection – a legitimate expectation could not be denied without providing an opportunity of hearing to the affected person.

20. In O'Reilly v. Mackman, 9 the House of Lords was called upon to decide the validity of the order passed by the Board of Visitors to impose a penalty against the plaintiffs in breach of the prison rules and principles of natural justice. Lord Diplock observed that the doctrine of legitimate expectation gave the affected party a right to challenge the legality of the adverse actions on the ground that the authority had acted beyond the powers conferred upon it by the legislation including the failure to observe the principles of natural justice. Lord Diplock reiterated the doctrine of legitimate expectation in terms of the duty of public authorities to act fairly in their https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases dealings with individuals.

21. The doctrine of legitimate expectation received further impetus in the decision of the Privy Council in Attorney General of Hong Kong v. Ng Yuen Shiu. 10 In that case, a senior immigration officer announced that each illegal entrant from China would be interviewed before passing deportation orders against them. The respondent, an illegal entrant from China, was detained and removal orders were passed against him without any opportunity of hearing. Therefore, the issue was whether the respondent had a legitimate expectation of the grant of a hearing before repatriation by the immigration officer. It was held that a public authority is bound by its undertakings. Lord Fraser explained the contours of legitimate expectations in the following terms: "The expectations may be based upon some statement or undertaking by, or on behalf of, the public authority which has the duty of making the decision, if the authority has, through its officers, acted in a way that would make it unfair or inconsistent with good administration for him to be denied such an inquiry." According to Lord Fraser's opinion, the primary justification for the doctrine of legitimate expectation is that a public authority should implement its promise in the interests of fairness and good administration.

22. The doctrine of legitimate expectation was crystallized in common law jurisprudence by Lord Diplock in the locus classicus, Council of Civil Service Unions v. Minister for the Civil Service. Lord Diplock held that courts can exercise the power of judicial review of administrative decisions in situations where such decision deprives a person of some benefit or advantage which:

(i) they had in the past been permitted by the decision-

maker to enjoy and which they can legitimately expect to be permitted to continue until there has been communicated to them some rational grounds for withdrawing it on which they have been given an opportunity to comment; or

(ii) they have received assurance from the decision-maker that the advantage or benefit will not be withdrawn without giving them an opportunity of advancing reasons for contending that the advantage or benefit should not be withdrawn. https://www.mhc.tn.gov.in/judis 23. The doctrine of legitimate expectation emerged as a WP Nos. 26084 of 2023 etc. cases common law doctrine to guarantee procedural fairness and propriety in administrative actions. Legitimate expectation was developed by the courts to require a degree of procedural fairness by 9 [1983] 2 AC 237 10 [1983] 2 WLR 735 11 [1985] AC 374 8 public authorities in their dealings with individuals. Denial of an assured benefit or advantage was accepted as a ground to challenge the decision of a public authority. b. Doctrine of legitimate expectation under Indian law

24. By the 1990s, the Indian courts incorporated the doctrine of legitimate expectation in the context of procedural fairness and non-arbitrariness under Article 14 of the Constitution. In Food Corporation of India v. Kamdhenu Cattle Feed Industries , this Court held that public authorities have a duty to use their powers for the purposes of public good. This duty raises a legitimate expectation on the part of the citizens to be treated in a fair and non-arbitrary manner in their interactions with the state and its instrumentalities. This Court held that a decision taken by an executive authority without considering the legitimate expectation of an affected person may amount to an abuse of power:

> "7. [...] To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review." The court held that whether the expectation of a claimant is legitimate or not is a question of fact which has to be decided after weighing the claimant's expectation against the larger public interest. Thus, while dealing with the claims of legitimate expectations, the Court has to necessarily balance the legitimate expectation of a claimant against the larger public interest.

25. In Union of India v. Hindustan Development Corporation, 13 this Court clarified the contours of the doctrine https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases of legitimate expectation in the following terms: (i) legitimate expectation arises based on a representation or past conduct of a public authority; (ii) legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular or natural sequence; (iii) legitimate expectation provides locus standi to a claimant for judicial review; (iv) the doctrine is mostly confined to a right of a fair hearing before a decision and does not give scope to

claim relief straightaway; (v) the public authority should justify the denial of a person's legitimate expectation by resorting to overriding public interest; and (vi) the Courts cannot interfere with the decision of an authority taken by way of policy or public interest unless such decision amounts to an abuse of power.

26. In Hindustan Development Corporation (supra), this Court cautioned against the use of the doctrine of legitimate expectation to safeguard a substantive right. Yet, in a series of subsequent decisions, this Court accepted that the doctrine of legitimate expectations has become a source of both procedural and substantive rights. In Punjab Communication Ltd v. Union of India , this Court explained the difference between procedural and substantive legitimate expectation in the following terms:

> "The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. The substantive part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is 12 (1993) 1 SCC 71 13 (1993) 3 SCC 499 14 M P Oil Extraction v. State of M P, (1997) 7 SCC 592; National Building Construction Corporation v. S Raghunathan (1998) 7 SCC 66 15 (1999) 4 SCC 727 9 already in receipt of the benefit that it will be continued and not be substantially varied, then the same could be enforced." A claim based on the doctrine of procedural legitimate expectation arises where a claimant expects the public authority to follow a particular procedure before taking a decision. This is in contradistinction to the doctrine of substantive legitimate expectation where a claimant expects conferral of a substantive https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases benefit based on the existing promise or practice of the public authority. The doctrine of substantive legitimate expectation has now been accepted as an integral part of both the common law as well as Indian jurisprudence.
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> c. Substantive Legitimate Expectation

27. In R v. North and East Devon Health Authority, ex parte Coughlan16 , the Court of Appeal laid down the test of abuse of power to determine whether a public authority can resile from a prima facie legitimate expectation. It was held that frustration of a substantive legitimate expectation by public authorities would be unfair and amount to abuse of power. Importantly, it was held that abuse of power constitutes a ground for the courts to exercise judicial review of executive actions.

28. In Nadarajah v. Secretary of State for the Home Department, the Court of Appeal added another facet to the doctrine of substantive legitimate expectation by grounding it in the principles of good administration. Importantly, the court identified that consistency and probity are tenets of a good administration. Laws LJ explained the principles underlying the doctrine of legitimate expectation in the following terms:

> "68. The search for principle surely starts with the theme that is current through the legitimate expectation cases. It may be expressed thus. Where a public authority has

issued a promise or adopted a practice which represents how it proposes to act in a given area, the law will require the promise or practice to be honoured unless there is good reason not to do so. What is the principle behind this proposition? It is not far to seek. It is said to be grounded in fairness, and no doubt in general terms that is so. I would prefer to express it rather more broadly as a requirement of good administration, by which public bodies ought to deal straightforwardly and consistently with the public." (emphasis supplied) Moreover, Laws LJ held that a public authority can resile from its promise or future conduct if its decision: (i) is in pursuance of a legal duty; or (ii) is a proportionate response having regard to the legitimate aim pursued by the public body in the public interest. 29. The decision of the Court of Appeal in https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases Coughlan (supra) marked a gradual shift in the formulation of the doctrine of legitimate expectation in the common law. In Schmidt (supra) and Council of Civil Service Unions (supra), the application of the doctrine was justified on the grounds of fairness in decisionmaking by public authorities. However, the gradual shift towards a more nuanced aspect of the doctrine began when the English courts started requiring public authorities to honor their promises or practices as a requirement of good administration. Good administration was characterized by consistent, regular, and straight-forward conduct on behalf of the public authorities. Further, the concept of unfairness in decision-making as an abuse of power was firmly established by the court in Coughlan (supra). Thus, the requirement of good administration and preventing an abuse of power came to underpin the administrative actions of public authorities.

30. The above developments in the common law also had an influence on the Indian law. In Ram Pravesh Singh v.

State of Bihar, 19 this Court explained the concept of legitimate expectation as a reasonable, logical, and valid expectation of certain benefit, relief, or remedy:

"15. What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term "established practice" refers to a regular, consistent, predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation." (emphasis supplied) In Ram Pravesh Singh (supra), this Court noted that the efficacy of the doctrine of legitimate expectation is weak as the claimant is only entitled to the following two reliefs: (i) an opportunity to show cause before the expectation is negatived; and (ii) an explanation as to the cause for denial. The Court further clarified that a claim based on legitimate expectation can be negatived on factors such as public interest, change in policy, conduct of the claimant, or any other valid or bona fide reason provided by the public authority.

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> 31. While dealing with the doctrine of legitimate expectation, another important aspect that the courts have had to grapple with is determining the "legitimacy" of the expectation. The court can infer the legitimacy of an expectation only if it is founded on the sanction of law. In Secretary, State of Karnataka v. Umadevi, a Constitution Bench of this Court held that a contractual or casual employee cannot claim a legitimate expectation to be regularized in service since such appointments could only be made after following proper procedures for selection including consultation with the Public Service Commission in certain situations. The legitimacy of expectation is a question of fact and has to be determined after weighing the claimant's expectation against the larger public interest.
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> 32. This Court has consistently held that a legitimate expectation must always yield to the larger public interest. In Sethi Auto Service Station v. DDA,22 this Court clarified that legitimate expectation will not be applicable where the decision of the public authority is based on a public policy or is in the public interest, unless the action amounts to an abuse of power.

The doctrine of legitimate expectation cannot be invoked to fetter valid exercise of administrative discretion. In P Suseela v. University Grants Commission, the claimants challenged the UGC Regulations which made it mandatory for candidates seeking to be appointed to the post of lecturer or assistant professor to qualify at the NET examination. The Court held that the legitimate expectation of the claimants must yield to the larger public interest – having highly qualified assistant professors and lecturers to teach in educational institutions governed by the UGC.

33. In Kerala State Beverages (M&M) Corp Ltd. v. P P Suresh, 25 the state government decided to ban arrack, as a result of which thousands of arrack workers lost their livelihoods. In 2002, the government issued an order reserving twenty-five percent of all the vacancies to the post of daily wage workers in the petitioner corporation for the 19 (2006) 8 SCC 381 20 Bannari Amman Sugars Ltd v. CTO, (2005) 1 SCC 625 21 (2006) 4 SCC 1 22 (2009) 1 SCC 180 23 Monnet Ispat & Energy Ltd v. Union of India, (2012) 11 SCC 1 24 (2015) 8 SCC 129 25 (2019) 9 SCC 710 11 arrack workers who lost livelihood due to the arrack ban. In 2004, the government changed the https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases criteria by providing that the reservation policy would only be earmarked for the dependent sons of the arrack workers. The state government submitted before this Court that it was practically difficult to provide employment to the arrack workers. The Court accepted that the workers had a legitimate expectation to be considered for the appointment as daily wage workers. However, it gave credence to the overriding public interest cited by the state government to resile from the promise made to the arrack workers. After weighing the expectation of the workers against the public interest, this Court held that the expectation of the workers was not legitimate.

34. In State of Jharkhand v. Brahmputra Metallics, the issue before this Court was whether the respondent was entitled to claim a rebate or deduction on electricity duty under the Industrial

Policy, 2012 for a period of five years from the commencement of production. Although the policy was announced in 2012, the exemption notification was issued in 2015 with prospective effect. While dealing with the issue of whether the state government frustrated the legitimate expectation of the respondent, one of us (D Y Chandrachud, J) observed that the representations made by the public authorities should be held to scrupulous standards because of the trust reposed by the citizens in the state:

> "41. [...] Representations by public authorities need to be held to scrupulous standards, since citizens continue to live their lives based on the trust they repose in the State. In the commercial world also, certainty and consistency are essential to planning the affairs of business. When public authorities fail to adhere to their representations without providing an adequate reason to the citizens for this failure, it violates the trust reposed by citizens in the State. The generation of a business friendly climate for investment and trade is conditioned by the faith which can be reposed in government to fulfil the expectations which it generates."

> 31. Thus, it is lucid from the above decisions of the Hon'ble Supreme Court that there are three components to the concept of non-arbitrariness i.e., https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases

> 1. Transparency 2. Predictability and 3. Consistency. In the present case, the State has acted in a manner as to attract the rigor of all the above said factors.

The non-furnishing or absence of reason for dropping selection shows non-

transparency; not adopting a particular method of selection after having applied the same shows non-predictability; and a change in a policy within close proximity of time after having itself defended it, clearly attracts glaring inconsistency. Thus, the action of the State has been most arbitrary, unreasonable, and opposed to the doctrine legitimate expectation, thus violating the petitioners' fundamental rights under Articles 14 & 16 of the Constitution.

D. Does the State's action amounts to changing the rules of the game midway?-

32. The next question would be whether the method of selection now adopted, if applied to the petitioners would amount to changing the rules of the same after the same has commenced. The petitioners herein and other similarly placed persons who have completed certificate verification before 2018, cannot be treated on par with those who have graduated this year or in the recent past. Particularly those who have taken the effort to challenge the validity of the method of selection and waited patiently for 10 years cannot now be denied employment by putting them to disadvantageous position, so as https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases to take away their chance of public employment and their fundamental right to equality of opportunity in public employment as envisaged under Article 16 of the Constitution. Viewed from this angle, the petitioners form a separate class who should be given priority in appointment. In other words, GO Ms.No.149 School Education (TRB) Department dated 20.07.2018 cannot be made applicable to the

petitioners. Also, the present method totally disregards and ignores all other scores obtained by candidates including TET scores which is not legally sustainable as far as the petitioners are concerned. This is because the NCTE notification dated 11.02.2011 particularly, in para 9 (b) states that weightage is to be given to the TET marks in the selection and appointment of teachers. These guidelines have been specifically adopted by the State Government in GO Ms.No.181 School Education (C2) Department dated 15.11.2011. Having held that the process of selection had commenced in 2017 with the certificate verification, and the State Government had consciously applied the method of selection as envisaged in GO Ms.No.71 dated 30.05.2014 and thereafter abandoned it for no reason justifiable in law, now subjecting the petitioners to a new method would amount to changing the rules of the game midway. As such, any change in the method of selection will definitely amount to change in rules of the game, primarily because, as far as petitioners are concerned, their process of selection, commenced in 2017, but https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases remains unconcluded. Therefore, asking the petitioners to now subject themselves to a fresh process of selection with an enlarged group of persons in the zone of consideration would be treating unequals equally which is impermissible under Article 14 of the Constitution.

33. In this connection, it would be useful to refer to the following decisions:-

(i) K. Manjusree Vs. State of UP and Anr. (Civil Appeal No.1313/2008):

"24. But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum m arks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier resolutions dated 24.7.2001 and 21.2.2002 and held that what was adopted on 30.11.2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them P. K. Ramachandra Iyer v. Union of India 1984 (2) SCC 141, Umesh Chandra Shukla v. Union of India 1985 (3) SCC https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases 721, and Durgacharan Misra v. State of Orissa 1987 (4) SCC

25. In Ramachandra Iyer (supra), this Court was considering the validity of a selection process under the ICAR Rules, 1977 which provided for minimum marks only in the written examination and did not envisage obtaining minimum marks in the interview. But the Recruitment Board (ASRB) prescribed a further qualification of obtaining minimum marks in the interview also. This Court observed that the

power to prescribe minimum marks in the interview should be explicit and cannot be read by implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm. This Court held that as there was no power under the rules for the Selection Board to prescribed the additional qualification of securing minimum marks in the interview, the restriction was impermissible and had a direct impact on the merit list because the merit list was to be prepared according to the aggregate marks obtained by the candidates at written test and interview. This Court observed : Once an additional qualification of obtaining minimum marks at the viva voce test is adhered to, a candidate who may figure high up in the merit list was likely to be rejected on the ground that he has not obtaining minimum qualifying marks at viva voce test. To illustrate, a candidate who has obtained 400 marks at the written test and obtained 38 marks at the viva voce test, if considered on the aggregate of marks being 438 was likely to come within the zone of selection, but would be eliminated by the ASRB on the ground that he has not obtaining qualifying marks at viva voce test. This was impermissible and contrary to rules and the merit list prepared in contravention of rules cannot be sustained.

26. In Umesh Chandra (supra), the scope of the Delhi Judicial Service Rules, 1970 came up for consideration. The rules provided that those who secured the prescribed minimum qualifying marks in the written examination will be called for viva voce; and that the marks obtained in the viva voce shall be added to the marks obtained in the written test and the candidates ranking shall depend on the aggregate of both 27 candidates were found eligible to appear for viva voce on the basis of their having secured the minimum prescribed marks in the written examination. The final list was therefore, expected to be prepared https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases by merely adding the viva voce marks to the written examination marks in regard to those 27 candidates. But the final list that was prepared contained some new names which were not in the list of 27 candidates who passed the written examination. Some names were omitted from the list of 27 candidates who passed the written examination. It was found that the Selection Committee had moderated the written examination marks by an addition of 2% for all the candidates, as a result of which some candidates who did not get through the written examination, became eligible for viva voce and came into the list. Secondly, the Selection Committee prescribed for selection, a minimum aggregate of 600 marks in the written examination and viva voce which was not provided in the Rules and that resulted in some of the names in the list of 27 being omitted. This Court held neither was permissible. Dealing with the prescription of minimum 600 marks in the aggregate this Court observed :

There is no power reserved under Rule 18 of the Rules for the High Court to fix its own minimum marks in order to include candidates in the final list. It is stated in paragraph 7 of the counter-affidavit filed in Writ Petition 4363 of 1985 that the Selection Committee has inherent power to select candidates who according to it are suitable for appointment by prescribing the minimum marks which a candidate

> should obtain in the aggregate in order to get into the Delhi Judicial Service But on going through the Rules, we are of the view that no fresh disqualification or bar may be created by the High Court or the Selection Committee merely on the basis of the marks obtained at the examination because clause (6) of the Appendix itself has laid down the minimum marks which a candidate should obtain in the written papers or in the aggregate in order to qualify himself to become a member of the Judicial Service. The prescription of the minimum of 600 marks in the aggregate by the Selection Committee as an addition requirement which the candidate has to satisfy amounts to an amendment of what is prescribed by clause (6) of the Appendix.. We are of the view that the Selection Committee has no power to prescribe the minimum marks which a candidate should obtain in the aggregate different from the minimum already prescribed by the Rules in its Appendix. We are, therefore, of the view that the exclusion of the names of certain candidates, who had not secured 600 marks in the aggregate https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases including marks obtained at the viva voce test from the list prepared under Rule 18 of the Rules is not legal.

27. In Durgacharan Misra (supra), this Court was considering the selection under the Orissa Service Rules which did not prescribe any minimum qualifying marks to be secured in viva voce for selection of Munsifs. The rules merely required that after the viva voce test the State Public Service Commission shall add the marks of the viva voce test to the marks in the written test. But the State Public Service Commission which was the selecting authority prescribed minimum qualifying marks for the viva voce test also. This Court held that the Commission had no power to prescribe the minimum standard at viva voce test for determining the suitability of candidates for appointment of Munsifs.

28. In Maharashtra State Road Transport Corporation v. Rajendra Bhimrao Mandve 2001 (10) SCC 51, this Court observed that the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced. In this case the position is much more serious. Here, not only the rules of the game were changed, but they were changed after the game has been played and the results of the game were being awaited. That is unacceptable and impermissible.

29. The resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee want to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the selection committee prescribed minimum marks only for the written examination,

https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview.

30. It was submitted that Administrative Committee and Interview Committee were only delegates of the Full Court and the Full Court has the absolute power to determine or regulate the process of selection and it has also the power and authority to modify the decisions of the Administrative Committee. There can be no doubt about the proposition. The Administrative Committee being only a delegate of the Full Court, all decisions and resolutions of Administrative Committee are placed before the Full Court for its approval and the Full Court may approve, modify or reverse any decision of the Administrative Committee. For example when the resolution dated 30.11.2004 was passed it was open to the Full Court, before the process of selection began, to either specifically introduce a provision that there should be minimum marks for interviews, or prescribe a different ratio of marks instead of 75 for written examination and 25 for interview, or even delete the entire requirement of minimum marks even for the written examination. But that was not done. The Full Court allowed the Administrative Committee to determine the method and manner of selection and also allowed it to conduct the examination and interviews with reference to the method and manner determined by the Administrative Committee.

Once the selection process was completed with reference to the criteria adopted by the Administrative Committee and the results were placed before it, the Full Court did not find fault with the criteria decided by the Administrative Committee (as per resolution dated 30.11.2004) or the process of examinations and interviews conducted by the Administrative Committee and Interview Committee. If the Full Court had found that the procedure adopted in the examinations or interviews was contrary to the procedure prescribed, the Full Court could have set aside the entire process of selection and directed the Administrative Committee to conduct a fresh selection. The resolution dated 30.11.2004 was approved. It did not find any https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases irregularity in the examination conducted by the Administrative Committee or the interviews held by the Selection Committee. The assessment of performance in the written test by the candidates was not disturbed. The assessment of performance in the interview by the Selection Committee was not disturbed. The Full Court however, introduced a new requirement as to minimum marks in the interview by an interpretative process which is not warranted and which is at variance with the interpretation adopted while implementing the current selection process and the earlier selections. As the Full Court approved the resolution dated 30.11.2004 of the Administrative Committee and also decided to retain the entire process of selection consisting of written examination and interviews it could not have introduced a new requirement of minimum marks in interviews, which had the effect of eliminating candidates, who would otherwise be eligible and suitable for selection. Therefore, we hold that the action of Full Court in revising the merit list by adopting a minimum percentage of marks for interviews was impermissible.

31. The Division Bench of the High Court while considering the validity of the second list, has completely missed this aspect of the matter. It has proceeded on an erroneous assumption that the resolution dated 30.11.2004 of the Administrative Committee prescribed minimum marks for interviews. Consequently, it erroneously held that the Administrative Committee had acted contrary to its own resolution dated 30.11.2004 in not excluding candidates who had not secured the minimum marks in the interview and that the Full Court had merely corrected the wrong action of the Administrative Committee by drawing up the revised merit list by applying marks for interview also. The decision of the Division Bench therefore, cannot be sustained.

CONCLUSION

32. We therefore, find that the judgment of the Division Bench of the High Court has to be set aside with a direction to the AP High Court to redraw the merit list without applying any minimum marks for interview. The merit list will have to be prepared in regard to 83 candidates by adding the marks secured in written examination and the marks secured in the interview. Thereafter, separate lists have to be prepared for each reservation category and then the final selection of 10 candidates https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases will have to be made. The scaling down of the written examination marks with reference to 75 instead of 100 is however, proper."

(ii) Tej Prakash Pathak and Ors. Vs. Rajasthan High Court and Ors. (MANU/SC/0263/2013 = 2013 (4) SCC 540):

> "13. Those various cases deal with situations where the State sought to alter 1) the eligibility criteria of the candidates seeking employment or 2) the method and manner of making the selection of the suitable candidates. The latter could be termed as the procedure adopted for the selection, such as, prescribing minimum cut off marks to be secured by the candidates either in the written examination or viva-voce as was done in the case of Manjusree (supra) or the present case or calling upon the candidates to undergo some test relevant to the nature of the employment [such as driving test as was the case in Maharashtra State Road Transport Corporation (supra)]."

> (iii) Bishnu Biswas and Ors. Vs. Union of India and Ors. (2014 (4) SCR 625):

> "4. Per contra, Shri R. Balasubramaniam, learned counsel appearing for the respondents has opposed the appeals contending that it was not permissible for the employer to change the rule of the game after the selection process commenced even if the employer is entitled for prescribing a higher qualification or a stringent test than prescribed under the rules. In the instant case as the finding of fact has been recorded by the courts below that there had been no transparency in awarding the marks in interview and the interview marks could not be same as that of the written test, the court should not grant any indulgence in such case. Hence, the appeals are liable to be dismissed.

https://www.mhc.tn.gov.in/judis 5. We have heard learned counsel for the parties and WP Nos. 26084 of 2023 etc. cases perused the record

6. This Court has considered the issue involved herein in great detail in Ramesh Kumar v. High Court of Delhi & Anr., AIR 2010 SC 3714, and held as under:

"11. In Shri Durgacharan Misra v. State of Orissa & Ors., AIR1987 SC 2267, this Court considered the Orissa Judicial Service Rules which did not provide for prescribing the minimum cut-off marks in interview for the purpose of selection. This Court held that in absence of the enabling provision for fixation of minimum marks in interview would amount to amending the Rules itself. 4 Page 5 While deciding the said case, the Court placed reliance upon its earlier judgments in B.S. Yadav & Ors. v. State of Haryana & Ors., AIR 1981 SC 561, P.K. Ramachandra Iyer & Ors. v. Union of India & Ors., AIR 1984 SC 541 and Umesh Chandra Shukla v. Union of India & Ors., AIR 1985 SC 1351 wherein it had been held that there was no "inherent jurisdiction" of the Selection Committee/Authority to lay down such norms for selection in addition to the procedure prescribed by the Rules. Selection is to be made giving strict adherence to the statutory provisions and if such power i.e. "inherent jurisdiction" is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the Rules is likely to cause irreparable and irreversible harm.

12. Similarly, in K. Manjusree v. State of A.P., AIR 2008 SC 1470, this Court held that selection criteria has to be adopted and declared at the time of commencement of the recruitment process. The rules of the game cannot be changed after the game is over. The competent authority, if the statutory rules do not restrain, is fully competent to prescribe the minimum qualifying marks for written examination as well as for interview. But such prescription must be done at the time of initiation of selection process. Change of criteria of selection in the midst of selection process is not permissible. 13. Thus, the law on the issue can be summarised to the effect that in case the statutory rules prescribe a particular mode of selection, it has to be given strict adherence accordingly. In case, no procedure is prescribed by the rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the tests and https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases further specify the minimum benchmarks for written test as well as for viva voce."

7. In Himani Malhotra v. High Court of Delhi, AIR 2008 SC 2103, this Court has held that it was not permissible for the employer to change the criteria of selection in the midst of selection process. (See also: Tamil Nadu Computer Science BEd Graduate Teachers Welfare Society (1) v. Higher Secondary School Computer Teachers Association & Ors., (2009) 14 SCC 517; State of Bihar & Ors. v. Mithilesh Kumar, (2010) 13 SCC 467; and Arunachal Pradesh Public Service Commission & Anr. v. Tage Habung & Ors., AIR 2013 SC 1601).

8. In P. Mohanan Pillai v. State of Kerala & Ors., AIR 2007 SC 2840, this Court has held as under :

“It is now well-settled that ordinarily rules which were prevailing at the time, when the vacancies arose would be adhered to. The qualification must be fixed at that time. The eligibility criteria as also the procedures as was prevailing on the date of vacancy should ordinarily be followed.”

9. The issue of the change of rule of the game has been referred to the larger Bench as is evident from the judgment in Tej Prakash Pathak & Ors. v. Rajasthan High Court & Ors., (2013) 4 SCC 540.

10. However, the instant case is required to be considered in the light of the findings of facts recorded by the Courts below:-

"The Tribunal after appreciating the evidence on record, recorded the following findings:

“The applicant had secured 47 marks out of 50 in the written examination. He was given only 20 marks in the interview whereas persons like Miss Zeenath Begum, Mr. Mohsin, Mr. Bishnu Biswas, Mr. Mohan Raof, Mr. Bharati Bhusan, Mr. Dilip Bepari and others got equal marks in the interview as in the written examination or more distorting results. For instance, Mr. Bishnu Biswas got 34 marks in the written examination and was given 45 marks in the interview. Similarly, Mr. Dilip Bepari got 36 marks in the written examination and got 45 marks in the interview. In case of Shri Bishnu Biswas he was not qualified as per recruitment rules https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases since he did not possess the prescribed 8th pass certificate for the post. Directions have been sought from the Tribunal to set aside the appointment orders of the private respondents as per orders of 5.2.2009 and 4.6.2009.”

11. The High Court considered these issues and recorded the finding of fact that undoubtedly awarding of marks in the above manner indicated lack of transparency in the matter.

12. The High Court has further held that distribution of marks equally both in the written test and in the interview is not permissible at all. In the instant case, there has been 50 marks for the written test as well as 50 marks for interview though the rules did not envisage holding of the interview at all.

13. This Court in Ashok Kumar Yadav & Ors. etc. etc. v. State of Haryana & Ors., AIR 1987 SC 454 held that allocation of 22.2% marks for the viva voce test was excessive and unreasonably high, tending to leave room for arbitrariness.

(See also : Munindra Kumar & Ors. v. Rajiv Govil & Ors., AIR 1991 SC 1607; Mohinder Sain Garg v. State of Punjab & Ors., (1991) 1 SCC 662; P. Mohanan Pillai (supra); and Kiran Gupta & Ors. etc. etc. v. State of U.P. & Ors. etc., AIR 2000 SC 3299).

14. In Satpal & Ors. v. State of Haryana & Ors., 1995 Supp (1) SCC 206, this Court disapproved allocation of 85% of total marks for interview observing that such fixation was conducive to arbitrary selection. While deciding the said case the court placed reliance upon the Constitution Bench judgment in Ajay Hasia etc. v. Khalid Mujib Sehravardi & Ors., AIR 1981 SC 487, wherein the court had held that allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid. Thus, it is evident that the courts had always frowned upon prescribing higher percentage of marks for interview even when the selection has been on the basis of written test as well as on interview.

15. The appropriate allocation of marks for interview, where selection is to be made by written test as well as by https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases interview, would depend upon the nature of post and no straight-jacket formula can be laid down. Further there is a distinction while considering the case of employment and of admission for an academic course. The courts have repeatedly emphasized that for the purpose of admission in an education institution, the allocation of interview marks would not be very high but for the purpose of employment, allocation of marks for interview would depend upon the nature of post.

16. In Mehmood Alam Tariq & Ors. v. State of Rajasthan & Ors., AIR 1988 SC 1451, this Court had upheld fixation of 33% marks as minimum qualifying marks for viva test.

17. In State of U.P. v. Rafiquddin & Ors., AIR 1988 SC 162, this Court upheld the fixation of 35% marks as minimum qualifying marks in the viva test for selection for the recruitment to the post of a judicial magistrate.

18. In Anzar Ahmad v. State of Bihar & Ors., AIR 1994 SC 141, allocation of 50% marks for viva test and 50% marks for academic performance was upheld by this Court while considering the appointment of Unani Medical Officer observing that court must examine as to whether allocation of such higher percentage may tend to arbitrariness.

19. In Jasvinder Singh & Ors. v. State of J&K & Ors., (2003) 2 SCC 132, this Court upheld the allocation of 20% marks for viva test as against 80% marks for written test for selection to the post of SubInspector of Police. However, the Court cautioned observing that the awarding of higher percentage of marks to those who got lower

> marks in written test in comparison to some who had got higher marks in written examination, an adverse inference from certain number of such instances can be drawn. However, in absence of any allegation of mala fides against the Selection Committee or any Member thereof, a negligible few such instances, would not justify the inference that there was a conscious effort to bring some candidates within the selection zone.
>
> 20. In the instant case, the rules of the game had been changed after conducting the written test and admittedly not at the stage of initiation of the selection process. The marks allocated for the oral interview had been the same as for written test i.e. 50% for each. The manner in which marks have https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases been awarded in the interview to the candidates indicated lack of transparency. The candidate who secured 47 marks 10 Page 11 out of 50 in the written test had been given only 20 marks in the interview while large number of candidates got equal marks in the interview as in the written examination.

Candidate who secured 34 marks in the written examination was given 45 marks in the interview. Similarly, another candidate who secured 36 marks in the written examination was awarded 45 marks in the interview. The fact that today the so called selected candidates are not in employment, is also a relevant factor to decide the case finally. If the whole selection is scrapped most of the candidates would be ineligible at least in respect of age as the advertisement was issued more than six years ago.

Thus, in the facts of this case the direction of the High Court to continue with the selection process from the point it stood vitiated does not require interference."

(iv) The State of Tripura and Ors. Vs. Sri Arunabha Saha and Another dated 25.08.2020 (WA No.196 of 2019):

"[4] The petition was strongly opposed by the Government. The learned Single Judge allowed the writ petition by relying on the decision in case of Samudra Debbarma versus State of Tripura and others dated 14.05.2019. The relevant observations of the learned Single Judge in the impugned judgment read as under :

> "22. Having appreciated the submission made by the learned counsel for the parties, this court is confronted with a solitary question whether there is any tangible rationality for cancellation of the recruitment process as initiated by the TPSC Advertisement No.1-2017, Annexure- 4 to the writ petition, for recruitment to the post of Inspector of Boilers, Group-A Gazetted. If it is located that there is no reason for such revocation, whether in that https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases context, this court can direct the respondents No.3 and 4 to complete the selection process. In the similar circumstances, this court in Samudra Debbarma vs. State of Tripura & Ors. [judgment dated 14.05.2019] had occasion to observe that the scope of judicial review is limited to oversee the State action for the

purpose of satisfying that it is not vitiated by vice of arbitrariness. The wisdom of the policy or the lack of it or the desirability for a better alternative does not fall within the permissible scope of judicial review. It is not for the courts to recast the policy or to substitute it with another which is considered to be more appropriate, once the attack on the ground of arbitrariness is successfully repelled by showing that the act which has done and challenged was fair and reasonable in the facts and circumstances of the case, the Constitution courts will refrain from exercising the power of judicial review. The power of judicial review is limited to the ground of constitutionality, irrationality and procedural impropriety. In the case of arbitrariness, the defect of rationality is obvious. It has been observed in the advent of the new recruitment policy dated 05.06.2018 and the memorandum dated 20.08.2018 in Samudra Debbarma (supra) as under:

"……this court finds that the respondents No.1 and 2 have utterly failed to provide any reason for cancelling the recruitment process inasmuch as no foundation has been raised to show that action has been taken to protect any greater or public interest the mode prescribed by those service rules for selection is infested impediment in following that procedure. When the law is well enunciated and settled if any change in the recruitment rules is made in the midst of the process that cannot be given a retrospective operation to apply that change or the amended rule in the pending selection process. That apart, when the conflict between the provisions of the subordinate legislation as enacted under proviso to Article 309 of the Constitution of India is eminent with the executive action (the new recruitment policy and the impugned memorandum), there cannot be any amount of hesitation that the provision of the https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases subordinate legislation so far the allotted marks for the personality test is concerned would prevail. Therefore, the State action as aforestated is grossly arbitrary, irrational and predominantly unfair. However, the new recruitment policy may apply where the recruitment rules are not in force and where the recruitment rules are amended in accordance with the executive instructions, consolidated in the new recruitment policy. Since there is no dispute that the TCS Rules, 1967 and TPS Rules, 1967 are not amended by the competent authority as yet with consultation with the TPSC, the cancellation of the recruitment process as initiated by the advertisement No.04/2016 (Annexure-1 to the writ petition) is liable to be interfered by this court on the above grounds and, accordingly it is interfered."

23. The same analogy and the principle is applicable in the present case. Moreover, in P. Mahendran (supra) the apex court has categorically stated that if a candidate applies for a post in response to the advertisement issued by the Public Service Commission in accordance with the recruitment rules, he acquires a right to be considered for selection in accordance with the then existing rules. This right cannot be affected by amendment of any rule unless the amending rule is retrospective in nature. The new recruitment policy has been given consciously the prospective operation and as such this court is of the view that memorandum dated 20.08.2018, Annexure-12 to the writ petition and the notification dated 22.11.2018, Annexure-11 to the writ petition so far the selection of

Inspector of Boilers is concerned are grossly unreasonable, arbitrary and unsustainable and hence those are accordingly interfered with and set aside as far as the selection of the Inspector of Boilers under the Factories & Boilers Organisation, Labour Department is concerned.

24. Having observed thus, the respondents No.3 and 4 are directed to complete the selection process, publish the result and make the recommendation to the respondents No.1 and 2 within a period of two months from the date when the petitioner shall furnish a copy of this order to the respondent No.4.

https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases In the result, the writ petition stands allowed to the extent as indicated above.

There shall be no order as to the costs."

[5] We may record that in case of Samudra Debbarma (supra) similar issues were examined by the Single Judge. In the said case what was under challenge was the cancellation of the ongoing selection process by the TPSC for TCS and TPS Grade-II Group-A Gazetted services. In the said case also the selection process had reached at an advanced stage when relying on the same Government notifications, TPSC cancelled the selection process in view of the Government adopting new recruitment policy. The cancellation of the selection was challenged by the petitioner and others. The leaned Single Judge held that the cancellation was wholly impermissible and allowed the writ petition. This decision of the learned Single Judge was challenged by the State Government in Writ Appeal No.142 of 2019. It was, therefore, that when this writ appeal was taken up for hearing previously, on 19.11.2019 the Division Bench of this Court while admitting the appeal had provided that the same be tagged along with Writ Appeal No.142 of 2019. Subsequently, the said Writ Appeal No.142 of 2019 was disposed of by the Division Bench by a judgment dated 03.12.2019. Due to oversight though this appeal was to be heard along with the said writ appeal the same got separated. In the said judgment dated 03.12.2019 in case of Samudra Debbarma (supra) the Division Bench confirmed the decision of the learned Single Judge to a large extent and disposed of the appeal making following observations :

> "[27] We have reproduced the entire notification dated 5th June, 2018 under which the State Government had published its new recruitment policy. One of the major thrusts of this policy was to abolish oral interviews for Group-D posts. However, we are not concerned with this policy change. In so far as Group A and B posts are concerned, this policy provides that the weightage for interview should not exceed 10% of the total marks. Only in exceptional cases the same may be increased beyond 10% with the approval of the Cabinet. There is https://www.mhc.tn.gov.in/judis no other change that this new policy makes insofar as WP Nos. 26084 of 2023 etc. cases the present selection process is concerned. We have noted that as per the existing policy which was being applied for the selection process which had already commenced, the proportion of oral interview to the total marks was 11%. As against this, the new policy prescribes a ceiling of 10% weightage for oral interviews.

[28] The Government while framing its policies, undoubtedly has a vast latitude. As long as the policy is based on a well-informed decision, the executive also has the liberty to experiment in policy formation. A policy change which restricts the preparation of marks for oral interview cannot be in absence of sound reasons faulted. Nevertheless, the question is, was it open for the Government to superimpose such policy and the changes brought about through such policy in the recruitment process which had travelled to an advanced stage? The answer to this question for multiple reasons must be in the negative. The reasons are as follows :

[29] Firstly, as noted, the new policy of the Government restricts the marks for oral interviews to 10% of the total. The existing formula being applied for selection to the posts in question carried oral interview weightage of only 11% which was fractionally higher than what the new policy prescribes. For such a minor policy change the entire exercise of inviting applications from eligible candidates, holding screening test for weeding out weaker candidates, allowing successful candidates passing the screening test to appear in the written examination and conducting the written examination could not have been be annulled. No pressing grounds are demonstrated before us for taking such a drastic measure for an insignificant change in the policy parameters.

[30] Secondly, allowing the Government to apply the policy change at such an advanced stage would undoubtedly breach the principle of changing the rules of the game once the game has begun. The fundamental https://www.mhc.tn.gov.in/judis philosophy behind the Courts laying down the said WP Nos. 26084 of 2023 etc. cases principle is that the executive discretion cannot be allowed to operate in such a way that midway through the selection process the very selection criteria can be changed. This would in addition to giving rise to uncertainty in public selection process, also be open to mala fide application where the rules for selection would be changed to suit so as to include certain wanted or to exclude unwanted candidates. In the present case, there may not be any element of bias. Nevertheless permitting the Government to bring in a new set of rules and to cancel the entire selection process which has travelled to an advanced stage has a risk potential to permit arbitrary decision of the executive to prevail. To frame a new recruitment policy may be a perfectly valid and legitimate policy decision of the Government. We do not intend to; in fact we are not even called upon to interfere with such policy decision. However, the subsequent decision of the Government to annul the entire selection process which had reached an advanced stage only so that the new policy of recruitment can be applied by restarting the selection was an arbitrary decision.

[31] There is yet another reason why the Government decision cannot survive the test of law. We may recall, the proportion of marks for the screening test, written main examination and oral interview have been prescribed under the relevant Regulations. These Regulations are in exercise of powers conferred under Rule 6 of the said Rules. These Regulations are thus in the nature of subordinate legislation. The prescription of the marks for written test and oral interview thus tress their origin to statutory

Regulations. The field is thus not open and is occupied by legislation. Executive instructions cannot override such statutory prescriptions. By issuing an executive fiat it was, therefore, not open for the State Government to modify the proportion of the marks for oral interview. In other words, unless and until the Regulations are amended, the policy declaration under the notification dated 5th https://www.mhc.tn.gov.in/judis June, 2018 insofar as it pertains to limiting the marks WP Nos. 26084 of 2023 etc. cases for oral interview to 10% of the aggregate, would not prevail.

[32] For such reasons, we do not find any error in the view of the learned Single Judge in allowing the writ petition of the original writ petitioner. However, before closing couple of clarifications would be needed. Firstly, the learned Single Judge has struck down even the notification dated 5th June, 2018. This was neither under challenge nor shown to be in any manner unlawful, except to the extent the provisions made in the said notification conflict with the existing Rules and Regulations. Subject to these observations, the decision of the learned Single Judge to set aside the notification dated 5th June, 2018 must be reversed. Secondly, the learned Single Judge quashed the memorandum dated 20th August, 2018 insofar as it relates to TCS Grade-II and TPS Grade II. The petitioner had not challenged cancellation of examination of TPS Grade-II. Such cancellation, therefore, could not have been set aside. We are conscious that the considerations and parameters in both sets of recruitments may be similar. However there was no challenge before the learned Single Judge to the cancellation of the TPS Grade - II examination held by the State Government. The petitioner was not even aggrieved by it. Without a formal challenge, without full material being brought on record and arguments advanced by both sides it would not be proper to extend the relief to the recruitment of TPS Grade - II services also which as noted, the petitioner had never challenged. Such later directions for setting aside Government decision to cancel TPS Grade II examination of the learned Single Judge are also, therefore, reversed.

[33] The appeal of the Government is allowed to the above extent. However, so far as the petitioner's main challenge to the cancellation of selection process for the post of TCS Grade - II by virtue of impugned memorandum dated 20th August, 2018 is concerned, the decision of the learned Single Judge is confirmed. https://www.mhc.tn.gov.in/judis [34] In view of the disposal of the appeal of the WP Nos. 26084 of 2023 etc. cases Government it would now be for the Government to complete the selection process for the post in question from the stage where it had been stopped. The remaining procedure may be completed within a period of 3(three) months from today."

(6) Issues being identical, we do not find any reason to entertain the State appeal and the same is accordingly dismissed. Pending application (s), if any, also stands disposed of."

(v) Ramjit Singh Kardam and Ors. Vs. Sanjeev Kumar and Ors.

(2020 (7) SCR 1096):

"45. The above sequence of events indicates that in accordance with the "special instruction" extracted above the Commission decided the criteria for calling the candidates for the selection as holding of written examination of 200 marks and interview for 25 marks which was the perfect criteria looking to the number of the candidates i.e. 20836 who had applied in pursuance of the advertisement for the post of PTI. The criteria was implemented by holding a written test on 21.07.2007 which was cancelled due to some complaints. The written test was again notified for 20.07.2008 which was withdrawn by notice published on 30.06.2008, the earlier criterion was given a go bye by another notification dated 11.07.2008. The above indicates that the standard on which candidates are to be screened for selection was downgraded by Chairman of his own. When the number of candidates who applied against certain posts are enormously large, short-listing has always been treated as an accepted mode to correctly value the work and merit of the candidate. The Division Bench of the High court on the alteration of the mode of selection as noticed above has made following observation in paragraph 37 of the judgment:

"(37) Thus, even accepting the appellants' plea that 'selection criteria' or 'mode of selection' can be altered midstream to short-list the candidates with higher merit, here is a case where the alterations have https://www.mhc.tn.gov.in/judis been designed with the sole object of downgrading WP Nos. 26084 of 2023 etc. cases and not upgrading the standards of selection to public employment.

Was the Chairman competent to take policy decisions like 'selection criteria' or 'mode of selection'?

46. As per the notification extracted above it is the Commission, who "shall devise the mode of selection and fix the criteria for selection." The said power has to be exercised in a reasonable and fair manner to advance the purpose and object of selection. Even if it is assumed for the sake of the argument that the Commission can change the criteria of selection from time to time, the said power has to be exercised not in an arbitrary manner.

47. We may in this context refer to three-Judge Bench judgment of this Court in Tamil Nadu Computer Science BED Graduate Teachers Welfare Society (1) vs. Higher Secondary School Computer Teachers Association and others, 2009(14) SCC 517. In the above case Computer instructors were appointed on contract basis to various Schools. The Government decided to hold a special test by the Teacher Recruitment Board for selection of computer instructors. On 10.10.2008 the State Government took decision that minimum qualification marks would be 50%. Special Recruitment Test was announced as 12.10.2008. On the night of 12.10.2008 a list of candidates for appointment to the post of computer instructors based on the special recruitment test was put on the Internet. While publishing the said marks of the candidates, it was

made clear that all candidates who have secured 35% marks in the test would be called for certificate verification. The State Government reduced the minimum qualifying marks to 35%. This Court did not approve the reduction of qualifying marks from 50% to 35%.

Following was laid down in paragraph 33:

"33. We, however, cannot hold that the subsequent decision of the Government thereby changing qualifying norms by reducing the minimum qualifying marks from 50% to 35% after the holding of the examination and at the time when the result of the examination was to be announced and thereby changing the said criteria at the verge of and towards the end of the game as justified, for we find the same as arbitrary and unjustified. This Court https://www.mhc.tn.gov.in/judis in Hemani Malhotra v. High Court of Delhi,(2008) 7 SCC WP Nos. 26084 of 2023 etc. cases 11, has held that in recruitment process changing rules of the game during selection process or when it is over are not permissible.

48. Learned counsel for the appellant has submitted that judgments of this Court laying down the criteria for selection cannot be changed during the course of selection has been referred to a larger Bench by a judgment of this Court in Tej Prakash Pathak and others vs. Rajasthan High Court and others, 2013(4) SCC 540, hence the judgment of this Court laying down the criteria cannot be changed during the course of the selection is yet to be tested. For the purposes of the present case we proceed on the assumption that even if the criteria can be changed by selecting body from time to time, the said change cannot be affected arbitrarily. The present is a case where change in criteria has been affected and altered arbitrarily with the object of down-grading and not up-grading the standards of selection. The High Court did not commit any error in not upholding the change of criteria effected after start of selection process with which finding we fully concur.

49. The notifications issued under proviso to Article 309 of the Constitution of India specifically provides that the Commission shall devise the mode of selection and fix the criteria for selection of posts. The power to devise the mode of selection and fix the criteria was, thus, entrusted to the Commission. Commission is a multi-member body, which acts collectively. The Commission in the counter affidavits filed before High Court or this Court has not brought any rules or resolution of the Commission by which power of the Commission to devise the mode of selection and fix the criteria have been delegated to any other member including the Chairman. In Principles of Administrative Law, M.P. Jain & S.N. Jain, 6th Edition, writes in Chapter XXII states:-

"When power is conferred on a multi-member body, the power ought to be exercised by the concerned body; the power cannot be exercised either by the chairman alone or by one of its members. This can be done only if the body concerned delegates

power to the chairman or a single member to discharge certain functions on its behalf."

50. When there are no statutory rules regarding allocation of business of the Commission or delegating its https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases business to members or Committee, the Commission could very well by its resolution devise its own mode of exercising such power or function, which preposition has been laid down by this Court by a Constitution Bench in Naraindas Indurkhya Vs. The State of Madhya Pradesh and Others, (1974) 4 SCC 788 wherein in paragraph 17 following was stated:-

17. ..... Now we do not dispute the general proposition that when a power or function is given by the statute to a corporate body and no provision is made in the statute as to how such power or function shall be exercised, the corporate body can by a resolution passed at the general meeting devise its own mode of exercising such power or function, such as authorising one or more of the members to exercise it on behalf of the Board..... ....."

51. The Division Bench of the High Court after pursuing the original records, which was summoned by it from the Commission has returned a finding that the decision of the Commission dated 30.06.2008, 11.07.2008 as well as 31.07.2008 have all been taken by the Chairman alone, which was proved from original records containing the relevant notes and approval by the Chairman. The alteration of criteria, thus, was sole handi-work of the Chairman, which decision was not the decision of the Commission. It is not even claimed in the affidavit filed before the High Court or before this Court that said decisions were decisions taken by the Commission. The conclusion is, thus, inescapable that criteria for conducting selection for the post of PTI as was published on 28.12.2006 was altered by the Chairman step by step completely giving a go bye to the method of merit selection. The statutory notifications when entrust the Commission to devise the mode of selection and fix the criteria and the Commission being multi-member body, Chairman alone was not competent to alter the mode of selection and the criteria, which was fixed and published for conducting the selection for the post of PTI.

52. Now, we come to the decision dated 03.08.2008, which was a decision fixing the criteria for selection signed by all the members of the Commission, the High Court after minutely looking into the original records has held that in the https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases original records, which was produced before the High Court by the Commission, there is no mention of the criteria for making selection dated 03.08.2008 nor the said one page decision was part of the original records. The said one-page decision was separately produced before the High Court and before us.

Learned counsel for the Commission have placed that one-page decision in an envelope before us also which we have also perused. The Division Bench of the High Court in paragraph 42 has dealt with the decision dated 03.08.2008 and has affirmed the findings of the learned Single Judge that the said decision dated 03.08.2008 was prepared only when learned Single Judge directed the Commission to produce the criteria of selection. Division Bench of the High Court has given weighty reasons for not accepting the claim set up by the Commission that criteria was fixed on 03.08.2008 as claimed. The observations of the High Court in paragraphs 41 and 42 are to the following effect:-

> "(41) It is unfortunate that instead of reversing his unlawful decisions, taken by side-tracking eight other Members (as it was a nine-Member body since 21.06.2007), the Chairman involved those other Members in a mock-drill and flashed a surprise on the learned Single Judge by producing the magical 'single loose sheet' of their purported decision dated 03.08.2008 laying down the 'criteria for selection'.

(42) We have also perused the decision dated 03.08.2008 produced in a sealed envelope. We firmly affirm the findings returned by the learned Single Judge to discard the same. We say so for the reasons that (i) various administrative decisions whether taken by the Commission as a multi-Member body (only one such decision found in the Files) or by the Chairman contained in the Files produced before us, are preceded by an 'Office Note' or 'proposal' and are invariably forwarded by the Secretary of the Commission; (ii) the original record of decisions taken by the Chairman in the last week of September, 2008 or in first week of October, 2008 do not even whisper about any meeting of the Commission held on 03.08.2008 or the decision taken therein; and (iii) the unusual manner in which the 'loose https://www.mhc.tn.gov.in/judis sheet' has been prepared casts a serious doubt on its WP Nos. 26084 of 2023 etc. cases genuineness. The so-called decision dated 03.08.2008 was thus apparently contrived to defeat the cause of the writ-petitioners and to mislead the learned Single Judge, who has rightly held that it was only when he directed to produce the criteria of selection that this 'loose sheet' "was prepared and produced in Court"."

53. We fully concur with the above findings of the High Court with regard to decision dated 03.08.2008. It is, thus, proved that decision dated 03.08.2008 was prepared by the Commission subsequent to declaration of the result and only when the learned Single Judge directed the Commission to produce the criteria under which the selection for the post of PTI was undertaken.

54. As noted above the decision of Chairman of the Commission dated 30.06.2008 not to hold the written examination was claimed to have been taken due to "administrative reasons", but what were "administrative reasons" have never been disclosed or brought on record by the Commission. The decision to change the selection process as notified on 28.06.2006 was a major decision not only affecting the applicants who had to participate in the selection on the basis of criteria as notified on 28.12.2006 but had adverse effect on merit selection as devised for 1983 posts of PTI.

55. As per advertisement dated 20.07.2006, the Commission had published the criteria for selection on 28.12.2006 which was implemented also, hence, there was no occasion to give up the merit selection in midway. Further, when no reasons are forthcoming to support the so called 'administrative reasons' in the decision dated 30.06.2008 which was so stated by Chairman for the

scrapping the written test, we have to hold the said decision arbitrary and without reason. The written test consisting of 100 objective type of multiple choice questions out of which 60 questions relating to academic knowledge of the respective subjects including skill and method of teaching ability and 40 questions relating to general knowledge, general English and Hindi upto matric standard was well thought screening test, easy to conduct and easy to evaluate. The Commission being recruiting body abdicated its obligation of screening out the best candidates; The competitive https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases examination, are means by which equality of opportunity was to be united with efficiency. By the above method favouritism was to be excluded and the goal of securing the best man for the job was to be achieved. We, thus, conclude that decision dated 30.06.2008 for not holding the written examination and steps taken consequent thereto were all arbitrary decisions, unsustainable in law.

56. At this stage we may note one more submission of Shri Kapil Sibal. Shri Sibal submits that when the Commission published notice dated 30.06.2008 that no written test shall be held, the writ petitioners ought to have challenged the above decision and the petitioners should have insisted that written examination may be held. They having not raised any challenge, at this stage, cannot be permitted to say that written test ought to have been held.

57. We having held that change in criteria of selection was never notified by the Commission and about the change in process of selection candidates were kept in total dark and for the first time the criteria applied in selection process was published along with result dated 10.04.2008, the writ petitioners cannot be estopped in challenging the arbitrary criteria so applied. The submission of Shri Sibal cannot be accepted. The petitioners have never questioned the criteria which was published on 28.12.2006 i.e. written test of 200 marks and viva voce of 25 marks, merely because they participated in the process of selection after the change of criteria, their right to challenge the arbitrary change cannot be lost. Estopping the petitioners from challenging the change of criteria will be giving seal to arbitrary changes affected by Chairman as noted above.

58. In view of the foregoing discussions, we answer point Nos.3,4 and 5 in following manner: -

Ans.3:

The decisions dated 30.06.2008, 11.07.2008 and 31.07.2008 were arbitrary decisions without any reason to change the selection criterion published on 28.12.2006 which have effect of downgrading the merit in the selection.

Ans.4:

The Commission being a multi-member body, all decisions pertaining to mode of selection and criteria was to be taken by https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases the Commission itself, there being no rules or resolution delegating the said power to Chairman or any other member. The decision of not holding written examination dated 30.06.2008, decision to screen on the basis of eight times of vacancies and percentage of marks dated 11.07.2008 and decision

dated 31.07.2008 to call all eligible candidates, were all decisions taken by the Chairman himself, which decisions cannot be said to be decisions of the Commission.

Ans.5:

The decision dated 03.08.2008 was never taken on 03.08.2008 as claimed and the said resolution was prepared subsequent to declaration of the result when the learned Single Judge asked for criteria of the selection, which was produced in a separate loose sheet signed by all members." E. Should the relief be restricted to the parties to this writ petitions alone?

34. Coming to the last question on whether the relief sought for in these petitions is to be restricted to these petitioners alone, it may be stated that the petitioners in the above writ petitions have all participated in the process of selection in 2017 and subjected themselves to the method of selection then adopted by the State Government. They have been awaiting employment ever since. However, the State Government did not conclude the process of selection and abandoned it midway. Even after GO Ms.No.149 dated 20.07.2018 was introduced, there was nothing to show whether the State Government was commencing any fresh process of selection or what would be https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases the modalities of such selection, or as to whether the said competitive environment would be for selected candidates i.e., in addition to selection made by weightage or it would be sole method of selection. In fact, the Government has not resorted to any recruitment till date. While so, in the judgment of this very Bench dated 02.06.2023 in W.A.No.313 of 2022, and etc., cases, it was held as follows:

"75. The narration of facts which propelled this case would indicate that the teachers have not been appointed for the last ten years inspite of being qualified with a pass in TET. On the basis of the above findings and observations made, the State Government is directed to conduct TET periodically and make direct recruitment of teachers and promotion from among TET qualified candidates at the earliest."

35. Immediately thereafter, when it was imminent that the State Government would make direct recruitment, the writ petitioners approached this Court with the present reliefs. While the petitioners herein are similarly placed to the thousands of candidates who have participated in the process of selection started by the State Government in 2017, what differentiates the writ petitioners from the others is the fact that they approached this Court seeking redressal of their grievances, without waiting in the wings and taking any calculated chance. All the writ petitioners have in some way or the other been consistently approaching the court and that is what sets them apart. While https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases some of the writ petitioners had regularly approached this Court and gone upto the Supreme Court, some of the writ petitioners had challenged GO Ms.No.149 dated 20.07.2018 by way of writ petitions even in the year 2018.

Therefore, the writ petitioners are the only persons who approached this Court seeking consideration in appointment on the basis of the selection commenced by the State in 2017. It is further reiterated that all the petitioners in the above writ petitions are similarly placed as they approached this Court well in time i.e., immediately after the observation made by this Bench directing the State Government to make direct recruitment of teachers. The fact that some of the petitioners had gone upto Supreme Court and some others had been approaching this Court at different points of time cannot be a dividing factor among them. On the contrary, it only shows that the petitioners herein are a vigilant lot of citizens and as such, all the petitioners in the above writ petitions from one class by themselves and cannot be equated to fence-sitters or to such persons who have not approached the court. As such, the petitioners before this court are seeking a remedy in personam, forming a separate class of persons. The relief claimed in these writ petitions is therefore restricted to these petitioners done. It is also made clear that citing this judgment, fence-

sitters will not be entitled to similar relief by filing fresh writ petitions. In State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava & Ors. [2014 https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases (12) SCR 193], it was held as follows:

> "23. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:
>
> (1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India.

This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if

the judgment of the Court was in personam holding that benefit https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

24. Viewed from this angle, in the present case, we find that the selection process took place in the year 1986. Appointment orders were issued in the year 1987, but were also cancelled vide orders dated June 22, 1987. The respondents before us did not challenge these cancelleation orders till the year 1996, i.e. for a period of 9 years. It means that they had accepted the cancellation of their appointments. They woke up in the year 1996 only after finding that some other persons whose appointment orders were also cancelled got the relief. By that time, nine years had passed. The earlier judgment had granted the relief to the parties before the Court. It would also be pertinent to highlight that these respondents have not joined the service nor working like the employees who succeeded in earlier case before the Tribunal. As of today, 27 years have passed after the issuance of cancellation orders. Therefore, not only there was unexplained delay and laches in filing the claim petition after period of 9 years, it would be totally unjust to direct the appointment to give them the appointment as of today, i.e. after a period of 27 years when most of these respondents would be almost 50 years of age or above.

For all the foregoing reasons, we allow the appeal and set aside the order of the High Court as well as that of the Tribunal. There shall, however, be no order as to costs."

36. In view of the above discussion and findings, we are of the considered opinion that the writ petitioners are entitled to the reliefs sought herein. However, as stated earlier, this order is only restricted to these https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases petitioners alone.

37. The petition in WMP No. 7353 of 2024 in W.P. No. 26133 of 2023, has been filed to implead the petitioners therein in the writ petition mentioned hereinabove, without stating in what capacity they seek to be impleaded, while making stray averments that they are similarly placed as the petitioners. Also, the said petition has been filed after the arguments were completed in the writ petitions and the counsel for the impleading petitioners was not able to answer any of the queries raised by this Court. Therefore, we are of the view that the impleading petition is throughly misconceived in law and the same deserves to be dismissed with exemplary costs. However, we refrain from imposing any costs. As such, this miscellaneous petition is dismissed.

38. In the result, all the writ petitions are allowed with a direction to the State Government to continue the process of appointment left midway in 2017, insofar as the petitioners are concerned and appoint them as Secondary Grade Teachers, or Graduate Assistants as the case may be, as expeditiously as possible, without causing any further delay, if they are otherwise eligible for appointment as per the eligibility criteria laid down by the NCTE, and to appoint them as teachers depending on their respective merit/ranking as per the weightage method and their TET scores,

applying the rule of reservation https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases accordingly. As these writ petitions were filed well before the recruitment notification dated 25.10.2023, number of vacancies already advertised in the said recruitment notification or the present number of vacancies shall not be cited as a reason for not giving effect to the direction stated above.

WMP No.7353 of 2024 is dismissed. WMP No. 35331 of 2023 is closed. No costs.

[R.M.D., ACJ.,] [M

10.07.2024

Index : Yes / No
Internet : Yes / No
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To

1. The Principal Secretary to Government
State of Tamil Nadu
School Education Department
Fort St. George, Chennai - 600 009

2. The Commissioner of School Education
Directorate of School Education
DPI Campus, College Road
Chennai - 600 006

3. The Joint Director of School Education (Personnel) DPI Campus, College Road Chennai - 600 006

4. The Director of School Education Directorate of School Education https://www.mhc.tn.gov.in/judis WP Nos. 26084 of 2023 etc. cases DPI Campus, College Road Chennai - 600 006

5. Member Secretary Teachers Recruitment Board (TRB) 4th Floor, DPI Campus College Road, Chennai - 600 006 https://www.mhc.tn.gov.in/judis