

GAHC010050792024



2024:GAU-AS:12186-DB

**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/1414/2024**

1.SMTI MONI GOGOI,  
WIFE OF SRI DIGANTA GOGOI, RESIDENT OF VILLAGE- TITABOR,  
DEOGHARIA, DISTRICT- JORHAT, ASSAM. PIN-785630.

2: DR. RASHMITA DEVI,  
C/O DR. PALASH BORAH,  
RESIDENT OF DAPARBATIA, TEZPUR,  
DISTRICT- SONITPUR, ASSAM, PIN-784150.

3: SMTI PRANJALI GOGOI,  
DAUGHTER OF AMBURAM GOGOI,  
RESIDENT OF VILLAGE- SIRAJULI,  
DISTRICT- SONITPUR, ASSAM, PIN-784117.

4: SMTI GAYATRI HAZARIKA,  
C/O. KUSHAL KUMAR BORAH,  
RESIDENT OF VILLAGE- DUBIA GAON,  
DISTRICT- BISWANATH, ASSAM, PIN-784178.

5: SMTI RANI TAMULI PHUKAN,  
C/O. SRI NAREN TAMULI PHUKAN,  
RESIDENT OF HATILUNG BANTOW,  
DISTRICT- LAKHIMPUR, ASSAM, PIN-787031.

6: SMTI PURANJITA BHARALI,  
DAUGHTER OF SRI TILAK BHARALI,  
RESIDENT OF VILLAGE- AMULAPATTI,  
DISTRICT- LAKHIMPUR, ASSAM, PIN-787055.

7: SMTI PARMITA NATH,  
WIFE OF SRI BIRESWAR NATH,  
RESIDENT OF VILLAGE- PACHIM CHUBA,  
DISTRICT- DARRANG, ASSAM, PIN-784145.

- 8: SMTI RASHMI REKHA MEDHI,  
WIFE OF SRI UTPAL DEKA,  
RESIDENT OF BARJARI JAGIROAD,  
DISTRICT- MORIGAON, ASSAM, PIN-782411.
- 9: SMTI GITALI GOGOI,  
WIFE OF SRI BIKASH DOWARAH,  
RESIDENT OF VILLAGE- BURALIKSON GAON,  
DISTRICT- GOLAGHAT, ASSAM, PIN-785622.
- 10: SMTI RASHMI REKHA BORA,  
WIFE OF SRI KALPAJIT SAIKIA,  
RESIDENT OF VILLAGE- SAPMARI,  
DISTRICT- MORIGAON, ASSAM, PIN-782104.
- 11: SMTI KARABI DEKA,  
WIFE OF SRI MADHURJYA SAIKIA,  
RESIDENT OF VILLAGE KETEKIBARI,  
DISTRICT- SONITPUR, ASSAM, PIN-784154.
- 12: TARPAN DEKA,  
C/O SRI DINESH DEKA,  
RESIDENT OF BARJARI BARPAK, JAGIROAD,  
DISTRICT- MORIGAON, ASSAM, PIN-782411.
- 13: SMTI ANUSMITA BAYAN,  
C/O. MANIK BAYAN,  
RESIDENT OF VILLAGE- DAKUAPARA,  
DISTRICT- KAMRUP, ASSAM, PIN-781123.
- 14: SMTI MANISHA RANI BAIDYA,  
WIFE OF SRI RITUPON BORA,  
RESIDENT OF VILLAGE- CHOTAHAIBAR,  
DISTRICT- NAGAON, ASSAM, PIN-782003.
- 15: SMTI RANI CHIRING,  
C/O. CHANDRESWAR CHIRING,  
RESIDENT OF VILLAGE-DHENUKHANA, CHIRING GAON,  
DISTRICT- LAKHIMPUR, ASSAM, PIN-787053.
- 16: SMTI DAISY DEVI,  
WIFE OF SRI MRIGEN KAKATI,  
RESIDENT OF VILLAGE- DHALPUKHURI,  
DISTRICT- HOJAI, ASSAM, PIN-782435.
- 17: SMTI GITANJALI DEVEE,  
WIFE OF SRI MANOJ GUPTA,  
RESIDENT OF VILLAGE- ITAKHOLA,

DISTRICT- SONITPUR, ASSAM, PIN-784182.

18: SMTI DEBASHREE GOGOI,  
C/O. SIMANATA BORAH,  
RESIDENT OF VILLAGE- MURHATETELI TEZPUR,  
DISTRICT- SONITPUR, ASSAM, PIN-784001.

19: KUSHAL SAIKIA,  
SON OF LATE HIRANYA SAIKIA,  
RESIDENT OF VILLAGE- NO.2 DHEMAGARH,  
DISTRICT- LAKHIMPUR, ASSAM, PIN-787023.

20: SMTI MOUSUMI MEDHI,  
WIFE OF SRI MANORANJAN SARMAH,  
LANKA TOWN WARD NO.6,  
DISTRICT- HOJAI, ASSAM, PIN-782446.

**.....Petitioners**

**-VERSUS-**

1.THE STATE OF ASSAM,  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE  
GOVERNMENT OF ASSAM, SCHOOL EDUCATION DEPARTMENT, DISPUR,  
GUWAHATI-781006.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM,  
SCHOOL EDUCATION DEPARTMENT,  
DISPUR, GUWAHATI-781006.

3:THE JOINT SECRETARY TO THE GOVERNMENT OF ASSAM,  
DEPARTMENT OF SCHOOL EDUCATION,  
DISPUR, GUWAHATI, PIN- 781006.

4:THE DIRECTOR, SECONDARY EDUCATION,  
GOVERNMENT OF ASSAM, KAHILIPARA,  
GUWAHATI-781019.

5:THE MEMBER SECRETARY,  
TEACHERS ELIGIBILITY TEST EMPOWERED COMMITTEE FOR  
SECONDARY EDUCATION.

6:THE NATIONAL COUNCIL FOR TEACHERS EDUCATION,  
REPRESENTED BY THE CHAIRPERSON,  
G-7 SECTOR 10, DWARKA, NEAR METRO STATION,  
NEW DELHI PIN- 11007.

**.....Respondents**

**Linked Case : WP(C)/1591/2024**

1.DHRUBAJYOTI NATH,  
SON OF SHRI DEBESWAR NATH,  
RESIDENT OF VILLAGE- DHEKENABORI,  
DISTRICT- KAMRUP, ASSAM, PIN- 781124.

2: PARASHMONI B. BAISHYA,  
SON OF BINOD BAISHYA,  
RESIDENT OF VILLAGE- WARD NO. 3, NIZARAPAR,  
DISTRICT- UDALGURI, ASSAM, PIN- 784509..

3: NABA PRAN DEKA,  
SON OF BOLU RAM DEKA,  
RESIDENT OF VILLAGE- KUMOIPUKHURI PAR,  
DISTRICT- MORIGAON, ASSAM, PIN- 782811.

4: HAIDAR ALI AHMED,  
SON OF BADARUDDIN AHMED,  
RESIDENT OF VILLAGE- BHALUKABARI,  
DISTRICT- KAMRUP, ASSAM, PIN- 781136.

5: PRIYAMA KALITA,  
DAUGHTER OF LATE KIRAN CHANDRA KALITA,  
RESIDENT OF VILLAGE- DUBJENI,  
DISTRICT- KAMRUP, ASSAM, PIN- 781124.

6: KAPIL KALITA,  
SON OF PABITRA KUMAR KALITA,  
RESIDENT OF VILLAGE- THEKASHU,  
DISTRICT- GOALPARA, ASSAM, PIN- 783124.

7: DIGANTA DEV SHARMA,  
SON OF LATE BANIKANTA SHARMA,  
RESIDENT OF VILLAGE- DHELACHAR,  
DISTRICT- KAMRUP, ASSAM, PIN- 781123.

8: PRANAB DAS,  
SON OF DHRUVA NARAYAN DAS,  
RESIDENT OF VILLAGE- NO.3 AMTOLA,  
DISTRICT- KAMRUP, ASSAM, PIN- 781134.

9: NILAKSHI DEKA,  
DAUGHTER OF NIROD KUMAR DEKA,  
RESIDENT OF VILLAGE- MONKHALI,  
DISTRICT- NALBARI, ASSAM, PIN- 781334.

10: DIBYA JYOTI PATAR,  
SON OF JAYANTA KUMAR PATAR,  
RESIDENT OF VILLAGE- WABORI,  
DISTRICT- MORIGAON, ASSAM, PIN- 782106.

11: MANALISHA SARMA,  
DAUGHTER OF BIRENDRA NATH SARMA,  
RESIDENT OF VILLAGE- KONWARPARA ,  
DISTRICT- DARRANG, ASSAM, PIN- 784125.

12: UMME SADIKA,  
DAUGHTER OF ABU BAKKAR SIDDIQUE,  
RESIDENT OF VILLAGE- MANGALDOI GAON,  
DISTRICT- DARRANG, ASSAM, PIN- 784125.

13: DIPANKAR KAKATI,  
SON OF ATUL CHANDRA KAKATI,  
RESIDENT OF VILLAGE- NADIA,  
DISTRICT- KAMRUP, ASSAM, PIN- 781102.

14: BANDANA DAS,  
DAUGHTER OF DENU DHAR DAS ,  
RESIDENT OF VILLAGE- UTTAR BHERBHERI,  
DISTRICT- BARPETA, ASSAM, PIN- 781317.

15: MURSHIDUL ISLAM,  
SON OF YAKUB ALI,  
RESIDENT OF VILLAGE- CHUKABAHI,  
DISTRICT- DARRANG, ASSAM, PIN- 784514.

16: RAHUL BORA,  
SON OF JIBAKANTA BORA,  
RESIDENT OF VILLAGE- GUAL GAON,  
DISTRICT- GOLAGHAT, ASSAM, PIN- 785625.

17: CHAYAMONI HALOI,  
DAUGHTER OF KANDARPA HALOI ,  
RESIDENT OF VILLAGE- PARVATI NAGAR,  
DISTRICT- SONITPUR, ASSAM, PIN- 784001.

18: MONUJ BORUAH,  
SON OF JITENBORUAH,  
RESIDENT OF VILLAGE- GATONG VILLAGE,  
DISTRICT- DIBRUGRAH, ASSAM, PIN- 786610.

19: BANASMITA KOUSHIK THAKUR,  
DAUGHTER OF TRIPURESWAR THAKUR,

RESIDENT OF VILLAGE- WARD NO. 9, PHCG ROAD,  
DISTRICT- GOLAGHAT, ASSAM, PIN- 785614.

20: DHANJITA SARMA,  
DAUGHTER OF LATE RABINDRA SARMA,  
RESIDENT OF VILLAGE- WARD NO. 4, BARUAPARA,  
DISTRICT- DARRANG, ASSAM, PIN- 784125.

21: MITALI DEKA,  
DAUGHTER OF PABITRA DEKA,  
RESIDENT OF VILLAGE- GERIMARI,  
DISTRICT- DARRANG, ASSAM, PIN- 784125.

22: SAIFUL JAMAN,  
SON OF AMZEDALI,  
RESIDENT OF VILLAGE- PIPIRAKUCHI,  
DISTRICT- ASSAM, PIN- 784144.

23: HEMRAJ PAUL,  
SON OF MADHU SUDANPAUL,  
RESIDENT OF VILLAGE- WARD NO. 5, DHEKIAJULI,  
DISTRICT- SONITPUR, ASSAM, PIN- 784110.

24: TRIDIB JYOTI KALITA,  
SON OF SARBESWAR KALITA,  
RESIDENT OF VILLAGE- GANDHIAPATHAR,  
DISTRICT- DARRANG, ASSAM, PIN- 784145.

25: SUSMITA TALUKDAR,  
DAUGHTER OF ATUL TALUKDAR,  
RESIDENT OF VILLAGE- JAPARKUCHI,  
DISTRICT- NALBARI, ASSAM, PIN- 781134.

26: MUSTAFIZUR RAHMAN,  
SON OF LATE ABDUL KARIM ,  
RESIDENT OF VILLAGE- SIMLITOLA,  
DISTRICT- GOALPARA, ASSAM, PIN- 783130.

27: REBAT GOGOI,  
SON OF TARUN CH. GOGOI,  
RESIDENT OF VILLAGE TINSUTI NO.1,  
DISTRICT- TINSUKIA ,ASSAM, PIN- 786182.

28: DURGESH RAJAK,  
SON OF SURENDRA RAJAK,  
RESIDENT OF VILLAGE- LEDO ITAKHOLA,  
DISTRICT- TINSUKIA ,ASSAM, PIN- 786132.

29: BARNALI KALITA,  
DAUGHTER OF KHARGESWAR KALITA,  
RESIDENT OF VILLAGE- BARDADHI,  
DISTRICT- KAMRUP, ASSAM, PIN- 781102.

30: HIMAKHI BHUYAN,  
DAUGHTER OF KHIRESWAR BHUYAN,  
RESIDENT OF VILLAGE- BAPAKHAT,  
DISTRICT- LAKHIMPUR, ASSAM, PIN- 787052.

31: GANESH GOWALA,  
SON OF DULAL GOWALA ,  
RESIDENT OF VILLAGE- WARD NO. 6,  
DISTRICT- NORTH LAKHIMPUR, ASSAM, PIN- 787001.

32: SHILPEE SHIKHA HAZARIKA,  
DAUGHTER OF DIMBESWAR HAZARIKA,  
RESIDENT OF VILLAGE- BALIPUKHURI NATUN BASTI,  
DISTRICT- SONITPUR, ASSAM, PIN- 784116.

33: BISHAL PAUL,  
SON OF BIMAL KRISHNA PAUL,  
RESIDENT OF VILLAGE- WARD NO.3, UDALGURI,  
DISTRICT- UDALGURI, ASSAM, PIN- 784509

34: NAHIDA SULTANA SIDDIQUE,  
DAUGHTER OF MUSLIM SIDDIQUE,  
RESIDENT OF VILLAGE- WARD NO.11, EIDGAH NAGAR,  
DISTRICT- DHUBRI, ASSAM, PIN- 783301.

35: TRISHNAMONI NATH,  
SON OF JITENDRA CHANDRA NATH,  
RESIDENT OF VILLAGE- RUPAKHAT,  
DISTRICT- UDALGURI, ASSAM, PIN- 784528

36: MRIGANKA PRATIM TALUKDAR,  
SON OF DIPAK TALUKDAR,  
RESIDENT OF VILLAGE- WARD NO.4, TANGLA,  
DISTRICT- UDALGURI, ASSAM, PIN- 784521.

37: RUBI DEKA,  
DAUGHTER OF TAPAN DEKA,  
RESIDENT OF VILLAGE- TENGABARI, WARD NO.4, MANGALDOI,  
DISTRICT- DARRANG, ASSAM, PIN- 784529

38: DEEPIKA BORAH,  
DAUGHTER OF ANIL KUMAR BORAH,  
RESIDENT OF VILLAGE- NAMATI,

DISTRICT- UDALGURI , ASSAM, PIN- 784507.

39: PALLAVI BARMAN,  
DAUGHTER OF LATE PRADIP BARMAN,  
RESIDENT OF VILLAGE- EAST AMOLAPATTY,  
DISTRICT- NAGAON, ASSAM, PIN- 782003.

40: PRIYAKHI SAIKIA,  
DAUGHTER OF MANIK SAIKIA,  
RESIDENT OF VILLAGE- MOHIMBARI GAON,  
DISTRICT- JORHAT, ASSAM, PIN- 785631.

41: BARNALI BARUAH,  
DAUGHTER OF NARENDRA BARUAH,  
RESIDENT OF VILLAGE- NAPTAPARA,  
DISTRICT- DARRANG, ASSAM, PIN- 784144.

42: LIPIKA BONIA,  
DAUGHTER OF LATE TARUN CHANDRA BONIA,  
RESIDENT OF VILLAGE- URIAGAON,  
DISTRICT- NAGAON, ASSAM, PIN- 782003.

43: BIKASH KALITA,  
SON OF KAMALESHWAR KALITA,  
RESIDENT OF VILLAGE- TAKARDIA,  
DISTRICT- KAMRUP, ASSAM, PIN- 781124.

44: SHAHIDUL HUSSAIN,  
SON OF SAHAB UDDIN,  
RESIDENT OF VILLAGE- BHERBERI,  
DISTRICT- NAGAON, ASSAM, PIN- 782125

45: NASIRUDDIN KHAN,  
SON OF HAZI AKKASH ALI KHAN,  
RESIDENT OF VILLAGE- BHOMARAGURI,  
DISTRICT- SONITPUR, ASSAM, PIN- 784027.

46: JAYANTA ADHIKARI,  
SON OF LATE ARBINDA ADHIKARI,  
RESIDENT OF VILLAGE- GOBINDAPALLY,  
DISTRICT- HOJAI, ASSAM, PIN- 782435.

47: BISHWA JYOTI NATH,  
SON OF LATE GANESH NATH,  
RESIDENT OF VILLAGE- BARIBANDHA,  
DISTRICT- MORIGAON, ASSAM, PIN- 782127.



48: ABSANA BEGUM,  
DAUGHTER OF AMZED ALI,  
RESIDENT OF VILLAGE- PIPIRAKUCHI,  
DISTRICT- DARRANG, ASSAM, PIN- 784144.

49: MASTUFA AL AMIN BARBHUYAN,  
SON OF MD. JAMAL UDDIN BARBHUYAN,  
RESIDENT OF VILLAGE- JAYANTIA BASTI,  
DISTRICT- HOJAI, ASSAM, PIN- 782445.

50: ARUP WADADER,  
SON OF RANAMOY WADADER,  
RESIDENT OF VILLAGE- LUMDING,  
DISTRICT- HOJAI, ASSAM, PIN- 782447.

51: DEBARTHA PATHAK,  
SON OF SUDHARSHAN PATHAK,  
RESIDENT OF JONAKI PATH GOPAL BAZAR,  
DISTRICT- NALBARI, ASSAM, PIN- 781353.

52: PINKUMANI BORA,  
SON OF JATINDRA NATH KEOT,  
RESIDENT OF VILLAGE- DEBANANDA,  
DISTRICT- DARRANG, ASSAM, PIN- 784145.

53: KUSHAL KALITA,  
SON OF HARISH KALITA,  
RESIDENT OF VILLAGE- MUJKURI,  
DISTRICT- GOALPARA, ASSAM, PIN- 783124.

54: WAZID ALI,  
SON OF MUZAID ALI,  
RESIDENT OF VILLAGE- THOWRA JAPIHOJIA,  
DISTRICT- SIVASAGAR, ASSAM, PIN- 785672.

55: RANJAN SAHARIAH,  
SON OF BHUBANESHWAR SAHARIA,  
RESIDENT OF VILLAGE- HAZARIKAPARA,  
DISTRICT- DARRANG, ASSAM, PIN- 784145.

**.....Petitioners**

**-VERSUS-**

1.THE STATE OF ASSAM AND 2 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE  
GOVERNMENT OF ASSAM SCHOOL EDUCATION DEPARTMENT  
DISPUR GUWAHATI- 781006.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM  
DEPARTMENT OF SCHOOL EDUCATION  
DISPUR GUWAHATI- 781006.

3:THE DIRECTOR SECONDARY EDUCATION  
GOVERNMENT OF ASSAM  
KAHILIPARA GUWAHATI- 781019.

**.....Respondents**

**– BEFORE –**

**HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI  
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

For the Petitioner(s) : Mr. K.N. Choudhury, Senior Advocate, assisted by Mr. R.M. Deka and Mr. N. Gautam, Advocates.

For the Respondent(s) : Mr. D. Saikia, Advocate General, Assam, assisted by Mr. R. Majumdar, Standing Counsel, Education (Secondary) Department; Ms. P. Barua and Ms. R. Barua, Advocates.

: Mr. I. Alam, Standing Counsel, National Council for Teacher Education (NCTE).

Date of Hearing : 12.11.2024 and 13.11.2024.

Date of judgment : 03.12.2024.

**JUDGMENT & ORDER (CAV)**

**(Vijay Bishnoi, CJ)**

These 2(two) writ petitions have been filed by the petitioners challenging the validity of the provisions of Rule 8, Rule 10(1) and Rule (2) of the Assam Secondary Education (Provincialised Schools) Service (Amendment) Rules, 2023, (hereinafter to be referred as "the Amendment Rules of 2023") notified on 20.09.2023 as well as the amendment brought into the Schedule-II and

Schedule-III of the Assam Secondary Education (Provincialised Schools) Service Rules, 2018 by way of the Assam Secondary Education (Provincialised Schools) Service (Second Amendment) Rules, 2023, notified on 13.12.2023 (hereinafter to be referred as "the Second Amendment Rules of 2023"). The petitioners have also prayed for quashing and setting aside the Advertisement Nos.E-392562/3 and E-392562/4 dated 27.12.2023, issued by the Director of Secondary Education, Government of Assam.

**2.** The relevant brief facts of the cases are that the Assam Secondary Education (Provincialised Schools) Service Rules, 2018 (hereinafter to be referred as "the Rules of 2018") were promulgated by the Hon'ble Governor of Assam in exercise of powers conferred by proviso to Article 309 of the Constitution of India and it came into force from 10.10.2019.

**3.** As per Rule 1(3) of the Rules of 2018, the Rules of 2018 apply to the employees appointed for teaching and non-teaching purpose in the Senior Secondary Schools, Higher Secondary Schools, Assam High Madrassa and High Schools which have been provincialised under the Assam Secondary Education (Provincialised) Act, 1977, Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011, Assam Junior Colleges (Provincialisation) Act, 2012 and Assam Education (Provincialisation of Services of Teachers and Re-organisation of Educational Institutions) Act, 2017.

**4.** The procedures regarding recruitment to the post of Graduate Teacher and Post Graduate Teacher were provided under Rule 8 of the Rules of 2018. Rule 10 of the Rules of 2018 prescribes the academic and professional

qualification for direct recruitment to the post of Graduate Teachers and Post Graduate Teachers. It stipulates that the academic and professional qualification for direct recruitment shall be as in Schedule III of the Rules of 2018.

**5.** For the convenience, the provisions of Rule 8, Rule 10 and Schedule-II and Schedule-III pertaining to the recruitment on the post of Graduate Teacher and Post Graduate Teacher, as they stood before coming into force of the Amendment Rules of 2023 and the Second Amendment Rules of 2023, are reproduced hereinunder:

**“8. Recruitment to the post of Graduate Teacher, Post Graduate Teacher selection procedure thereof:-** (1) *The Recruitment to the post in the cadre of Graduate Teachers, Post Graduate Teacher including Subject Teacher in Vocational Subjects in provincialised High School/High Madrasa, Higher Secondary Schools and Senior Secondary School shall be made by direct recruitment in the manner prescribed under sub-rule (2).*

(2)(i) *Before the end of the year the Member-Secretary of the District Selection Committee constituted under Rule 16(2), shall ascertain the vacancy position of the posts in the cadre of Graduate Teacher, Post Graduate Teacher including Subject Teacher in Vocational Subjects in provincialised High School, High Madrasa, Higher Secondary Schools Senior Secondary School with sanction number, allotment and retention order of those posts and invite applications through an advertisement to be published in two local newspapers.*

(ii) *The Member-Secretary shall prepare a list of eligible candidates and submit to the District Selection Committee after scrutiny of the applications. The District Selection Committee shall verify documents in respect of academic qualification and marks sheet of the respective examination and calculate the marks secured by a candidate in respect of the respective examination in the manner as specified in Schedule-II and on the basis of total marks secured by a candidate in respect of the academic marks secured in the respective examinations under Schedule-I, prepare a select list in respect of as many candidates equal to the number of vacancies.*

(iii) *The select list so prepared by the District Selection Committee shall be*

*submitted to the Director who shall after necessary verification as may be required, approve the select list and publish the same in the official notice Board or in such other places as the Director may consider fit and proper.*

- (iv) After approval and publication of the select list the Appointing Authority shall appoint the candidates in order of preference in the select list by observing all formalities.*
- (v) No appointment in any manner shall be made by any authority except in accordance with the procedure prescribed above.*
- (vi) The validity of the Select list shall not exceed beyond one year from the date of its approval by the Director.*

**“10. Academic and Professional Qualification:-** *(1) The academic and professional qualification for direct recruitment shall be as in Schedule-III.*

*(2) In addition to such academic and professional qualifications mentioned in Schedule-III, for direct recruitment to the posts, candidates shall have to appear and pass in the Teachers Eligibility Test (TET) in the concerned cadre, conducted by the Government scoring a minimum of 60% marks in case of Unreserved category candidates and minimum of 55% marks in case of Scheduled Castes/Scheduled Tribes/Other Backward Classes and Persons with Disabilities candidates :*

*Provided further that any experienced teacher who has appeared, but could not secure the minimum qualifying 60 marks in the TET, shall be awarded at least 60 marks in respect of their experience if he or she has already completed 15 years of teaching experience. Any marks secured by such experienced teacher over and above 60 qualifying marks in TET shall be counted additionally in respect of TET for such teacher for the purpose of selection for the post of Post Graduate Teacher and Graduate Teacher as the case may be.*

*(3) The teachers engaged on contractual basis in a provincialised Higher Secondary/High School under the scheme “strengthening of secondary education” shall be given preference for recruitment to the post of Graduate teachers by awarding total 50 bonus marks for their services as contractual teachers, i.e. 25 marks for one year and another 25 marks for completion of two years of service as contractual teacher, subject to consideration for a maximum period of two years.*

*(4) The teachers working continuously on Fixed pay basis (other than contractual teachers) in a provincialised Higher Secondary School or High School/Madrassa shall be given preference for recruitment to the post of Graduate teachers by awarding 50 bonus marks for their service as Fixed Pay teachers provided they have requisite academic and professional qualification.*

*(5) In addition to the academic and professional qualification as per sub-rule (1), the candidates must satisfy the following criteria:-*

- (i) In case of Assamese Medium School, the candidate must have passed HSLC or equivalent Examination with Assamese language as one of the subjects or having Diploma in Assamese language issued by the Axom Sahitya Sabha or read up to HSLC level in Assamese Medium School;*
- (ii) In case of Bengali Medium School, the candidate must have passed HSLC or equivalent Examination with Bengali language as one of the subjects or having Diploma in Bengali language issued by the Barak Upatyaka Bangya Sahitya Sanscriti Sammelan or read up to HSLC level in Bengali medium School;*
- (iii) In case of Hindi Medium School, the candidate must have passed HSLC or equivalent Examination with Hindi language as one of the subjects or read up to HSLC level in Hindi medium School;*
- (iv) In case of Bodo Medium School, the candidate must have passed HSLC or equivalent Examination with Bodo language as one of the subjects or read up to HSLC level in Bodo medium School;*
- (v) In case of English Medium School, the candidate must have passed HSLC or equivalent Examination with Alternative English as one of the subjects or read from Class XI onwards in English medium School:*

*Provided that for recruitment of teacher for teaching MIL subject, the candidate who passed FISLC examination with particular MIL subject shall be considered.*

### **Schedule-II**

*[See Rules 7(2) and 10]*

#### **(1) Criteria for Selection of Post Graduate Teacher:**

- (i) 100 marks on percentage of marks in M.A./M.Sc/M.Com Examination;
- (ii) 100 marks on percentage of marks in B.A/B.Sc/B.Com Examination; (in case of Major/Hons. the marks obtained in Major/Hons. shall be taken into consideration)
- (iii) 100 marks on percentage of marks in HS Final Examination;
- (iv) 100 marks on percentage of marks in BT/B.Ed. Examination;
- (v) 100 marks on percentage of marks in TET Examination or 60 marks for 15 years of experience as a Graduate teacher in provincialised High/Higher Secondary School having requisite academic and professional qualification, as the case may be. Any experienced teacher who has appeared but could not secure the minimum qualifying 60 marks in the TET, shall be awarded at least 60 marks in respect of their experience if he or she has already completed 15 years of teaching experience. Any marks secured by such experienced teacher over and above 60 qualifying marks in TET shall be counted additionally in respect of TET for such teacher for the purpose of selection for the post of Post Graduate Teacher;

*Explanation:- For the purpose of calculation of marks under the categories mentioned in clauses (1)(ii), (iii) and (iv) above, it may be clarified that if a candidate secures; for example 60% marks in the particular examination he/she secure 60 marks out of 100 marks allotted in the concerned examination;*

- (vi) 10 marks for NCC Certificate (10 marks for 'C' Certificate and 5 marks for 'B' Certificate);
- (vii) 10 marks for participation in recognized sports at National level representing Assam;
- (viii) 10 marks for achievements in fine Arts and Cultural Activities representing the State officially at National level.

**(2) Criteria for Selection of Graduate Teacher :**

- (i) 100 marks on percentage of marks in BA/B.Com/B.Sc. Examination; (in case of Major/Hons. the marks obtained in Major/Hons shall be taken into consideration;
- (ii) 100 marks on percentage of marks in HS Final Examination.
- (iii) 100 marks on percentage of B.T./B.Ed. Examination;
- (iv) 100 marks on percentage of marks in TET Examination or 60 marks for 15 years of experience as an Undergraduate/Junior Teacher in a provincialised High/Higher Secondary school having requisite academic and professional qualification. Any experienced teacher who has appeared but could not secure the minimum qualifying 60 marks in the TET, shall be awarded at least 60 marks in respect of their experience if he or she has already completed 15 years of teaching experience. Any marks secured by such experienced teacher over and above 60 qualifying marks in TET shall be counted additionally in respect of TET for such teacher;
- (v) *Explanation: For the purpose of calculation of marks under the categories mentioned in clauses 1(ii), (iii) and (iv) above, it may be clarified that if a candidate secures; for example 60% marks in the particular examination he/she secure 60 marks out of 100 marks allotted in the concerned examination;*
- (vi) 50 marks @ 25 marks for one year of teaching experience as contractual teacher and another 25 marks for two years, subject to consideration for a maximum period of two years;
- (vii) 50 marks teaching experience for the teachers working continuously on Fixed Pay basis (other than contractual teachers) in a provincialised Higher Secondary School or High School/Madrassa for their service as Fixed Pay teachers provided they have requisite academic and professional qualification.
- (viii) 10 marks for NCC Certificate (10 marks for 'C' Certificate and 5 marks for 'B' Certificate);



- (ix) 10 marks for participating in recognized sports at National level representing Assam;
- (x) 10 marks for achievements in fine Arts and Cultural Activities representing the State officially at National level.

3. ....”

### **Schedule-III**

[See Rules 10(1)(2)]

#### **Minimum educational and professional Qualifications for direct recruitment in the post of :**

- (i) **Post Graduate Teacher:** Post Graduation with at least 50% marks (or its equivalent) from recognized University and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution, but degree obtained from off-campus and distance education institution shall not be considered as valid;
- (ii) **Graduate Teacher:** Graduate/Post Graduate from recognized University with at least 50% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution, but degrees obtained from off-campus and distance education institution shall not be considered as valid;
- (iii) ....”

**6.** The Hon’ble Governor of Assam, vide Notification dated 20.09.2023, has amended the Rules of 2018 and in place of Rule 8, Rule 10 and Schedule II, the following have been substituted:-

#### **Amendment of Rule 8**

“(8)(1) The Recruitment to the post in the cadre of Post Graduate Teacher and Graduate Teacher including subject teacher in vocational subjects shall be made by direct recruitment through the Teachers’ Eligibility Test-cum-

*Recruitment Test herein after called as TET-cum-Recruitment Test to be held as per criteria mentioned in Schedule-II and in a manner hereinafter provided.*

*2(i) Before the end of the year the Member-Secretary of the Selection Committee constituted under sub rule (2) of rule 16, shall ascertain the vacancy position of the posts in the cadre of Graduate Teachers, Post Graduate Teachers, including subject teacher in vocational subjects.*

*(ii) The Director shall invite applications through advertisements in two local dailies and through online portal in the website of the Directorate of Secondary Education.*

*(iii) The Director shall scrutinize the applications and prepare a list of eligible candidates for appearing in the TET-cum-Recruitment Test.*

*(iv) The TET-cum-Recruitment Test as mentioned in clause (1) above shall be conducted by Director with the approval of the Government for the said purpose.*

*(v) The Director, on the basis of the marks obtained by the candidates in the TET-cum-Recruitment Test and fulfilling the criteria mentioned in Schedule-II, shall prepare a select list for each cadre in order of preference which shall contain the names of selected candidates equal to the number of vacancies as notified at the time of advertisement:*

*Provided that in case two or more candidates obtain equal marks in aggregate, the candidate getting comparatively higher marks in B.Ed. Examination shall be preferred and if such situation again prevails, then the seniority of age shall be preferred.*

*(vi) The Director, after necessary verification as may be required, shall send the select list to the Government for approval and after receipt of approval of the select list, shall publish the same in the Official Website of the Directorate of Secondary Education or in such other places as the Director may consider fit and proper.*

*(vii) After approval and publication of the select list, the Appointing Authority shall appoint the candidates in order of merit in the select list by observing all formalities as and when vacancy arises.”*

### **Amendment of Rule 10**

*“(1) The academic and professional qualification for direct recruitment shall be as in the Schedule-II.*

*(2) In addition to such academic and professional qualifications mentioned in sub rule (1) above for direct recruitment to the posts all candidates shall have to appear in the TET-cum-Recruitment test as per Rule 8 of these rules.”*

*(3) The existing sub-rule (2), sub-rule (3) and sub-rule (4) shall be deleted.*

### **Substitution of Schedule II**

*Schedule II*

*[See rule 8 and 10]*

**Criteria for selection of Graduate Teachers, Post Graduate Teachers, including subject teacher in vocational subjects**

**Teacher Eligibility Test-cum Recruitment Test: 250 marks in the following two Papers:**

*(a) The paper-I shall be for 150 marks (Pedagogy-50 marks; About Assam and its People-50 marks, General English-30 marks; General Studies and Current Affairs-20 marks)*

*(b) The Paper-II shall be for 100 marks for each subject taught in class-IX to XII in a Secondary school. The candidates may choose the subject from the list of subjects to be notified by the Appointing Authority at the time of advertisement of the vacancies.*

**7.** Vide another Notification dated 13.12.2023, the Rules of 2018 have been further amended and Schedule II and Schedule III of the Rules of 2018 have been amended as under:

*Substitution of Schedule II*

*“(2) Criteria for selection of Graduate Teachers, Post Graduate Teachers,*

*including subject teacher in vocational subjects:*

*(a) Teacher Eligibility Test-cum-Recruitment Test:*

*140 marks in the following Paper, namely:-*

*The Paper shall be of 140 marks (Pedagogy-50 marks; About Assam and its People-50 marks; General English-30 marks; General Studies and Current Affairs-10 marks).*

*(b) NCC/Sports/Fine Arts and Cultural Activities:*

*(i) 5 marks for NCC Certificate (5 marks for “C” Certificate and 3 marks for “B” Certificate)*

*Or*

*5 Marks for participation in recognized sports at National Level representing Assam.*

*Or*

*5 marks for achievements in Fine Arts and Cultural activities representing State officially at National Level.*

*(ii) Candidates who have passed the earlier High/Higher Secondary TET and not been appointed till date will get weightage @5% of the marks secured in respective TET or maximum 5 marks for selection as a Graduate/Post Graduate Teacher.”*

### ***Amendment of Schedule –III***

*3. In the principal rules, in Schedule III, in clause (i), in fourth line, after the words ‘as valid’ for the punctuation mark “;” the punctuation mark “.” shall be substituted and thereafter the following words shall be inserted, namely:-*

*“The candidates shall have to read the same subject as one of the subjects in degree level;”.*

**8.** The Advertisement No.E-392562/3 dated 27.12.2023 is regarding recruitment to the post of Graduate Teachers (Arts), Graduate Teachers

(Science), Graduate Teachers (Hindi) and Graduate Teachers (Sanskrit). However, the Advertisement No.E-392562/4 dated 27.12.2023 is in relation to recruitment to the post of Post Graduate Teachers. In both the Advertisements, the criteria for selection on the posts of Graduate Teachers as well as on the posts of Post Graduate Teachers have been mentioned as per the Amendment Rules of 2023 and Second Amendment Rules of 2023.

**9.** Assailing the above referred amendments as well as the Advertisements, Mr. K.N. Choudhury, learned Senior Counsel appearing for the petitioners has argued that the petitioners are aggrieved with the impugned amendments made to the provisions of Rule 8, Rule 10(1) and Rule 10(2), and Schedule-II and Schedule-III of the Rules of 2018 vide Amendment Rules, 2023 and Second Amendment Rules of 2023 to the extent that it provides that for the purpose of recruitment to the post in the cadre of Post Graduate Teachers and Graduate Teachers, a candidate has to go through the Teachers Eligibility Test-cum-Recruitment Test and that a candidate shall have to read the same subject as one of the subjects in the Degree Level in which he or she has obtained the Post Graduate Degree for the purpose of recruitment on the post of Post Graduate Teacher.

**10.** It is contended that the National Council for Teacher Education Act, 1993 (hereinafter referred to be as "the NCTE Act, 1993") has been enacted by the Parliament with reference to Entry 66 of the List I of Schedule VII of the Constitution of India. The State has no power under List II of Schedule VII of the Constitution to make law on the subject of education. Though Entry 25 of List III, Schedule VII of the Constitution provides the field for legislation both to the State and to the Centre in relation to education including Technical

Education, Medical Education and Universities, Vocational and Technical Training of Labour, but any such law made by the State with reference to Entry 25 of list III of the Constitution cannot be contrary to the Central law.

It is contended that it is well settled where the State law is repugnant to the Central law, the State law must give way in favour of the Central law to the extent of repugnancy.

**11.** It is further contended by the learned Senior Counsel for the petitioners that any State law, repugnant to the Central law, can be made applicable only after following the procedures prescribed under Article 254(2) of the Constitution of India.

**12.** Learned Senior Counsel for the petitioners has argued that the National Council for Teacher Education (in short, NCTE) was established under the provisions of NCTE Act, 1993 and is empowered to determine minimum standards of education of school Teachers and in exercise of that power the NCTE has framed Regulations named as "the National Council for Teacher Education (Determination of Minimum Qualification for persons to be recruited as Education Teachers and Physical Education Teachers in Pre-Primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014 (hereinafter to be referred as "the NCTE Regulations of 2014), whereby the NCTE has prescribed the qualification for recruitment of Teachers in the Secondary and Senior Secondary Schools.

In the aforesaid NCTE Regulations of 2014, for the purpose of recruitment as Teacher in the Secondary and Senior Secondary Schools, the following qualifications have been prescribed:-

4. Secondary/High School (For Classes IX-X)	<p>(a) Graduate/Post Graduate from recognized University with at least 50% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution.</p>
	<p>Or</p>
	<p>(b) Graduate/Post Graduate from recognized University with at least 45% marks in either Graduate or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution (in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations 2002 notified on 13.11.2002 and National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.2007)</p>
	<p>Or</p>
	<p>(c) 4-years degree of B.A. ED./B.Sc.Ed from any National Council for Teacher Education recognize institution.</p>

<p>5. Senior Secondary/ Intermediate (For Classes XI-XII)</p>	<p>(a) Post Graduate with at least 50% (or its equivalent) from recognized University and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution.</p> <hr/> <p style="text-align: center;">Or</p> <hr/> <p>(b) Post Graduate with at least 45% marks (or its equivalent) from recognized University and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized Institution (in accordance with the National Council for Teacher Education (form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002 and National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.2007.</p> <hr/> <p style="text-align: center;">Or</p> <hr/> <p>(c) Post Graduate with at least 50% marks (or its equivalent) from recognized University and B.A.Ed./B.Sc. Ed. from any NCTE recognized institution.</p>

**13.** It is contended that in the NCTE Regulations of 2014, there is no



requirement of undergoing Teachers Eligibility Test-cum-Recruitment Test. However, in Rule 8, Rule 10(1), Rule 10(2) of the Amendment Rules of 2023, the respondents have provided that for the purpose of recruitment in the cadre of Post Graduate Teacher and Graduate Teacher, a candidate is required to go through the Teachers Eligibility Test-cum-Recruitment Test. It is contended that making such a provision is beyond the competence of the State and is clearly in repugnance to the NCTE Regulations of 2014 and before doing that, the procedure prescribed under Article 254(2) of the Constitution of India has not been followed.

**14.** Learned Senior Counsel for the petitioners has further argued that, similarly, for the purpose of appointment in the cadre of Post Graduate Teacher, in the NCTE Regulations of 2014, it has nowhere been provided that a candidate has to read the same subject as one of the subjects in the Degree Level in which he or she has obtained the Post Graduate Degree. Introduction of such a provision by amending the Schedule III of the Rules of 2018 vide Second Amendment Rules of 2023, is illegal and repugnant to the provision of Central law as the same is not permissible until and unless the procedure prescribed under Article 254(2) of the Constitution of India is followed.

**15.** In support of the above contentions, the learned Senior Counsel for the petitioners has placed reliance upon the following decisions rendered by the Hon'ble Supreme Court:

(i) ***Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of Uttar Pradesh & Ors.***, reported in **(2013) 2 SCC 617**;

(ii) ***Innoventive Industries Limited Vs. ICICI Bank & Anr.***, reported in **(2018) 1 SCC 407**;

(iii) ***Devesh Sharma Vs. Union of India & Ors.***, reported in **2023 SCC OnLine SC 985**.

Learned Senior Counsel for the petitioners has also placed reliance upon the decision rendered by the Division Bench of this Court in ***Raju Chakraborty & Ors. Vs. State of Assam & Ors.***, reported in **2020 (4) GLT 842**.

**16.** Learned Senior Counsel for the petitioners has further argued that the action of the State Government of introducing the TET-cum-Recruitment Test and laying down the condition that for the Post Graduate Teacher a candidate has to read the same subject as one of the subjects in the Degree Level in which he or she has obtained the Post Graduate Degree, is suffering from manifest arbitrariness. It is submitted that the said amendments to the Rules of 2018 are irrational and have no nexus with the object sought to be achieved.

**17.** Learned Senior Counsel for the petitioners has submitted that any action of the State, resulting in manifest arbitrariness, cannot be sustained.

In support of the above contention, learned Senior counsel for the petitioners has placed reliance upon the decision rendered by the Hon'ble Supreme Court in ***Manish Kumar Vs. Union of India & Anr.***, reported in **(2021) 5 SCC 1**.

**18.** Learned Senior counsel for the petitioners has further argued that, as a matter of fact, the writ petitioners have already undergone the TET in the year 2020, conducted by the State Government. The TET certificate possessed by

them is valid for life-time. However, despite the same, the State is compelling them to undergo TET-cum-Recruitment Test by amending the Rules of 2018.

**19.** It is further contended by the learned Senior Counsel for the petitioners that the persons who have qualified the TET, conducted by the State, have already been appointed as Graduate Teachers in the High Schools and Secondary Schools. However, the petitioners, though TET qualified, were not selected pursuant to the earlier Advertisement issued, but, by amending the Rules of 2018 through Amendment Rules of 2023 and Second Amendment Rules of 2023, the State Government has created a class between the similarly placed persons which is discriminatory.

**20.** Learned Senior Counsel for the petitioners has, therefore, submitted that the amendments brought into by the State vide Amendment Rules of 2023 and Second Amendment Rules of 2023 are void as these are in clear conflict with the NCTE Regulations of 2014.

It is, therefore, prayed that the impugned action of the State of amending the Rule 8, Rule 10(1) and Rule 10(2) vide Amendment Rules of 2023 as well as the amendment to Schedule II and Schedule III of the Rules of 2018 be declared as ultra vires and set aside the consequential advertisements dated 27.12.2023 issued for recruitment to the posts of Graduate Teachers and Post Graduate Teachers incorporating the conditions in the amendments are also liable to be set aside.

**21.** Per contra, Mr. D. Saikia, learned Advocate General, Assam has defended the action of the State Government of amending the Rules of 2018 by way of the Amendment Rules of 2023 and the Second Amendment Rules of

2023.

**22.** It is contended by Mr. Saikia that the NCTE Regulations of 2014 lay down the minimum qualification for recruitment of Teachers and it is settled that no person with a qualification below such minimum qualification can be appointed as a Teacher.

**23.** It is further submitted by Mr. Saikia that the amendment to the Rules of 2018, in no manner violates or contradicts the qualifications laid down by the NCTE. He has submitted that with the introduction of the TET examination, the minimum qualifications provided under the NCTE Regulations of 2014 have not been tinkered with. It is submitted that the requirement of passing the TET-cum-Recruitment Test is over and above the minimum qualification prescribed under the NCTE Regulations of 2014 and, in no manner waives or relaxes the minimum qualification prescribed for appointment of Secondary and Senior Secondary Teachers.

**24.** Mr. Saikia has submitted that the provisions of the Amendment Rules of 2023 and Second Amendment Rules of 2023 do not deal with the subject of education but govern the service conditions of the Teachers without contradicting or violating the minimum qualifications laid down by the NCTE in its Regulations.

**25.** It is further argued by Mr. Saikia that there is no repugnancy in the State law in any form with the law enacted by the Parliament and therefore, there is no question of following the procedure laid down under Article 254(2) of the Constitution before amending the Rules of 2018.

**26.** Mr. Saikia has submitted that so far as the TET qualification acquired by the petitioners and the validity of the said qualification for life-time is concerned, it is to be noticed that the NCTE had introduced Teachers Eligibility Test (TET) for Teachers appointed for class I to VIII vide Notification dated 23.08.2010 only and not for the Teachers appointed for the higher classes i.e. for Class IX to XII.

**27.** Mr. Saikia has submitted that introduction of TET-cum-Recruitment Test in the Rules of 2018 for the purpose of recruitment of Graduate Teachers and Post Graduate Teachers was necessitated because as per unamended Rules of 2018, particularly, Rule 10 for recruitment of Graduate Teacher and Post Graduate Teacher, a candidate was required to appear and pass the TET in the concerned cadre. The said TET examination was conducted by the State Government. However, the State Government was facing great difficulty in conducting the TET examination and for the last three years, no such examination has been conducted.

**28.** Mr. Saikia has submitted that on account of the fact that no TET examination has been conducted for the last three years, the persons otherwise eligible for appointment as Graduate Teacher and Post Graduate Teacher have no opportunity to pass the said examination and if any of the vacancies of the Graduate Teachers and Post Graduate Teachers are filled up, there is all possibility that many of the deserving candidates may not be able to get the opportunity to participate in the said examination process as they are not TET qualified.

Mr. Saikia has submitted that looking to these facts and circumstances the State has introduced the TET-cum-Recruitment Test for recruitment of Graduate

Teachers and Post Graduate Teachers vide Amendment Rules of 2023.

**29.** In respect of amendment made to the Schedule-III of the Rules of 2018 vide Second Amendment Rules of 2023, it is argued by Mr. Saikia that by amending the Schedule-III of the Rules of 2018 and making a provision that a candidate shall have to read the same subject as one of the subjects in the Degree Level, in which he or she has obtained Post Graduate Degree, has an object to be achieved.

It is contended that by amending the Schedule III of the Rules of 2018, the minimum qualification prescribed by the NCTE Regulations of 2014 has not been disturbed or compromised. The requirement of reading the same subject as one of the subjects in the Degree Level in which a candidate has obtained the Post Graduate Degree is a qualification in addition to the minimum qualification prescribed in the NCTE Regulations of 2014.

**30.** It is submitted that the NCTE has strived to achieve planned and coordinated development of teacher education system throughout the country by laying down the minimum norms of eligibility and it has not, as it cannot, lay down the requirement criteria for appointment of Teachers. It is submitted that though prior to the amendment to the Rules of 2018, Post Graduate Teachers were appointed without requiring them to have the same subject in Post Graduation Course as one of the subjects in Graduate level, but later on it was realized that such requirement posed several difficulties in the Teachers discharging efficient instructions to the students. The minimum educational qualification required for teaching in High School is Graduate Degree along with B.Ed.

**31.** Mr. Saikia has submitted that the syllabus of Master's Degree is steered towards higher order of thinking and is research oriented. However, the basic concepts of subject are given at Bachelor Degree programme. It is the need of the day that the Teachers must have conceptual clarity in the subject concerned.

**32.** It is further submitted by Mr. Saikia that it is generally noticed that a person with the Master's Degree in a subject, which was not a subject pursued in the Bachelor Degree, is often deficient in basic concepts. Basic and thorough knowledge of the subjects is a must for Teachers of Secondary School because the Secondary stage is a fundamental/crucial stage where the Teacher has to share his/her knowledge with the students and in the absence of basic knowledge of the subject, the students may not be benefitted as required.

**33.** Mr. Saikia has highlighted the advantage of recruiting Post Graduate Teachers who have same subject in their Graduate Degree level and has submitted that the Teachers with the background knowledge of a particular subject often have a deeper understanding of the concepts which may lead to a more comprehensive and insightful teaching approach. A Teacher who has studied a subject extensively is likely to develop specialized skills and techniques that can benefit the students and such Teachers may have effective communication with the students and the students can easily understand.

Mr. Saikia has, therefore, argued that there is enough intelligible differentia between the persons who have opted for same subject in both Graduation and Post Graduation and the persons who have opted different subjects in Graduation and Post Graduation in so far as efficiently discharging

their duties. He submits that the Amendment Rules of 2023 and the Second Amendment Rules of 2023 are student-centric and are more realistic and, therefore, are not required to be interfered with.

**34.** The sum and substance of the arguments advanced by Mr. Saikia, learned Advocate General is that the State is competent to prescribe a qualification which is in addition to the minimum qualification, or higher than the minimum qualification, as prescribed under the NCTE Regulations of 2014. It is contended that while doing so, the only aspect which is to be taken into account is that the criteria prescribed for minimum qualification in Central legislation should not be compromised or tinkered with.

**35.** In support of the above contentions, Mr. Saikia, learned Advocate General, Assam has placed reliance upon the following decisions rendered by the Hon'ble Supreme Court :

(i) ***S. Satyapal Reddy & Ors. Vs. Government of A.P. & Ors.***, reported in ***(1994) 4 SCC 391***;

(ii) ***Dr. Preeti Srivastava & Anr. Vs. State of M.P. & Ors.***, reported in ***(1999) 7 SCC 120***;

(iii) ***State of T.N. & Anr. Vs. S.V. Bratheep (Minor) & Ors.***, reported in ***(2004) 4 SCC 513***;

(iv) ***Jaiveer Singh & Ors. Vs. State of Uttarakhand & Ors.***, reported in ***2023 SCC OnLine SC 1584***.

Mr. Saikia has also placed reliance upon the decision of a Division Bench of this Court rendered in ***Siddhartha Sarkar & Ors. Vs. State of Assam &***



**Ors.**, reported in **2007 (3) GLT 715**.

**36.** Mr. Saikia has further submitted that the petitioners are estopped from raising grievance about the introduction of the TET-cum-Recruitment Test vide Amendment Rules of 2023 because in the un-amended Rules of 2018, the provision regarding Teachers Eligibility Test (TET) examination was already introduced and the petitioners, without raising any question regarding the competence of the State Government of introducing the TET examination, have voluntarily participated in the said examination.

Mr. Saikia has submitted that, looking to the above fact situation, the challenge of the petitioners to the Amendment Rules of 2023 and Second Amendment Rules of 2023 is lacking merit and the same is not liable to be entertained.

**37.** In rejoinder, learned Senior Counsel for the petitioners has submitted that the *ratio decidendi* of the decisions rendered by the Hon'ble Supreme Court in **S. Satyapal Reddy** (supra), **Dr. Preeti Srivastava** (supra), **S.V. Bratheep (Minor)** (supra) and **Jaiveer Singh** (supra), is not that a State Act, on a subject referred in the Concurrent list, can incorporate the provisions which are in direct conflict with the Act made by the Parliament. It is argued that those judgments are rendered in the facts and circumstances of those cases and if those judgments are read in their entirety the same have no applicability in the present controversy.

In support of the above contention, learned Senior Counsel for the petitioners has placed reliance upon the decisions of the Hon'ble Supreme Court rendered in **State of Orissa Vs. Sudhansu Sekhar Mishra & Ors.**, reported

in ***AIR 1968 SC 647*** and ***Islamic Academy of Education & Anr. Vs. State of Karnataka & Ors.***, reported in ***(2003) 6 SCC 697***, wherein the Hon'ble Supreme Court has held that the *ratio decidendi* of a judgment can be deciphered only upon reading the same in its entirety.

**38.** It is further contended by the learned Senior Counsel for the petitioners that the other argument of the State that the petitioners are estopped from challenging the action of the State Government of introducing the TET-cum-Recruitment Test by way of amendment in the Rules of 2018, is without any merit. It is submitted that the petitioners were not in a bargaining position as they were in need of employment and had no other option but to accept the arbitrary introduction of Teachers Eligibility Test (TET) in the Rules of 2018. However, simply because they had appeared in the TET examination introduced by the State under the Rules of 2018, will not restrain them from challenging the validity of the Amendment Rules of 2023 whereby the State has made a candidate to go through TET-cum-Recruitment Test illegally.

**39.** In support of the above contention, learned Senior counsel for the petitioners has placed reliance on the decisions of the Hon'ble Supreme Court rendered in ***Basheshar Nath Vs. Commission of Income Tax Delhi & Rajasthan & Anr.***, reported in ***1959 Supp (1) SCR 528 : AIR 1959 SC 149*** and ***Somesh Thapliyal & Anr. Vs. Vice Chancellor, H.N.B. Garhwal University & Anr.***, reported in ***(2021) 10 SCC 116***.

**40.** Heard the learned counsel appearing for the parties.

**41.** First of all, we deal with the contention of the State that the petitioners

are estopped from raising grievance about the introduction of TET-cum-Recruitment Test vide Amendment Rules of 2023.

**42.** Having taken into consideration the facts and circumstances of the case, particularly, the fact that the petitioners have challenged the competence of the State Government in introducing the TET-cum-Recruitment Test, which is admittedly not provided under the NCTE Regulations of 2014, it cannot be held that simply because the petitioners had earlier not challenged the action of the State Government of introduction of TET examination in the Rules of 2018, they are now restrained from challenging the same when the Rules of 2018 have been amended by the State Government.

It is always open for a person to raise a question about the competence of the State Government in framing/enacting an Act or Rules, which he or she believes that the same is in contravention of the constitutional provisions. If any person approaches a Court with the plea that his fundamental rights have been compromised, the Court cannot limit its power not to entertain such plea by applying the doctrine of waiver, as the fundamental rights guaranteed by the Constitution cannot be waived. Hence, the said contention of the State is rejected.

**43.** Now, we proceed to examine the challenge of the petitioners to the amendments made in the Rules of 2018 by way of Amendment Rules of 2023 and Second Amendment Rules of 2023.

**44.** The Central Government by way of enactment of NCTE Act of 1993 has established the National Council for Teacher Education (NCTE). The powers and functions of the NCTE are provided under the NCTE Act of 1993.

**45.** The Preamble of the NCTE Act of 1993 reads as under:

*“An Act to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and co-ordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system [including qualifications of school teachers] and for matters connected therewith.”*

**46.** Section 12 of the NCTE Act of 1993 defines the functions of the Council to determine minimum standards of education of school teachers, which reads as under :

*“**12. Functions of the Council.**-It shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and co-ordinated development of teacher education and for the determination and maintenance of standards for teacher education and for the purposes of performing its functions under this Act, the Council may--*

*(a) undertake surveys and studies relating to various aspects of teacher education and publish the result thereof;*

*(b) make recommendations to the Central and State Government, Universities, University Grants Commission and recognised institutions in the matter of preparation of suitable plans and programmes in the field of teacher education;*

*(c) co-ordinate and monitor teacher education and its development in the country;*

*(d) **lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher \*\*\* in recognised institutions;***

*(e) lay down norms for any specified category of courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum;*

*(f) lay down guidelines for compliance by recognised institutions, for starting new courses or training, and for providing physical and instructional facilities, staffing pattern and staff qualification;*

*(g) lay down standards in respect of examinations leading to teacher education qualifications, criteria for admission to such examinations and schemes of courses or training;*

*(h) lay down guidelines regarding tuition fees and other fees chargeable by recognised institutions;*

*(i) promote and conduct innovation and research in various areas of teacher education and disseminate the results thereof;*

*(j) examine and review periodically the implementation of the norms, guidelines and standards laid down by the Council, and to suitably advise the recognised institutions;*

*(k) evolve suitable performance appraisal system, norms and mechanisms for enforcing accountability on recognised institutions;*

*(l) formulate schemes for various levels of teacher education and identify recognised institutions and set up new institutions for teacher development programmes;*

*(m) take all necessary steps to prevent commercialisation of teacher education; and*

*(n) perform such other functions as may be entrusted to it by the Central Government.”*

**47.** Section 12A of the NCTE Act of 1993 empowers the NCTE to determine the minimum standards of education of school teachers which reads as under :

**“ 12A. Power of Council to determine minimum standards of education of school teachers.** -- For the purpose of maintaining standards of education in schools, the Council may, by regulations, determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper

*primary, secondary, senior secondary or intermediate school or college, by whatever name called, established, run, aided or recognised by the Central Government or a State Government or a local or other authority:*

*Provided that nothing in this section shall adversely affect the continuance of any person recruited in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate schools or colleges, under any rule, regulation or order made by the Central Government, a State Government, a local or other authority, immediately before the commencement of the National Council for Teacher Education (Amendment) Act, 2011 (18 of 2011) solely on the ground of non-fulfilment of such qualifications as may be specified by the Council:*

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

**48.** Section 32 of the NCTE Act of 1993 empowers the NCTE to make regulations which reads as under :

**“32. Power to make regulations :** (1) *The Council may, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, generally to carry out the provisions of this Act.*

*(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:--*

*(a) the time and the place of the meetings of the Council and the procedure for conducting business thereat under sub-section (1) of section 7;*

*(b) the manner in which and the purposes for which persons may be co-opted by the Council under sub-section (1) of section 9;*

*(c) the appointment and terms and conditions of service of officers and other employees of the Council under sub-sections (1) and (2) respectively of section 10;*

*(d) the norms, guidelines and standards in respect of--*

*(i) the minimum qualifications for a person to be employed as a teacher under clause (d) of section 12;*

*(ii) the specified category of courses or training in teacher education under clause (e) of section 12;*

*(iii) starting of new courses or training in recognised institutions under clause (f) of section 12;*

*(iv) standards in respect of examinations leading to teacher education qualifications referred to in clause (g) of section 12;*

*(v) the tuition fees and other fees chargeable by institutions under clause (h) of section 12;*

*(vi) the schemes for various levels of teacher education, and identification of institutions for offering teacher development programmes under clause (l) of section 12;*

***(dd) [the qualifications of teachers under section 12A;]***

*(e) the form and the manner in which an application for recognition is to be submitted under sub-section (1) of section 14;*

*(f) conditions required for the proper functioning of the institution and conditions for granting recognition under clause (a) of sub-section (3) of section 14;*

*(g) the form and the manner in which an application for permission is to be made under sub-section (1) of section 15;*

*(h) conditions required for the proper conduct of a new course or training and conditions for granting permission under clause (a) of sub-section (3) of section 15;*

*(i) the functions which may be assigned by the Council to the Executive Committee under sub-section (1) of section 19;*

*(j) the procedure and the quorum necessary for transaction of business at the meetings of the Executive Committee under sub-section (5) of section 19;*

*(k) the manner in which and the purposes for which the Executive Committee*

*may co-opt persons under sub-section (6) of section 19;*

*(l) the number of persons under clause (c) of sub-section (3) of section 20;*

*(m) the term of office and allowances payable to members under sub-section (5) of section 20;*

*(n) additional functions to be performed by the Regional Committee under sub-section (6) of section 20;*

*(o) the functions of, the procedure to be followed by, the territorial jurisdiction of, and the manner of filling casual vacancies among members of, a Regional Committee under sub-section (7) of section 20;*

*(p) any other matter in respect of which provision is to be, or may be, made by regulations.”*

**49.** A plain reading of above quoted provisions makes it clear that NCTE is clothed with power to prescribe minimum qualification for recruitment on the post of teachers in pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college. Under the said power, the NCTE has framed regulations from time to time prescribing minimum qualification for teachers to be recruited in pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college. As per the latest regulations, i.e. the NCTE Regulations of 2014, the NCTE has prescribed the minimum qualification for teachers to be recruited in the above referred schools in the First Schedule of the said Regulations of 2014.

**50.** A perusal of the First Schedule of NCTE Regulations of 2014, makes it clear that while prescribing the minimum academic and professional qualification for Secondary/high School (for Classes IX-X) and Senior Secondary/Intermediate (for Classes XI-XII), the passing of TET examination has not been prescribed as a minimum qualification.



**51.** The Hon'ble Supreme Court in *Maa Vaishno Devi Mahila Mahavidyala* (supra), *Innovative Industries Limited* (supra), *Devesh Sharma* (supra) and the decision of the Division Bench of this Court rendered in *Raju Chakraborty* (supra) held that in the matters of education, only the Central Government can enact a legislation by virtue of Entry 66 of List I of Schedule VII of the Constitution of India. The State legislature has no specific power to this effect under List II of Schedule VII of the Constitution. However, Entry 25 of List III of Schedule VII of the Constitution of India provides that both the State and Centre, in relation to education including Technical education, Medical education and Universities, Vocational and Training of Labour, can legislate law. However, the field is primarily covered by the Union List, and the State, while exercising legislative power under Entry 25 List III of the Constitution, cannot legislate any law which is repugnant to the law made by the Parliament or the Central Government.

However, in the above referred judgments, it has not been laid down that the State cannot prescribe a qualification in addition to the minimum qualification or higher qualification than the minimum qualification prescribed by Central legislation, in the matters of recruitment on the public posts and also in the matters of admission in the institutions, such as Medical Colleges and Engineering Colleges.

On the other hand, the Hon'ble Supreme Court in various judgments including the judgment of Constitution Bench, has held that the State Government can legislate a law on the subject of education in reference to Entry 25 of List III and can prescribe a qualification in addition to the minimum qualification or can prescribe higher qualification than the minimum qualification prescribed in a law enacted by the Parliament subject to the condition that the

minimum qualification provided by the Act of the Parliament is not disturbed or compromised.

**52.** It would be beneficial to take note of the following decisions of the Hon'ble Supreme Court while dealing with this aspect.

**53.** In **S. Satyapal Reddy** (supra), the Hon'ble Supreme Court has held as under:

*“5. Having given our anxious consideration to the respective contentions, we find that the State's contention merits acceptance. It is seen that marginal note in [Section 213](#) for “appointment of Motor Vehicles Officers” indicates the subject-matter of the section. Sub-section (1) says that the State Government may, for the purpose of carrying into effect the provisions of this Act, establish Motor Vehicles Department and “appoint as officers thereof such persons as it thinks fit”. The power of appointment includes the power to select a fit and competent person who it thinks fit to hold the post and would discharge efficiently the functions assigned under the Act. It includes the power to prescribe qualifications to select suitable officers. The Parliament preserved that power to the State Government under [Section 213\(1\)](#) itself by allowing it to appoint the officers whom it finds fit to carry into effect the provisions of the Act. Sub-section (4) gives power to the Central Government, having regard to the object of the Act, by a notification in the Official Gazette “to prescribe minimum qualification” which the officers or class of officers thereof shall possess for being appointed as such officer or to the cadre belonging to the State Government. Under Entry 41 of List II (State List) of VIIth Schedule to the Constitution, the public service includes the services of the officers to be appointed under sub-section (1) of [Section 213](#) of the Act. No doubt, as contended by the learned counsel for the appellants that the Act receives paramountcy, since under Entry 35, the subject under the Act covers the concurrent field. Sub-section (4) of [Section 213](#) also preserves the power to prescribe qualifications higher than that “minimum qualification” prescribed by the Central Government to appoint the “said officers or any class thereof shall possess for being appointed as such”.*

**54.** In **Dr. Preeti Srivastava** (supra), the Constitution Bench of the Hon'ble Supreme Court has held as under:

*“35. The legislative competence of the Parliament and the legislatures of the*

States to make laws under [Article 246](#) is regulated by the VIIIth Schedule to the Constitution. In the VIIIth Schedule as originally in force, Entry 11 of List-II gave to the States an exclusive power to legislate on

*“education including universities, subject to the provisions of*

*Entries 63, 64, 65 and 66 of List I and Entry 25 of List-III.”*

Entry 11 of List II was deleted and Entry 25 of List III was amended with effect from 3-1-1976 as a result of the Constitution 42nd Amendment Act of 1976. The present Entry 25 in the Concurrent List is as follows:

*“25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.”*

Entry 25 is subject, inter alia, to Entry 66 of List I. Entry 66 of List I is as follows:-

*“66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.”*

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union Legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards [laid down by](#) the Union of India under Entry 66 of List I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in [Article 254](#).

**36.** It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are

*covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are:*

- (1) the calibre of the teaching staff;*
- (2) a proper syllabus designed to achieve a high level of education in the given span of time;*
- (3) the student-teacher ratio;*
- (4) the ratio between the students and the hospital beds available to each student;*
- (5) the calibre of the students admitted to the institution;*
- (6) equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;*
- (7) adequate accommodation for the college and the attached hospital; and*
- (8) the standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged.*

**37.** *While considering the standards of education in any college or institution, the calibre of students who are admitted to that institution or college cannot be ignored. If the students are of a high calibre, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has*

to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. Education involves a continuous interaction between the teachers and the students. The pace of teaching, the level to which teaching can rise and the benefit which the students ultimately receive, depend as much on the calibre of the students as on the calibre of the teachers and the availability of adequate infrastructural facilities. That is why a lower student-teacher ratio has been considered essential at the levels of higher university education, particularly when the training to be imparted is highly professional training requiring individual attention and on-hand training to the pupils who are already doctors and who are expected to treat patients in the course of doing their post-graduate courses.

**38.** The respondents rely upon some observations in some of the judgments of this Court in support of their stand that it is for the State to lay down the rules and norms for admission; and that these do not have any bearing on the standard of education. **In Minor P. Rajendran v. State of Madras & Ors.** [(1968) 2 SCR 786], a Constitution Bench of this Court considered the validity under Articles 14 and 15(1), of districtwise reservations made for seats in the medical colleges. In that case, the Act in question prescribed eligibility and qualifications of candidates for admission to the medical colleges. The Court observed:

“So far as admission is concerned, it has to be made by those who are in control of the colleges, - in this case the Government, because the medical colleges are government colleges affiliated to the university. In these circumstances, the Government was entitled to frame rules for admission to medical colleges controlled by it, subject to the rules of the university as to eligibility and qualifications. This was what was done in these cases and therefore the selection cannot be challenged on the ground that it was not in accordance with the University Act and the rules framed thereunder.”

This Court, therefore, upheld the additional criteria framed by the State for admission which were not inconsistent with the norms for admission laid down by the University Act. Since these additional qualifications did not diminish the eligibility norms under the University Act, this Court upheld the additional criteria laid down by the State as not affecting the standards laid down by the University Act. The question of diluting the standards laid down did not arise.

**39.** The respondents have emphasised the observation that admission has to be made by those who are in control of the colleges. But, the question is, on what basis? Admissions must be made on a basis which is consistent with the standards laid down by a statute or regulation framed by the Central Government in the exercise of its powers under Entry 66, List I. At times, in some of the judgments, the words “eligibility” and “qualification” have been used interchangeably, and in some cases a distinction has been made between the two words – “eligibility” connoting the minimum criteria for selection that

may be laid down by the University Act or any Central Statute, while “qualifications” connoting the additional norms laid down by the colleges or by the State. In every case the minimum standards as laid down by the Central Statute or under it, have to be complied with by the State while making admissions. It may, in addition, lay down other additional norms for admission or regulate admissions in the exercise of its powers under Entry 25 List III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down.”

**55.** In **S.V. Bratheep (Minor)** (supra), the Hon’ble Supreme Court held as under:

“9. Entry 25 of List III and Entry 66 of List I have to be read together and it cannot be read in such a manner as to from an exclusivity in the matter of admission but if certain prescription of standards have been made pursuant to Entry 66 of List I, then those standards will prevail over the standards fixed by the State in exercise of powers under Entry 25 of List III insofar as they adversely affect the standards laid down by the Union of India or any other authority functioning under it. Therefore, what is to be seen in the present case is whether the prescription of the standards made by the State Government is in any way adverse to, or lower than, the standards fixed by the AICTE. It is no doubt true that the AICTE prescribed two modes of admission - One is merely dependent on the qualifying examination and the other dependent upon the marks obtained at the Common Entrance Test. The appellant in the present case prescribed the qualification of having secured certain percentage of marks in the related subjects which is higher than the minimum in the qualifying examination in order to be eligible for admission. If higher minimum is prescribed by the State Government than what had been prescribed by the AICTE, can it be said that it is in any manner adverse to the standards fixed by the AICTE or reduces the standard fixed by it? In our opinion, it does not. On the other hand, if we proceed on the basis that the norms fixed by the AICTE would allow admission only on the basis of the marks obtained in the qualifying examination, the additional test made applicable is the common entrance test by the State Government. If we proceed to take the standard fixed by the AICTE to be the common entrance test then the prescription made by the State Government of having obtained certain marks higher than the minimum in the qualifying examination in order to be eligible to participate in the common entrance test is in addition to the common entrance test. In either event, the streams proposed by the AICTE are not belittled in any manner. The manner in which the High Court has proceeded is that what has been prescribed by the



AICTE is inexorable and that that minimum alone should be taken into consideration and no other standard could be fixed even the higher as stated by this Court in **Dr. Preeti Srivastava**'s case. It is no doubt true as noticed by this Court in **Adhiyaman**'s case that there may be situations when a large number of seats may fall vacant on account of the higher standards fixed. The standards fixed should always be realistic which are attainable and are within the reach of the candidates. It cannot be said that the prescriptions by the State Government in addition to those of AICTE in the present case are such which are not attainable or which are not within the reach of the candidates who seek admission for engineering colleges. It is not very high percentage of marks that has been prescribed as minimum of 60% downwards, but definitely higher than the mere pass marks. Excellence in higher education is always insisted upon by series of decisions of this Court including **Dr. Preeti Srivastava**'s case. If higher minimum marks have been prescribed, it would certainly add to the excellence in the matter of admission of the students in higher education.

**10.** Argument advanced on behalf of the respondents is that the purpose of fixing norms by AICTE is to ensure uniformity with extended access of educational opportunity and such norms should not be tinkered with by the State in any manner. We are afraid, this argument ignores the view taken by this Court in several decisions including **Dr. Preeti Srivastav**'s case that the State can always fix a further qualification or additional qualification to what has been prescribed by the AICTE and that proposition is indisputable. The mere fact that there are vacancies in the colleges would not be a matter which would go into the question of fixing the standard of education. Therefore, it is difficult to subscribe to the view that once they are qualified under the criteria fixed by the AICTE they should be admitted even if they fall short of the criteria prescribed by the State. The scope of the relative entries in the Seventh Schedule to the Constitution has to be understood in the manner as stated in the **Dr. Preeti Srivastava**'s case and, therefore, we need not further elaborate in this case or consider arguments to the contrary such as on application of occupied theory no power could be exercised under Entry 25 of List III as they would not arise for consideration.”

**56.** The Division Bench of this Court in **Siddhartha Sarkar** (supra), while taking into consideration the decisions rendered by the Hon’ble Supreme Court in **Dr. Preeti Srivastava** (supra) and **S.V. Bratheep (Minor)** (supra), has also expressed the same view.

**57.** In view of the above settled principle of law, if we examine the amendments to the Rules of 2018 introduced by the State Government vide Amendment Rules of 2023, and the Second Amendment Rules of 2023, it can safely be said that the introduction of TET-cum-Recruitment Test for the purpose of recruitment on the post of Graduate Teacher and Post Graduate Teacher, the State Government has not lowered down the minimum qualification prescribed by the NCTE in the NCTE Regulations of 2014 in relation to the Teachers to be appointed in the Secondary/ High Schools and Senior Secondary/ Intermediate Schools but only prescribed a higher qualification of passing the TET-cum-Recruitment Test for recruitment on the post of Graduate Teacher and Post Graduate Teacher and additionally provided that for recruitment on the post of Post Graduate Teacher, a candidate shall have to read the same subject as one of the subjects in Degree Level in which he or she has obtained the Post Graduate Degree.

**58.** We are unable to accept the contention of the learned Senior Counsel for the petitioners that the *ratio decidendi* of the judgments rendered by the Hon'ble Supreme Court in **S. Satyapal Reddy** (supra), **Dr. Preeti Srivastava** (supra), **Bratheep (Minior)** (supra) and **Jaiveer Singh** (supra) is not that the State Government can prescribe a different qualification than the minimum qualification prescribed in an Act enacted by the Parliament in the matters of education. Rather, the Hon'ble Supreme Court, after taking into consideration the constitutional provisions, particularly, the powers of the Parliament and the State Legislature on the subject of education in reference to Entry 66 to List I and Entry 25 of List III of Schedule VII of the Concurrent List of the Constitution of India, has laid down a principle of law that the State can prescribe a



qualification in addition to the minimum qualification or a qualification higher than the minimum qualification without compromising the minimum qualification.

**59.** In such circumstances, we do not find any repugnancy in the NCTE Regulations of 2014 and the provisions of Rules of 2018 as amended vide Amendment Rules of 2023, notified vide Notification dated 20.09.2023 and the Second Amendment Rules of 2023, notified vide Notification dated 13.12.2023.

**60.** We also do not find any reason to reject the justifications offered by Mr. D. Saikia, learned Advocate General, which has compelled the State to introduce the TET-cum-Recruitment Test and to make a provision for the Post Graduate Teachers to read the same subject as one of subjects in the Degree level in which a candidate has obtained the Post Graduate Degree.

**61.** So far as the contention of the learned Senior Counsel for the petitioners to the effect that the judgments, relied upon by the learned Advocate General in support of his contention that the State can prescribe an additional or higher qualification from the minimum qualification prescribed by a Central law, have no applicability in the present controversy, we do not find any merit in the same and the same is, therefore, rejected.

**62.** In view of the discussions made hereinabove, the challenge of the petitioners to the validity of the provisions of Rule 8, Rule 10(1) and Rule (2) of the Assam Secondary Education (Provincialised Schools) Service (Amendment) Rules, 2023, notified on 20.09.2023 as well as the amendment brought into the Schedule-II and Schedule-III of the Assam Secondary Education (Provincialised

Schools) Service Rules, 2018 by way of the Assam Secondary Education (Provincialised Schools) Service (Second Amendment) Rules, 2023, notified on 13.12.2023, fails and resultantly, the present writ petitions are dismissed.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**