**IN THE HIGH COURT OF MADRAS**

Writ Petition No. 19631 of 2011

Decided On: 14.08.2012

Appellants: **R. Thirunavukkarasau**
**Vs.**
Respondent: **The State of Tamil Nadu, rep. by its Secretary to Government, School of Education Department, Secretariat, Fort St. George, Chennai-600009 and Ors.**
[Writ Petition Nos. 14864, 14865, 14866, 14867, 14868, 15004, 15235, 15578, 15579, 15675, 15802, 16088 and 16186 of 2012]

**Hon'ble Judges/Coram:**
Honourable Mr. Justice V. Ramasubramanian

**ORDER**

**Honourable Mr. Justice V. Ramasubramanian**

1. A few Secondary Grade Teachers have come up with the above writ petitions, primarily seeking a Mandamus, to direct the respondents to prepare a panel of Secondary Grade Teachers eligible for promotion as B.T. Assistants in Middle Schools, including only the names of those Secondary Grade Teachers who have completed a 3 year Degree Course in the concerned discipline, after completing 10 years of High Schooling and 2 years of Higher Secondary Course. Some of the writ petitions also challenge, in addition to the above prayer, Clause 6 of an instruction issued by the Director of School Education dated 18.12.2008 by which the Panel Drawing Authorities were directed to include even those Secondary Grade Teachers who have completed a Degree of one year duration in the concerned subject. A few petitioners have challenged the panels drawn in a couple of Districts such as Thiruvallur and Salem Districts, in so far as those panels include the names of persons who have a degree of a duration of one year in the concerned subject. I have heard Mr. N.G.R. Prasad, Mr. C. Selvaraju, learned Senior Counsel and Mr. M.Ravi, learned counsel appearing for the petitioners in the writ petitions, Mr. P.H. Arvindh Pandian, learned Additional Advocate General, assisted by Mr. M.C. Swamy, learned Special Government Pleader for the official respondents and Mr. K.M. Vijayan, learned Senior Counsel, M/S. G. Sankaran, P.V.S. Giridhar and S.N. Ravichandran, K.H. Ravi Kumar and Mrs. A. Arulmozhi, learned counsel appearing for the contesting/impleaded respondents.

2. The writ petitioners as well as the contesting respondents are at present employed as Secondary Grade Teachers. The official respondents have either already prepared or/been in the process of preparing panels for promotion to the post of B.T. Assistants in Middle Schools. Since the panels for promotion to the post of B.T. Assistant are prepared by the official respondents, on the basis of subject roster, depending upon the vacancies available in each of the subjects to be taught, the contesting respondents have secured additional degrees also known as 'dual degrees', whose duration is only one year, in the subjects concerned.

3. The grievance of the petitioners is that the contesting respondents have been included in the panels for promotion to the post of B.T. Assistants in the subjects in which they secured an additional/dual degree of a duration of one year and that therefore, they cannot be considered as eligible for promotion in the concerned subjects.

4. Therefore, the short question that arises for consideration in this batch of writ petitions is as to whether a person who obtained an additional/dual degree of a duration of one year in a particular subject, is entitled to be promoted to the post of B.T. Assistants in that particular subject or not.

5. Before I take up for consideration the core question, I must first deal with a preliminary objection raised by the learned counsel for the impleaded respondents, to the very maintainability of the writ petitions. The preliminary objection is that most of the writ petitioners have come up with a challenge to the panels for promotion, without making those already included in the panels as parties to the writ petitions. Therefore, the writ petitions, according to the learned counsel for the contesting respondents, are not maintainable, due to non-joinder of necessary and proper parties and that the attempt of the writ petitioners to get orders behind the back of persons whose inclusion in the panels are under challenge, is fraudulent.

6. At the outset, the above preliminary objection deserves to be rejected at least for two reasons. They are:-

(i) Many persons, whose names are found in the impugned panels, have now come up before me with applications for impleading and those impleading applications have been allowed by me. All the impleading petitioners are actually represented by a battery of eminent, effective, senior and forceful lawyers. Actually the number of counsel who appeared for the contesting respondents and the effectiveness of their presentation far exceeded that of the learned counsel appearing on the side of the writ petitioners. Therefore, the cause of those, whose names are already included in the panels, have been espoused before me vociferously and their contentions are very effectively presented before me by a number of counsel. Hence the defect that existed at the threshold, in the writ petitions, has now been cured to a great extent. It is needless to point out that the non-joinder of necessary and proper parties is a curable defect. Though the writ petitioners did not implead all the persons who may be aggrieved by the eventual decision, many of them have got impleaded subsequently. Therefore, the defect has actually got cured.

(ii) The objection to the maintainability of the writ petitions, even if could be accepted, would apply only to one part of the prayer in the writ petitions. The prayer in all these writ petitions comprises of two parts, one relating to a pure question of law and another relating to mixed question of law and fact. While the correctness of the inclusion of the names of one or more named individuals, in a panel for promotion, is a mixed question of fact and law, the question whether dual degrees of a duration of one year in a particular subject can be considered eligible for promotion in that particular subject, is a pure question of law. For deciding, a pure question of fact or a mixed question of law and fact, it may be essential to implead those who may be affected by the outcome. But for deciding the pure question of law, it may not be so. The case on hand raises both a pure question of law and mixed questions of fact and law. Even if I agree with the learned counsel for the contesting respondents, I would be barred from deciding the validity of the individual panels. In other words, if the objections to the maintainability of the writ petitions on the ground of non-joinder of necessary parties is sustained, the prayer which related to individual panels may have to go. But still the pure question of law as to whether a person holding a dual degree in a subject could be considered as eligible for promotion, would certainly survive for adjudication, even if none of the contesting respondents have come up before me with impleading petitions. As a matter of fact, many of the writ petitions challenge the proceedings dated 18.12.2008 of the Director. In these proceedings, the Director indicated that persons holding a dual degree, obtained within a duration of one year could be considered for promotion. These proceedings are not issued in favour of any named individuals. These are general in nature and hence the petitioners cannot be expected to implead anyone in the writ petitions challenging these proceedings dated 18.12.2008. In fact, the potency of the objection relating to non-joinder of necessary parties, is whittled down, in view of Rule 9 and Rule 13 of Order I CPC. Though the provisions of the Code of Civil Procedure are not applicable per se to writ proceedings, the fundamental principles, enunciated in the Code, if they are based upon equity and good conscience, can always be applied to writ proceedings. Therefore, in essence, the objection on the ground of non-joinder of necessary and proper parties, cannot be sustained in so far as the pure question of law that arises for consideration in these cases is concerned.

7. Having disposed of the challenge to the maintainability of the writ petitions, I should now turn my attention to the core question. But before doing so, I should actually bring on record the stand taken by the official respondents viz., the Government and the Director of Elementary Education. The stand taken by the official respondents, appears to be wavering and not consistent throughout. As a matter of fact, a communication of the Director of Elementary Education dated 19.7.2012 was produced before me, at the time of conclusion of the hearing of the writ petitions. This communication supports the stand of the writ petitioners. Therefore, I can virtually allow the writ petitions, on the basis of the stand taken by the official respondents, since there is no ambiguity in the letter dated 19.7.2012. Yet I am persuaded to go into the core issue, on account of two things viz., (i) that the official respondents have been shifting sides, without any consistency and (ii) that by just closing the writ petitions on the basis of the letter of the Director of Elementary Education, I would only be shirking the responsibility of answering the fundamental issue raised in these writ petitions. This would only pave the way for a host of fresh writ petitions challenging the letter of the Director dated 19.7.2012. It is rudimentary that a Court should find a solution to the problem without driving the parties to another round of litigation. The only exception to this is that a Court would not dabble with issues which have become mere matters of academic importance. Therefore, let me first bring on- record how the official respondents have, in the past, sent different signals. The following sequence of events or orders, may be useful to see things more clearly:-

(i) By the proceedings dated 18.12.2008 in Rc. No. 36679/D3/2008, the Director of Elementary Education issued certain guidelines for preparation of seniority lists and panels. In Clause (6) of the said proceedings dated 18.12.2008, the Director stated that a person who had secured an additional degree of a duration of one year, will be eligible for consideration for promotion to the post of B.T. Assistants.

(ii) By another proceedings bearing the same number dated 6.1.2009, the Director of Elementary Education instructed all the Subordinate Officers that a person who had completed a 3 year degree course without B.Ed./B.T., could be considered for appointment to the post of Tamil Teacher or Middle School Headmaster, if he had additionally secured a one year degree (double major) in B.A.(Tamil)/B.Lit.(Tamil). These proceedings dated 6.1.2009 were issued by way of additional instructions to the previous set of instructions dated 18.12.2008.

(iii) When a person by name H. Arunkumar made an application under the Right to Information Act, to the Directorate of Elementary Education, raising about 7 queries, the Public Information Officer gave a reply on 14.11.2010. Question No. 2 raised by the applicant therein was as to whether persons who did 3 year degree in History, Mathematics, Commerce, Economics, Tamil etc., could be promoted as B.T. Assistants (English) merely because they secured an additional degree of a duration of one year from Annamalai University in B.A. (English) Literature. But the Public Information Officer shirked the question by saying that questions raised on presumptions cannot be answered. Nevertheless, the Public Information Officer answered question Nos.4 and 5, in the negative. Question No. 4 was as to whether the holder of a one year degree in English Literature could be compared to the holder of a degree of 3 years duration in B.A. (English). Question No. 5 was as to whether the Government had issued any orders for recognising one year B.A.(English) degree. The Public Information Officer gave an emphatic "no" as the answer to these questions.

(iv) In response to another query made by another candidate, the Public Information Officer sent a reply dated 15.12.2010 to the effect that the Director of Elementary Education had not issued any orders for the grant of promotion to the post of B.T. Assistants (English) to one year degree holders.

(v) In another set of instructions issued in Rc. No. 12118/D1/2011 dated 13.9.2011, the Director of School Education clarified in paragraph 27 that before including in the panel the names of persons who secured dual degrees of a duration of one year, the District Elementary Educational Officer should examine the syllabus, the leave taken by the teachers, the particulars of prior permission etc. However, in paragraph-22 of the same instructions, it was also stated that only those who had acquired a degree under the stream of 10+2+3 should be included in the panel.

(vi) In G.O.Ms.No.162, Higher Education, dated 14.7.2011, the Government issued guidelines for admission of students to Teacher Training Institutions for the academic year 2011-2012. In the Annexure to the said Government Order, it was made clear in Paragraph II (iv) that candidates who have passed Additional Degree Program with less than 3 years duration, are not eligible for admission. Again in Paragraph II (v) of the Annexure to the same Government Order, it was clarified that candidates who had passed under 4 years Dual Degree Program with 2 major subjects in Part III, are not eligible for admission. Therefore, it is clear that the second degree or the additional degree obtained with a duration of less than 3 years, is not even considered by the Government for admission to B.Ed. At this stage, it is also relevant to record that B.Ed., Program itself is now designed with particular reference to optional subjects such as Tamil/Urdu, English, Maths, Physical Sciences (Physics), Physical Sciences (Chemistry), Biological Sciences (Botany), Biological Sciences (Zoology), History, Geography, Computer Science, Home Science, Economics, Commerce, Political Science, Sociology, Psychology, Logic and Indian Culture, as seen from Paragraph I.1 of the Annexure to the above Government Order.

(vii) However, by a proceeding Rc.No.12118/D1/2011 dated nil.12.2011, the Director of Elementary Education, issued instructions regarding the counselling to be held on 21.12.2011 and 22.12.2011 for filling up of posts in schools which got upgraded. In Paragraph I of the said instructions, the Director indicated the roster to be followed subject-wise, while filling up the posts of B.T. Assistants. However, in Paragraph 4 of the said instructions, the Director also clarified that Secondary Grade Teachers who are qualified in History, Geography and other subjects, cannot be allowed to teach English and that as per G.O.Ms.No.1383, School Education, dated 23.8.1988, only those graduates possessing a degree in English as the main subject could be appointed as B.T. Assistants in English. Having said that in Paragraph 4, the Director said something else in paragraph 6. In paragraph 6, he stated that those Secondary Grade Teachers holding B. Lit, with a second degree in B.A. (English) and those Secondary Grade Teachers who have obtained degree in one sitting can also be considered subject to the rules framed by the Teachers Recruitment Board. This actually confuses the stand taken in paragraph 4.

(viii) In response to a query made under the Right to Information Act, the Public Information Officer of the Teachers Recruitment Board sent a communication in O.M.No.264/B-2/2012, dated 28.2.2012, giving a different signal. It was stated therein that a person who obtained a degree of a 3 year duration, will be considered for appointment as B.T. Assistant (English) if he had secured a second degree in B.A. (English).

(ix) In response to another query, the Public Information Officer of the Teachers Recruitment Board clarified that a double degree secured after undergoing a one year course, is considered as an eligible qualification for appointment. There is no point in multiplying all such replies because the Teachers Recruitment Board appears to be taking a stand that the double degree holders are qualified for appointment, in the subject in which they secured the second degree though it is of a duration of one year.

(x) In another reply issued in Rc.No.114632/C3/E2/2009 dated 8.12.2009, the Joint Director (Establishment) of School Education also clarified that a Secondary Grade Teacher who completed B.Lit. (Tamil) and who also obtained a B.Sc., degree at the same time from another University through the Distance Education Program of a duration of one year, will also be qualified for appointment as B.T. Assistant (Maths). In a similar communication dated 24.3.2012, issued in O.M.No.14436/C3/E1/2012, the Joint Director again reiterated that a person who obtained a B.Sc., degree in Mathematics of a duration of one year will be considered for promotion.

8. The various instructions issued by (i) Director of Elementary Education (ii) Joint Director of School Education (Establishment) (iii) Teachers Recruitment Board and (iv) the Government, either in general or in response to the queries made under the Right to Information Act, disclose that the stand taken by the official respondents has not been consistent. The various orders reflect the merry-go-round approach on the part of the respondents on this issue which is of a serious consequence. If the stand taken by the official respondents before the advent of the present litigation can be termed as inconsistent, the stand taken now before Court also appears to be no better.

9. In the counter affidavit filed by the Director of Elementary Education in W.P.No.15579 of 2012, the second respondent has taken a stand that the dual degrees issued by the Universities are recognised by the University Grants Commission (UGC) and that therefore they could be taken into consideration for promotion to the post of B.T. Assistants. The Director has also relied upon the stand taken by the Recruiting Agency viz., the Teachers Recruitment Board to the same effect. In paragraph 5 of the counter affidavit, the director has pointed out that since there are no practical examinations in the subject of English like other Science subjects, promotions were, in fact, granted to Secondary Grade Teachers, as B.T. Assistants (English), on the basis of the dual degree obtained by them in English. It is interesting to note that the Director of Elementary Education has claimed in his counter that dual degrees are considered as eligible qualification for promotion, in the interest of children from poor and downtrodden communities, with a view to impart quality education to them. I do not think that there can be a more heinous insinuating statements than this.

10. After having taken such a stand in the counter affidavit filed on 20.6.2012, the learned Special Government Pleader aired a different view, when the miscellaneous petitions for interim orders in the above writ petitions came up for hearing before N. Paul Vasanthakumar, J. It is necessary to extract the orders passed on 26.6.2012, since it contains a statement made by the learned Special Government Pleader on behalf of the Director of Elementary Education. Hence it is extracted as follows:-

2. Learned Special Government Pleader, on instructions from the Director of Elementary Education dated 26.6.2012, submitted that a proposal has been sent to the Government in Rc.No.12570/D1/2012 dated 14.6.2012 for clarification from the Government as to whether a Double Degree (One Year Course) obtained by an individual can be considered for promotion to the post of B.T. Assistants in the discipline wherein the individual has acquired Double Degree (One Year Course) and the proposal is under consideration of the Government. On instructions, he has further submitted that till the issuance of appropriate orders by the Government, promotion from the post of Secondary Grade Teacher to that of B.T. Assistants based on the Double Degree (One Year Course) will not be effected.

3. The said submission made by the learned Special Government Pleader, on instructions from the Director of Elementary Education, is recorded and the official respondents, while conducting counselling for promotion to the post of B.T. Assistants, are bound to verify whether the candidates appearing for counselling is having Three Years Degree Certificate of Double Degree (One Year Course) Certificate. If the candidates are having One Year Degree Course Certificate, they are not entitled to be considered for promotion, pending further orders.

4. Learned Special Government Pleader is directed to intimate the officers concerned regarding the order passed in these miscellaneous petitions.

11. Thereafter, the Director of Elementary Education issued proceedings in Rc.No.13275/E1/2012 dated 19.7.2012. Paragraph 5 of the said order reads as follows:-

5/ gl;ljhhp Mrphpah; gjtp cah;t[. gp/vl;/t[ld; 10 + 2 + 3 Kiwapy; jFjpa[ilath;fSf;F kl;Lnk tH';f ntz;Lk;/ Xuhz;L,ul;ilg; gl;l (Double Degree) Kiwia vLj;Jf;bfhs;sf;TlhJ/

12. Therefore, it is clear that no useful purpose will be served in either leaving the issue to the official respondents or closing the writ petition by relying upon the stand taken by the respondents at different points of time. The official respondents appear to be caught between teachers who wish to have promotions through the short cut methods on the one hand and the necessity to maintain quality of education on the other hand. Therefore, de hors the stand taken by the official respondents, it has become necessary to see how the core issue raised in the writ petition has to be answered.

13. On the core issue raised in the writ petitions, the battery of lawyers appearing for the contesting respondents projected their stand point from different perspectives. While many projected their views from the prescription contained in the University Grants Commission Act and the various Regulations issued by UGC, a few persons went to the extent of projecting their stand point from the Constitutional Scheme and the provisions of the National Council for Teacher Education Act and the Regulations framed thereunder. Some of them also laid stress on the past conduct of the official respondents to drive home the point that the dual degree is no less a degree than the regular degree and that the same cannot be equated to a degree secured through Open University System without completing a regular stream of education in a High School, Higher Secondary School and a College. Therefore, let me first group these contentions into a few categories so that I do not miss any one of the contentions.

14. All the contentions raised by the learned counsel for the contesting respondents could be summarised as follows:-

(i) that under the University Grants Commission Act and the Regulations framed thereunder, the dual degree granted by a recognised University is a valid degree and hence the State cannot belittle the status of such a degree, in view of the Constitutional Scheme of things;

(ii) that the National Council for Teacher Education Act and the Regulations framed thereunder also do not distinguish a graduate holding a 3 year degree in a subject and a graduate holding a one year degree in the same subject along with a 3 year degree in another subject and hence the State cannot act contrary to the Scheme of NCTE;

(iii) that the Tamil Nadu Elementary Education Act, 1920, the rules issued thereunder and the statutory rules issued under the proviso to Article 309 of the Constitution, all prescribe merely a degree in a subject as the essential qualification and hence the State cannot, without amending the rules, exclude the dual degree holders from the purview of these rules;

(iv) that the question as to whether an additional degree obtained in a different subject after undergoing a course of a duration of one year can be considered as equivalent to a degree obtained after undergoing a 3 year course, is a question that should be left open to be decided only by Experts and not by this Court;

(v) that in the previous year, several persons holding a dual degree were promoted and hence similarly placed persons cannot be discriminated this year;

(vi) that a dual degree is only an additional qualification and cannot be considered to be a disqualification; and

(vii) that, on facts, persons who undergo an additional degree of a duration of one year, study all essential papers that are prescribed in a 3 year degree, leaving out only the subjects that they had already studied in a 3 year degree in a different subject and hence the additional degree cannot be devalued by the respondents.

CONTENTION No. 1:

15. The first contention of the learned counsel appearing for the contesting respondents revolves around the provisions of the University Grants Commission Act, the Regulations issued thereunder, the definition of a degree under these Regulations and the power of the State vis-a-vis the prescription contained in the University Grants Commission Act and the Regulations.

16. Section 2(f) of the University Grants Commission Act, 1956 defines a University to mean a University established or incorporated by or under a Central Act, a Provincial Act or a State Act and it includes any such institution as may be recognised by the Commission in accordance with the Regulations made under this Act. Section 12 of the Act, vests with the Commission, the duty to take all steps for the promotion and coordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities. Clause (d) of Section 12 of the Act, empowers the Commission to recommend to any University, the measures necessary for the improvement of University education and to advise the University upon the action to be taken for the purpose of implementing such recommendation. The Commission is also vested with the role of an Advisor under Clause (g) of Section 12 of the Act. Section 22(1) of the Act, makes it clear that the right of conferring or granting a degree shall be exercised only by a University established by a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under Section 3. Sub-section (2) of Section 22 prohibits all persons and authorities from conferring or granting any degree, except as provided in sub-section (1). Interestingly, sub-section (3) of Section 22 states that for the purposes of this Section, the expression "degree" would mean any such degree as may be specified in this behalf by the Commission by notification in the official Gazette, with the previous approval of the Central Government.

17. Section 26(1) confers power upon the Commission to make Regulations. Clause (f) of sub-section (1) of Section 26 indicates that the Regulations made by the University Grants Commission may include defining the minimum standards of instruction for the grant of any degree by any University. However, in so far as the appointment of teaching staff is concerned, the power of the University Grants Commission to make Regulations appears to be confined, under Clause (e) of Section 26(1) only to teachers in Universities. They do not appear to cover the qualifications required of teaching staff of schools.

18. In exercise of the powers conferred by Section 26(1)(f) of the Act, the Commission issued 2 sets of Regulations. One relates to formal education and another relates to non formal education. Regulation 2 of the Regulations relating to formal education known as "University Grants Commission (The Minimum Standards of Instructions for the Grant of the First Degree through Formal Education in the Faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences) Regulations 1985 contain a series of prescriptions. Regulation 2 reads as follows:-

2. Admission/Students.--(1) No student shall be eligible for admission to the first Degree Course in these faculties unless he has successfully completed 12 years schooling through an examination conducted by a Board/University. The admission shall be made on merit on the basis of criteria notified by the institutions after taking into account the reservation order issued by to Government from time to time.

(2) Student enrolment shall be in accordance with the number of teachers and physical facilities available.

(3) No student shall be eligible for the award of the first degree unless he has successfully completed a three year course; this degree may be called the B.A./B.Sc./ B.Com. (General/Honours/Special) degree as the case may be:

Provided no student shall be eligible to seek admission to the Master's Course in these faculties, who has not successfully pursued the first Degree Course of three years' duration:

Provided further that, as a transitory measure where the Universities are unable to change over to a three year degree course, they may award a B.A/B.Sc./ B.Com.(Pass) degree on successful completion of two year course, but that no student of this stream shall be eligible for admission to the Master's course unless he has undergone further one year bridge course and passed the same. The three year degree course after 10+2 stage should in no case be termed as B.A./B.Sc./B.Com.(Pass) degree.

19. A careful reading of Regulation 2 would show that it contains the following prescriptions:-

(i) that a student cannot be admitted to the first degree course unless he has successfully completed 12 years of schooling;

(ii) that no student will be eligible for the award of the first degree unless he has successfully completed a 3 year course;

(iii) that a student cannot seek admission to the Master's Course in any of the faculties, unless he has successfully pursued the first degree course of 3 years duration; and

(iv) that wherever a degree course of a duration of less than 3 years was in existence at the time when the 1985 Regulations were promulgated, these institutions can award degrees of a duration of 2 years, only as a transitory measure. However, these persons will be eligible for admission to a Master's Course only if they undergo a one year bridge course.

20. In so far as the non formal/distance education in the same faculties are concerned, the Regulations issued by UGC are known as the University Grants Commission (The Minimum Standards of Instructions for the Grant of the First Degree through Non-Formal/ Distance Education in the Faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences) Regulations, 1985. Regulation 2 of these Regulations are exactly identical to Regulation 2 of the Regulations relating to formal education except that there are two changes. The changes are-

(i) Regulation 2(1) of the Regulations relating to formal education makes it compulsory for a student to successfully complete 12 years of schooling, for admission to the first degree course through formal education. But Regulation 2(1) of the Regulations relating to non-formal/distance education permits those who are not below the age of 21 years to seek admission to the first degree course through non-formal education, even if there is no previous academic record, provided they had passed an entrance test.

(ii) Another change in Regulation 2 of the Regulations relating to non-formal education is that no student enrolment is prescribed with reference to the number of teachers and physical facilities, as in the case of Regulation 2(2) of the Regulations relating to formal education.

21. What is important to note is that the provisions contained in Clause (3) of Regulation 2 of the Regulations relating to formal education are repeated in Regulation 2(2) of Regulations relating to non-formal education along with the two provisos contained therein.

22. Therefore, it is clear that no student will be eligible for the award of the first degree unless he has successfully completed a 3 year course. Moreover, no student will be eligible, by virtue of the first proviso of Regulation 2(3) or Regulation 2(2) relating to formal or non-formal education as the case may be, for admission to a Master's Degree unless such a person has successfully pursued the first degree course of a 3 years duration.

23. A careful reading of the Scheme of both these Regulations, one relating to formal education and another relating to non-formal education makes it clear that the emphasis is on "a course of a duration of 3 years", for the award of a first degree. The contesting respondents in these cases admittedly have secured their first degree, after undergoing a course of a duration of 3 years. It is only the additional degrees or the dual degrees that they have obtained after the completion of the first degree, that were of a duration of one year or even less. Therefore, the simple contention of the contesting respondents is that the restriction contained in Regulation 2(3) or Regulation 2(2) of the formal or non-formal education Regulations, as the case may be, that a degree course should be of a duration of 3 years, would not apply to the additional degrees obtained by them, as the contesting respondents have already obtained their first degree after undergoing a course of a duration of 3 years.

24. But such an interpretation on the part of the contesting respondents would strike at the very root of the prescription contained in Regulation 2(3) or Regulation 2(2) of the formal or non-formal Regulations as the case may be. The expression "first degree" contained in Regulation 2(3) of the Formal Education Regulations and Regulation 2(2) of the non-formal education Regulations should be understood to mean "the first degree in a subject". Suppose a person wants to acquire the first degree in History, he must undergo a course of a duration of 3 years in order to fulfil the requirements under Regulation 2(3) or Regulation 2(2). After acquiring a first degree in History, if the same person wants to acquire another degree in Mathematics, Physics, Tamil Literature or English Literature, he must undergo another course of a duration of 3 years for acquiring such a degree, as such a degree would be a first degree in such a subject. The degree so obtained may be an additional degree in so far as the person acquiring the same is concerned. But in so far as the subject is concerned, that will be the first degree. Therefore, whether a degree is a first degree or not, should not be decided with reference to the person acquiring it. It should be determined with reference to the subject in which such a degree is sought to be obtained.

25. Mr. AR.L. Sundaresan, learned Senior Counsel appearing for one of the contesting respondents contended that the expression "first degree" appearing in Regulation 2(3) cannot be read as "the first degree in a subject". According to the learned Senior Counsel, such a reading of the expression "first degree" would amount to reading something in the Regulation that the Regulating Body itself omitted to include consciously. Therefore, he contended that I cannot add the words "in a subject" to the words "first degree" appearing in Regulation 2(3).

26. But the above contention is misconceived. I am not reading into Regulation 2(3), something which the Regulating Body thought fit to omit as a result of any conscious decision. I am only pointing out as to how the expression "first degree" appearing in Regulation 2(3) has to be understood, so as to make the whole Regulations purposeful and meaningful. An interpretation that would advance and sub-serve the cause for which the Regulations were made, is a necessity of time. The fact that such an interpretation is not merely permissible but also warranted by the circumstances as well as the provisos contained under Regulation 2(3) can easily be appreciated. The first proviso states that no student shall be eligible for admission to the Master's Degree if he has not successfully pursued the first degree course of a 3 years duration. The second proviso is by way of a transitory measure, but the same also provided for a bridge course of a duration of one year. These two provisos contained under Regulation 2(3) shows that the expression "first degree" has to be understood only as "first degree in the subject". As a matter of fact, the second proviso does not even contain the expression "first degree". The second proviso makes a reference only to B.A./B.Sc./B.Com (Pass) Degrees. Therefore, the expression "first degree" should be understood only to mean the first degree in a subject.

27. Let us have a look at the consequences that would flow out of the literal interpretation sought to be given by the contesting respondents. A person who has done a 3 year degree in History, would be eligible, if the argument of the respondents is accepted, for the grant of a B.Sc., degree in Mathematics, after undergoing a course of a duration of one year or less. If such a person is held to be eligible to seek admission to a Master's Degree in Mathematics, by giving a literal interpretation to Regulation 2(3), that would mock at the provisos to Regulation 2(3). I am conscious of the fact that there are Universities which permit Graduates in a particular subject, to acquire Post Graduate Degrees in different subjects. But they have all been ingenious inventions of later years, for the purpose of taking the employers for a ride. Even then, to my mind, there is no University which offers a Post Graduate Degree in Mathematics or Chemistry or Physics for a person who studied B.A.(History) or the Literature or Economics at the degree level. Therefore, the interpretation to be given to the expression "first degree" appearing in Regulation 2(3) has to advance the cause of improvement of standards, for which the Commission itself framed the Regulations. The literal interpretation sought to be given by the contesting respondents would only dilute the standards and not improve the standards and hence the contention of the contesting respondents on the basis of the U.G.C. Act and the Regulations issued by the Commission has to fail.

28. Most of the contesting respondents have acquired a dual degree in a different subject, through non-formal/distance education. While the Regulations of U.G.C. relating to formal education contain several prescriptions such as the number of working days in an academic year, the Time Table containing not less than 40 clock hours per week etc., the Regulations relating to non-formal education contain a detailed programme of study under Regulation 3. Regulation 3(1) of the Regulations relating to non-formal education, stipulate that every lesson should constitute approximately one week's reading and that there should be at least 25 lessons in each main subject of study. Regulation 3(3) of the non-formal education Regulations mandate a contact programme to be organised for 8 to 10 days, in different places. The classes are required to be arranged on Sundays and other holidays at the Headquarters. Regulation 3(5) of the non-formal education Regulations prescribe that every student should do at least 5 home assignments in each subject. Similarly, Regulation 4 of the non-formal education Regulations contains the prescription regarding the manner in which the examinations are to be conducted. A careful reading of Regulations 3 and 4 of the Regulations relating to non-formal education would show that they are all designed only with respect to degrees of a duration of 3 years and not degrees of a duration of one year. In 1985, when these Regulations were issued, the University Grants Commission could never even have contemplated that such a fraud could be perpetrated upon these Regulations. Therefore, the entire scheme of both these Regulations (formal and non-formal) contain prescriptions which cover only degrees of a duration of 3 years. Hence to say that a second degree though obtained in a different subject, would not come within the meaning of the expression "first degree" would only pervert the stream of education. It must be remembered that the petitioners and the contesting respondents are teachers aspiring to get promotion to the post of B.T. Assistants so as to teach students in middle schools. Therefore, such an interpretation to the U.G.C. Regulations, coming as it does from teachers, is very unfortunate.

CONTENTION No. 2:

29. The second contention of the contesting respondents is that it is only the National Council for Teacher Education that is empowered to evaluate the degrees granted by a University, for the purpose of ascertaining whether someone holding a degree is qualified to be appointed as a Teacher or not. According to the contesting respondents, the State cannot assess whether or not a degree recognised by the National Council for Teacher Education is sufficient qualification for appointment as a teacher.

30. The National Council for Teacher Education Act, 1993 was enacted with a view to provide only for the establishment of a Council for the purpose of achieving planned and coordinated development of the teacher education system throughout the country and for regulating and proper maintenance of norms and standards in the teacher education system. In other words, the object of the Act is to streamline the system of teacher education. Consequently, the courses such as Diploma in Teacher Education, Degree in Teacher Education and Post Graduate and Research Degrees in Teacher Education are the items that come within the Regulations of the National Council. The National Council for Teacher Education is not concerned with the stream of education relating to Arts, Sciences, Humanities etc. It is concerned primarily with Teacher Education Courses. The functions of the Council are enlisted in Section 12 of the Act. A careful look into the functions of the Council as enunciated in Section 12, with particular reference to Clauses (b) and (e) relied upon by Mr. P.V.S.Giridhar, learned counsel for some of the contesting respondents, would show that the functions of the National Council are confined to the field of teacher education, making recommendations to Governments and Universities in the matter of preparation of suitable plans and programmes in the field of teacher education and the maintenance of norms for any specified category of courses or trainings in teacher education. The focus under Section 12(e) is on the prescription of minimum eligibility criteria for admission to Teacher Education Courses, the method of selection of candidates to Teacher Education Courses and various aspects of the Courses in Teacher Education such as its duration, course contents and mode of curriculum. It is not one of the functions of the National Council to deal with the basic degree or Post Graduate Degree that a person would obtain in other subjects. Section 29 of the said Act which empowers the Central Government to give directions to the National Council from time to time is also of no relevance. The NCTE is not one more Council that could meddle with or decide the duration, course contents etc., of degrees in Arts, Sciences, Humanities etc. This National Council is concerned only with the Courses in Teacher Education. The attempt of the learned counsel for some of the respondents to project the National Council for Teacher Education as one more regulatory body that deals with ordinary Under-graduate and Post-Graduate Courses in Arts, Sciences, Humanities etc, is unacceptable. Therefore, the second contention on the basis of the NCTE Act and the Regulations framed thereunder, is to be stated only to be rejected.

31. It is true that in exercise of the powers conferred by Section 32(d) of the NCTE Act, the National Council has also framed a set of Regulations. These Regulations are called the National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations 2001. Regulation 2 of these Regulations makes it clear that these Regulations are applicable for recruitment of teachers in all formal schools for imparting education at pre-school, elementary, secondary and senior secondary stages. Under Regulation 3, the qualifications for recruitment of teachers for teaching school subjects, shall be as prescribed in the First Schedule. The qualifications prescribed in the Second Schedule apply for recruitment of teachers in physical education. Under Regulation 3(iii), the minimum qualification as given in the Schedules, is applicable for promotion of teachers from one level to the next level of teaching. Regulation 4 also mandates that the existing recruitment rules are to be modified within a period of 3 years so as to bring them in conformity with the qualifications prescribed in the Schedules.

32. The First Schedule to these 2001 Regulations of NCTE prescribes the minimum academic and professional qualifications for each level of schooling. In so far as primary and middle schools are concerned, the qualifications prescribed in the First Schedule to the 2001 Regulations, are as follows:-

III. Elementary

|  |  |
| --- | --- |
| (a) Primary | (i) Senior Secondary School Certificate or Intermediate or its equivalent; and(ii) Diploma or Certificate in basic teachers' training of a duration of not less than two years.ORBachelor of Elementary Education (B.El.Ed.) |
| (B) Upper Primary (Middle school section) | (i) Senior Secondary School Certificate or Intermediate or its equivalent; and(ii) Diploma or Certificate in elementary teachers training of a duration of not less than two yearsORGraduate with Bachelor of Education (B.Ed.) or its equivalent." |

33. On the basis of the prescription contained in Regulation 3 read with the First Schedule to these Regulations, it is contended by the learned counsel for the contesting respondents that a Graduate in any subject holding a bachelor's degree in education, is fit to be appointed as a middle school teacher.

34. The above argument was fine tuned by some of the learned counsel on the basis of the Right of Children to Free and Compulsory Education Act, 2009. Under Section 23(1) of the said Act, 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. Even the curriculum and evaluation procedure for Elementary Education has to be laid down by an Academic Authority, Constituted under Section 29(1).

35. Rule 23 (1) of the Rules framed under the said Act, mandates the Central Government to notify an Academic Authority for the purpose of Section 29 within one month of the appointed date. Accordingly, the Central Government issued a notification on 31.3.2010, published in the Government Gazette on 5.4.2010, notifying the National Council for Educational Research and Training, as an Academic Authority, to lay down the curriculum and evaluation procedure. By another notification of the same date, the National Council for Teacher Education (NCTE) was authorised as the Academic Authority to lay down the minimum qualifications.

36. Thereafter, the National Council for Teacher Education issued a notification bearing No. F.No.61-03/20/2010/NCTE dated 23.8.2010, prescribing the minimum qualifications for appointment. As per the said notification issued by NCTE, the qualifications for appointment to the post of a teacher for Classes 6 to 8 are as follows:-

(ii) Classes VI-VIII

(a) Graduation and 2 year Diploma in Elementary Education (by whatever name known)

Or

Graduation with at least 50% marks and 1 year Bachelor in Education (B.Ed.)

Or

Graduation with at least 45% marks and 1 year Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard.

Or

Senior Secondary (or its equivalent) with at least 50% marks and 4 years Bachelor in Elementary Education (B.El.Ed.)

Or

Senior Secondary (or its equivalent) with at least 50% marks and 4 years B.A/B.Sc.Ed. or B.A./Ed./B.Sc.Ed.

Or

Graduation with at least 50% marks and 1 year B.Ed. (Special Education)

And

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE for the purpose).

37. Therefore, on the basis of the above, it is contended that the contesting respondents, who are already graduates in some discipline with an additional degree in another discipline, are competent to be appointed to the post of B.T. Assistants. But the said contention is wholly misconceived. There are 3 reasons for my above conclusion. They are:-

(i) Primarily, the National Council and the NCTE Act, are concerned with teacher education and not the recruitment of teachers to schools;

(ii) In any event, what is prescribed in the First Schedule is only "minimum academic and professional qualifications". Therefore, the power of the State to prescribe an additional qualification apart from the minimum prescribed in the First Schedule to the NCTE 2001 Regulations, is not taken away by these Regulations. Once the State takes a stand that the expression "Graduate" appearing in the First Schedule to the NCTE Regulations should be understood in a particular way, the contesting respondents cannot contend that it is not in tune with the Act; and

(iii) In any event, the expression "Graduate" appearing in the First Schedule, which I have extracted above, has to be understood as indicating a Graduate in the prescribed or concerned subject. The National Council for Teacher Education Act, the National Council for Teacher Education Rules and the aforesaid Regulations, do not define the expression "Graduate". Even the University Grants Commission Act and the Regulations that I have dealt with in the previous part of this order deal only with the expression "degree" and not the expression "Graduate". Therefore, the expression "graduate" appearing in the First Schedule to the NCTE Regulations is to be synchronised with and understood in tune with the interpretation given to the expression "degree" in UGC Regulations. In other words, the expression "first degree" used in Regulation 2 of the UGC Regulations signifies "first degree in a subject". Similarly, the expression "graduate" used in First Schedule to NCTE Regulations has to be understood as signifying "Graduate in the concerned subject". To be a graduate in a particular subject, one should have undergone a course of a duration of 3 years, as per the interpretation to be given to the expression "degree" in UGC Regulations. If the State as the employer holds that a Graduate is a person who has obtained a degree of a duration of 3 years, it would be perfectly in tune with the First Schedule to the aforesaid 2001 Regulations of the NCTE and cannot be stated to be opposed to the Regulations. Hence the second contention is also to be rejected.

CONTENTION No. 3:

38. The third contention of the contesting respondents revolves around the provisions of the Tamil Nadu Elementary Education Act, 1920 and the statutory rules issued by the State Government for recruitment of teachers in Government Schools, in exercise of the power conferred by the proviso to Article 309 of the Constitution.

39. There can be no other field in our democratic polity, than education, which is regulated by as many laws which are as innumerable as they are confusing. For instance, the law relating to School Education in the State of Tamil Nadu is governed by the following Acts and Rules:-

(i) The Tamil Nadu Recognised Private Schools (Regulation) Act, 1973.

(ii) The Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974.

(iii) The Tamil Nadu Compulsory Elementary Education Act, 1994.

(iv) The Tamil Nadu Compulsory Elementary Education Rules, 1998.

(v) The Tamil Nadu Elementary Education Act, 1920.

(vi) The Rules relating to Elementary Schools framed under the Tamil Nadu Elementary Education Act, 1920.

(vii) The Tamil Nadu Educational Rules, which date back to 1892.

(viii) The Board of Regulations for Approving the Nursery and Primary Schools.

(ix) The Tamil Nadu Minority Schools (Recognition and payment of Grant) Rules 1977.

(x) Code of Regulations for Matriculation Schools, Tamil Nadu.

(xi) Code of Regulations for Anglo-Indian Schools.

(xii) Grant-in-Aid Code.

(xiii) The Tamil Nadu Educational Inspection Code.

(xiv) Special Rules for Tamil Nadu Educational Subordinate Service and Educational Service.

40. Fortunately, the contesting respondents rely only upon the provisions of the Tamil Nadu Elementary Education Act, 1920 and the statutory rules governing the post of B.T. Assistants in elementary and middle schools. Therefore, it is enough if I deal with the relevant provisions of the said Act and the statutory rules.

41. Section 3(v) of the Tamil Nadu Elementary Education Act, 1920 defines the expression "elementary education" to mean education in such subjects and upto such standards as may be prescribed. Most of the provisions of this Act from Sections 4 to 31 have been omitted way back in 1939 by way of amendment. What remains in this Act is only certain provisions relating to elementary education fund, education taxes, budget and audit and compulsory elementary education.

42. However, the Rules relating to elementary schools framed in exercise of the powers conferred by Section 56of the Act, defines "elementary education" to mean "education upto and including Standard V of a elementary school or upto and including Class V of a secondary school". The expression "elementary education" also includes, for purposes other than compulsion, Standards VI, VII and VIII of elementary school. The list of subjects, both compulsory and optional, to be taught for Standards I to V and the list of compulsory and optional subjects to be taught for Standards VI to VIII are also given in the Rules issued under the Tamil Nadu Elementary Education Act, 1920. The optional and compulsory subjects to be taught for Standards VI to VIII, as given in the aforesaid set of Rules, are as follows:-

HIGHER ELEMENTARY STAGE STANDARDS VI TO VIII

Compulsory Subjects

(1) Language

(2) Elementary Mathematics

(3) Elementary Science (including Home Science for girls)

(4) Social Studies

(5) Physical Training

(6) Pre-vocational work (including practical gardening for rural higher elementary schools)

Optional Subjects

(i) English

(ii) Music

(iii) A second language in Muslim schools in bilingual areas

(iv) Drawing

(v) Religious or moral instructions

43. On the basis of the list of subjects to be taught in Standards VI to VIII as given in the aforesaid Rules, it was contended by Mr. G.Sankaran, learned counsel for some of the contesting respondents that a person acquiring an additional degree of a duration of one year, will be certainly competent to teach elementary Mathematics, Elementary Science, Social Studies, Language etc.

44. But the said contention loses sight of one important fact. The Tamil Nadu Elementary Education Act, was enacted about 90 years ago in the year 1920. Even before independence, most of the provisions of the Act, such as sections 4 to 31 were deleted by way of an Amendment in 1939. The rules relied upon by the learned counsel were issued in 1939. Today, the syllabus followed by the elementary schools are not exactly the same as those prescribed on the pattern suggested by the aforesaid Rules. Therefore, it is not for the contesting respondents to say that anybody can teach anything for students of Standards VI to VIII, since the subjects to be taught are only Elementary Mathematics and Elementary Science etc. I can take judicial notice of the fact that with the advancement of science and technology and the frequent changes to the stream of education, the curriculum for students of Standards V to VIII has undergone a sea change over the years. A person who could teach some of the subjects 20 years ago, cannot today teach the same subjects, unless he has equipped himself with the developments that have taken place. Therefore, nothing in favour of the contesting respondents flows out of the provisions of the 1920 Act and the Rules issued thereunder.

45. The Tamil Nadu Educational Rules (originally called as Madras Educational Rules) on which reliance is placed by Mr. G.Sankaran, learned counsel for some of the contesting respondents, were also issued way back in the year 1892, after a Special Committee appointed by the Central Government submitted its report to the Director of Public Instructions. Much water has flown under the bridge thereafter. Except that these Rules can now be preserved in the archives, no useful purpose can be drawn from these set of rules.

46. Coming to the statutory Rules, issued in terms of the proviso to Article 309 of the Constitution, it is seen that the first set of Special Rules for Tamil Nadu Elementary Educational and Subordinate Service was issued under G.O.Ms.No.1383, Education Department, dated 23.8.1988. These Rules were issued after the Panchayat Union Teachers were absorbed as Government Servants. Therefore, those Rules were given retrospective effect from 1.6.1981, the date on which the Panchayat Union Teachers became Government Servants.

47. Under the aforesaid Special Rules, the Elementary Educational Subordinate Service was to comprise of 6 classes of posts. They are as follows:-

|  |  |
| --- | --- |
| Class | Category |
| I | 1. Headmasters/Headmistresses of Middle Schools(B.Ed. Grade)2. Language Pandits Grade I (Tamil) and LanguagePandits Grade-I (other than Tamil)  |
| II | 1. Headmasters/Headmistresses of Middle Schools(Secondary Grade) |
| III | 1. Headmasters/Headmistress of Primary Schools(Secondary Grade).2. Secondary Grade Teachers. |
| IV | 1. Higher Grade Teachers |
| V | Physical Education Teachers |
| VI | Pre-vocational Instructors (Full-time) |

48. As could be seen from Rule 1 of the aforesaid Rules, indicating the classes and categories of posts covered by the Rules, the post of B.T. Assistant was not included as one of the posts in the said service, when the Special Rules were issued in 1988. It appears that the post of B.T. Assistant was included only at a later point of time, perhaps by G.O.Ms.No.227, dated 28.8.2000.

49. After it was included, it appears that a Graduate was indicated to be eligible for appointment to the post. Therefore, it is contended that when the statutory rules issued under Article 309 of the Constitution prescribed only a B.A. or B.Sc., or equivalent degree as the essential qualification for appointment to the post of B.T. Assistants, the official respondents cannot make a discrimination.

50. But the above contention omits to take note of one important fact. The expression "Graduate" is not defined anywhere. Therefore, one has to go by the accepted understanding of the expression to mean the holder of a valid University Degree. To see as to who can be said to hold a valid degree, one has to go to 1985 Regulations of the U.G.C. According to Regulation 2(3) of UGC Regulations, a degree has to be of a duration of 3 years. I have already indicated in the first part of this order that the expression "first degree" has to be understood as indicating "the first degree in a subject". Therefore, the contention that the statutory rules merely speak of a degree and that therefore a person holding a degree of a duration of one year in addition to a regular degree is to be taken to be qualified, cannot be accepted.

51. The next contention of Mr. G.Sankaran, learned counsel for some of the contesting respondents is that at one point of time, the State made an attempt to introduce subject roster in the matter of appointment of graduate teachers in terms of certain Government Orders. But the same was challenged unsuccessfully before a single Judge of this Court. However, by order dated 20.9.2007 passed in W.A.No.1198 of 2007, a Division Bench of this Court allowed the writ appeal, following two earlier decisions. The relevant portion of the decision of the Division Bench is found in paragraph-3 of the order dated 20.9.2007. It is extracted as follows:-

3. In fact the legal implication of the said proceedings dated 26.10.2004, was considered by this Court in the light of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (in short T.N. Act 29 of 1974) in the Correspondent. Britannia Higher Secondary School, Chennai vs. State of Tamil Nadu, represented by its Secretary, Department of School Education, Chennai and others (  : 2007 (2) MLJ 760), and held that the said Act 29/74 does not contemplate any subject roster to be followed regarding the appointment of Middle Grade Graduate Teachers. That was also the decision taken earlier by the Madurai Bench of Madras High Court in the Corporate Manager, CSI Corporate Schools vz. State of Tamil Nadu (2006 (5) CTC 504). It was also considered in the abovesaid cases that the executive instruction cannot supersede the statutory provision, by relying upon the decision of the Supreme Court in B.N. Nagarajan vs. State of Karnataka (  : 1979 II LLJ 209 (SC), which was subsequently reiterated by the Supreme Court in V. Sreenivasa Reddy vs. Government of A.P. ( : AIR 1995 SC 586). Therefore, by virtue of the abovesaid judgments, it is the categoric decision of this Court that the proceedings of the second appellant dated 26.10.2004 by imposing subject roster in making appointment is not valid and is in violation of the provisions of the Act 29/74. In view of the same, there is absolutely no reason to interfere with the order of the learned single Judge. Consequently, the writ appeal fails and the same is dismissed with direction to this appellants to approve the appointment of J.V. Titus Prabhakar (Mathematics) with effect from the date of his appointment with salary and other benefits within a period of four weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

52. But a careful perusal of the above decision of the Division Bench, which followed an earlier Division Bench decision would show that those decisions arose out of the refusal of the Director of Elementary Education to approve the appointment of B.T. Assistants in Private Aided Schools governed by the Tamil Nadu Recognised Private Schools (Regulation) Act and Rules. Interestingly, the Schools that came up against the refusal of the Department to approve the appointment of teachers were minority schools, which always claimed that many of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, would not apply to them. But for the purpose of attacking the subject roster, they relied upon the provisions of the very same Act. In respect of those schools, the Rules issued under Article 309 of the Constitution have no application. Therefore, the decision rendered by the Division Bench in the said case as to whether subject roster will be valid or not, cannot be imported to the present case where the only question that arises for consideration is as to whether a dual degree of a duration of one year is valid or not.

53. In fact, the contesting respondents herein have secured regular 3 year degrees in various subjects such as History, Tamil Literature, English Literature etc. If their contention is that there cannot be a subject roster in the matter of appointment of B.T. Assistants in Elementary/Middle Schools, then they need not rely upon the additional degrees obtained by them in other subjects such as Mathematics, English etc. If the Division Bench decision on the question of subject roster is applicable to the contesting respondents, there was no necessity for the contesting respondents to obtain additional degrees of a duration of one year in other subjects. The fact that subject roster is implemented by the Government at least in so far as the Government Schools are concerned, cannot be disputed. In so far as the Government Schools are concerned, the Government is the appointing authority. Therefore, it is always open to them to fill up vacancies in the post of B.T. Assistants, keeping in mind the requirement to teach different subjects. That the Government has the power to do so is recognised by the contesting respondents. This is why they have chosen to study additional degrees in other subjects so as to stake a claim to those posts in those subjects. Hence the reliance placed upon the Division Bench decision that arose under different circumstances in respect of minority private aided institutions, is ill founded.

CONTENTION No. 4:

54. The next contention of the contesting respondents is that the question whether an additional degree obtained by undergoing a course of a duration of one year is equivalent to a degree obtained in the normal course, is a question that cannot be decided by this Court. It is for the Experts to decide. According to the learned counsel for the contesting respondents, when a similar question came up for consideration whether one degree is equivalent to another or not, this Court referred the issue only to Equivalence Committees and that therefore the present issue should also be referred only to Experts. The learned counsel for the contesting respondents rely upon G.O.Ms.No.133, School Education dated 4.6.2012, by which the Government accepted the recommendation of the Equivalence Committee and directed to treat the degrees obtained in certain disciplines such as Statistics, Plant Bio-Technology, Environmental Zoology etc., to be equivalent to the degrees in Mathematics, Botany, Zoology etc., respectively. Therefore, they contend that if at all there is any doubt with regard to the validity or equivalence of a one year degree to a 3 year degree, the same can only be sent to the Equivalence Committee for consideration.

55. In order to buttress the above contention that it is for the Experts to decide such matters, the learned counsel also relied upon 3 decisions viz., (i) Basic Education Board, U.P. vs. Upendra Rai {  : 2008 (3) SCC 432} (ii) Guru Nanak Dev University vs. Sanjay Kumarketwal {  : 2009 (1) SCC 610} and (iii) a Division Bench decision of this Court in K. Sakthi Rani vs. Secretary, Bar Council of Tamil Nadu {  : 2010 (4) MLJ 849}.

56. In Basic Education Board, U.P. vs. Upendra Rai {  : 2008 (3) SCC 432}, the Supreme Court pointed out that grant of equivalence and/or revocation of equivalence is an administrative decision which is in the sole discretion of the Authority concerned and that the Court should exercise judicial restraint and not interfere with the decision taken by Experts. But in placing reliance on the said decision, the learned counsel for the contesting respondents are only partly right and partly wrong. They are right in contending that whenever there is a doubt as to whether the degree in one subject is equivalent to the degree in another subject, it should be referred only to the Experts and Equivalence Committees. But the learned counsel are wrong in presuming that there is a mere doubt in the cases on hand about the equivalence of the one year degrees.

57. That 1+1 is not equal to 3, is something that does not require a reference to an Expert. Though we have come to a stage where the younger generation seeks the assistance of a Calculator even to find out the sum total of two single digit numbers, I do not think that what is so obvious should also be referred to an Expert Committee. The fact that the degree in any discipline obtained after undergoing a course of a duration of one year, cannot be equated to a degree in the same discipline obtained after undergoing a course for 3 years, is not a matter of doubt at all to be referred to any Expert Committee or Equivalence Committee. A person who studied a degree course in Mathematics of a duration of 3 years and a person who studied a degree course in the same discipline, but for a duration of one year, can never be considered as equals. A person who acquired a degree in any discipline after undergoing a course of a duration of one year, cannot be treated as equal to a person who studied the same degree course for a duration of 3 years, merely because he also had an additional degree in another discipline.

58. The decision in Gurunanak Dev University relied upon by Mr. P.V.S.Giridhar, learned counsel for the contesting respondents was actually distinguished in Annamalai University. Some of the arguments advanced before me viz., that a degree obtained from a recognised University is a valid degree as per the University Grants Commission Act and that the validity of such degrees are to be tested only by Expert Bodies, were also rejected by the Supreme Court in Annamalai University case. As a matter of fact, many of the arguments advanced before me in the above batch of cases are the arguments that were rejected by the Supreme Court in Annamalai University. When I pointed out this fact, the learned counsel for the contesting respondents attempted to distinguish Annamalai University on the ground that the said case arose out of the degrees awarded to persons who did not undergo any curriculum in School at all.

59. But that is no distinction. The question as to whether a degree, to be a valid degree, should be of a duration of 3 years or one year, is also to be tested on the same touchstone on which Open University Degrees were tested, in Annamalai University.

60. In Sakthi Rani, the Division Bench of this Court was concerned about the validity of the decision taken by the State Bar Council to the effect that those who joined Degree Courses in Law after obtaining Post Graduate Degrees from Open Universities are not entitled to be enrolled as Advocates. The said decision was virtually upheld by the Division Bench. However, in so far as persons who were already enrolled as Advocates, the Division Bench held that their enrolment cannot be cancelled. The Division Bench held so, by applying the principles of promissory estoppel, legitimate expectation and equity. But in so far as the contesting respondents, in this case, are concerned, they have not already been promoted. They were only included in the panels for consideration for promotion. It is well settled that mere inclusion in the panels for promotion or select lists for appointment, would not confer a right upon persons who are so included. In fact, the decision of the Division Bench in Sakthi Rani, is in favour of persons who were promoted last year, despite having a dual degree of a duration of one year. In so far as the contesting respondents are concerned, the principle of law laid down in Sakthi Rani, are against their contentions. Therefore, the fourth contention is also rejected.

CONTENTION No. 5:

61. The next contention of the contesting respondents is that in the previous years, the dual degree holders were considered for promotion and that therefore, the official respondents cannot take a different view this year. But the said contention is wholly misconceived. All the contesting respondents agree that the dual degrees obtained by them should necessarily be valid degrees in terms of the U.G.C. Act and the U.G.C. Regulations. It appears that in the previous years, the official respondents were not alive to the fact that these degrees are of a duration of one year. But, this year, the official respondents have woken up to the reality.

62. In any case there was no authoritative pronouncement last year by any court, as to whether such one year degrees are valid in the light of UGC (formal and non-formal) Regulations. Now I have found in the first part of this order that Regulation 2(3) of the 1985 U.G.C. Regulations have to be read in such a manner that every first degree in a subject should be of a duration of 3 years. A second degree may be of a duration of less than 3 years, only if it is in the same subject. Once this position is legally clarified, there is no scope for any reliance upon the past actions of the official respondents. It is a fundamental principle of law that there is no equality in illegality.

63. There is one more issue which has to be taken note of. It is very unfortunate in this State that the degrees awarded by the Universities do not indicate very precisely where they are obtained after undergoing a course of a duration of one year or 3 years. Therefore, it is possible that either due to lack of clarity on the issue or due to the lack of information about the validity of such degrees that the respondents gave promotions last year to unqualified candidates. The same cannot operate as estoppel on the part of the official respondents, nor can it lead to a plea for equality of treatment in terms of Article 14 of the Constitution.

CONTENTION No. 6:

64. It is contended by Mr. R.Singaravelan, learned counsel for one of the contesting respondents that a dual degree is only an additional qualification and cannot act as a disqualification. This contention is nothing but a mere jugglery of words. This contention will be correct only if a person who holds a regular 3 year degree in History or English, is considered disqualified for appointment to the post of B.T. Assistant in the same subject namely History or English, on account of his acquisition of a dual degree in a different subject. All that the respondents say is that the contesting respondents cannot be appointed as B.T. Assistants in the subjects in which they acquired a one year degree.

65. Taking a stand that one year degree in a particular discipline is not an eligible qualification for appointment as B.T. Assistant in that particular discipline, does not amount to disqualifying a person. It merely tantamounts to pointing out the lack of qualification of such a person for appointment. Therefore, this contention also goes.

66. Some of the counsel appearing for the contesting respondents like Mr. K.M. Vijayan, learned Senior Counsel, drew my attention a Chart containing a list of papers that a candidate would study in a 3 year course and the list of papers which another candidate would study in a course of a duration of one year and contended that persons who undergo a one year degree course are merely exempt from appearing in some of the papers that are prescribed in a 3 year degree course. This exemption is on account of the fact that these candidates had already covered those papers in a regular 3 year degree course that they studied in a different discipline. In other words, their contention is that subjects which are common for the 3 year degree course that they already did in one discipline and the 3 year degree course in the other discipline, in which they seek to do a condensed course, are left out. According to the learned counsel for the contesting respondents, there is no necessity for a candidate who already holds a degree of a duration of 3 years in one discipline to study some of the papers/subjects once again if those subjects are also prescribed in the degree course in another discipline.

67. But the above contention has no universal application. Today in the cases that are covered by this order, there are persons who acquired their first degrees in disciplines like History, Tamil Literature and English Literature. These persons have taken their dual degree in Mathematics and other subjects. I do not think that there are several papers/subjects that are kept common for a 3 year degree course in History and a 3 year degree course in Mathematics. It is shocking that a Graduate in History or Literature could study a degree of a duration of one year in a Science subject and become eligible to teach Science or Mathematics, even if it be for Classes VI to VIII. What the Court should actually compare while considering such contentions is as to whether a person who did B.Sc., Mathematics for a duration of 3 years and a person who did B.Sc., Mathematics for a duration of one year, could be treated as equals for the purpose of teaching Mathematics in an Elementary/Middle School. If the issue is understood in such a manner, the answer will not be too far to seek.

68. Mr. S.N.Ravichandran and Mr. R.Singaravelan, learned counsel appearing for some of the contesting respondents drew my attention to a decision I rendered recently in W.P.Nos.7276 to 7278 of 2011 dated 27.6.2012, relating to the claim of Assistants (Accounts) for promotion to the post of Accounts Supervisor in the Tamil Nadu Electricity Board. In that case, I distinguished the decision of the Supreme court in Annamalai University on the short ground that granting exemption to a person who holds a Open University Degree, from appearing for a departmental test in Accountancy, is different from treating such a degree as equivalent to a degree obtained in the regular stream. Therefore, on the basis of my own judgement, these learned counsel attempted to put me on the mat. Their contention is that the Universities grant one year degrees in a few disciplines just by exempting those students from appearing in some papers that they had already passed while undergoing a regular 3 year degree in another discipline. Therefore, they contend that their cases cannot be equated to the case in Annamalai University decided by the Apex court and that the distinction that I drew in Electricity Board case would equally apply to them.

69. But I do not agree. In the Electricity Board case decided by me, persons serving in the Audit/Accounts Wing of the Electricity Board were granted exemption by the Regulations, for promotion within the same Department, on the basis of the Open University Degrees. The existing Regulations were sought to be made a dead letter by the Electricity Board contending that the decision of the Supreme court in Annamalai University superseded the statutory Regulations. But I did not agree with the said contention of the Electricity Board for 2 reasons, namely (i) that recognising an Open University Degree for the limited purpose of granting exemption from appearing in a departmental test stands on a different footing than placing it on the same pedestal as a regular degree and (ii) that without amending the statutory Regulations the Board cannot rely upon the decision of the Supreme court and the orders of the Government.

70. Therefore, the decision rendered by me in respect of Accounts Supervisors in Electricity Board cannot go to the rescue of the contesting respondents. for various reasons. They are:-

(i) In that case, the only benefit conferred by the Open University degrees to the serving employees, was an exemption from appearing in a departmental test for promotion. The Open University degree holders did not seek a recognition of their degrees as equivalent to other regular degrees. But in this case, the contesting respondents are seeking a recognition of a one year degree as equivalent to a 3 year degree.

(ii) In any case, the standard of prescription to be applied in respect of teaching posts should be higher than those applied in respect of other posts, atleast in so far as educational qualifications are concerned. The role of teachers in moulding and shaping students hardly needs any emphasis and hence there can be no compromise on the calibre or quality required of teachers.

71. As pointed out earlier, in the cases on hand, a History teacher or an English teacher is not seeking promotion to the post of B.T. Assistant in middle school to teach the same subject viz., History or English. They seek to teach a totally different subject on the basis of a degree obtained after undergoing a course of a duration of one year. Therefore, there is no comparison.

72. Some of the learned counsel appearing for the contesting respondents compared the course of a duration of one year to lateral entries permitted in professional courses. For instance, a student undergoing a Diploma in Engineering is permitted lateral entry to the second year of a degree in Engineering. Similarly, degree holders in Engineering are exempt from appearing in Part A or B of A.M.I.E. Comparing their cases to such lateral entries, the learned counsel for some of the contesting respondents argued that the dual degree is only a lateral entry.

73. The above argument fails to take note of one important aspect. Lateral entry is not permitted in completely distinct and different disciplines. Lateral entry is permitted only in the same or related discipline. A person undergoing Diploma in Engineering is not allowed lateral entry in B.A. (English) Literature or M.B.B.S. Similarly, a person undergoing a degree in English Literature will not be permitted lateral entry into the second year of an Engineering course. Unless the disciplines are one and the same, lateral entry is not permitted. But the case of the contesting respondents is with respect to unrelated disciplines. Therefore, the above contention does not hold water.

74. Lastly, the learned counsel for the contesting respondents rely upon a decision of D. Hariparanthaman, J., dated 29.7.2011 in W.P.No.6556 of 2011. The said case arose out of the non-selection of a candidate for appointment to the post of B.T. Assistant. The candidate, who was the petitioner in that case, had acquired a B.Com., degree of a duration of 3 years as a regular student. She had also completed M.Com., degree through distance education from the Annamalai University. Thereafter, the said candidate appears to have joined a B.Ed., Course in a college affiliated to Periyar University as a regular student during the year 2006-2007. While undergoing the said course, she also joined B.A., English through distance education and passed the same in the same year. Her name was sponsored for appointment to the post of B.T. Assistant, but she was not eventually selected, as the degrees obtained by her viz., B.A., and B.Ed., at the same time could not be accepted. The learned Judge allowed the writ petition solely on the basis of a view expressed by the Teachers Recruitment Board in answer to a query raised under the Right to Information Act. The learned Judge did not examine the core issue with reference to the U.G.C. Regulations and various statutory provisions. In that case, the learned Judge granted relief to the petitioner, solely on the basis of a stand taken by the Teachers Recruitment Board and that too in response to a query under the Right to Information Act. No counter was filed in the said case and the pleadings were also not complete. Therefore, the said decision cannot be taken to have conclusively decided the core legal issue that has arisen for a detailed consideration in this case.

75. Mr. P.V.S.Giridhar, learned counsel for some of the contesting respondents brought to my notice a decision of the Division Bench of the Delhi High Court in Director of Education vs. Baboo Lal Sharma { }. The said decision arose out of certain orders passed by the Central Administrative Tribunal in favour of a few persons who applied for appointment to the post of Trained Graduate Teachers, in the National Capital Territory of Delhi. The candidates, who claimed appointment, had studied 3 year Degree Courses in different subjects. But they studied one year Degree Courses in an additional subject and were declared to be not fit for appointment. Therefore, they filed original applications before the Central Administrative Tribunal, which allowed their claims. As against the orders of the Administrative Tribunal, the Director of Education filed a writ petition before the Delhi High Court in W.P.(C) No. 5835 of 2010. By a judgment dated 4.10.2010, the Division Bench of the Delhi High Court set aside the orders of the Tribunal and remitted the matter back for fresh adjudication before the Tribunal, on the ground that the Tribunal order was not a reasoned order. Therefore, nothing flows out of the said decision.

76. Mr. G.Sankaran, learned counsel for some of the contesting respondents drew my attention to the 10th Plan of the University Grants Commission. In particular, he drew my attention to the thrust directions contained in the 10th Plan.

77. But unfortunately for the learned counsel, the 10th Plan was of the year 2006-2007 and it was followed by the 11th Plan and we are now at the 12th Plan. I have gone through the XII Plan document itself. It shows that much water has flown after the 10th Plan. The 12th Plan document covers the period from 2012-2017. The focus of the 12th Plan is on access, equity and quality. Nowhere is there any recognition by the U.G.C., in the XII Plan, of such condensed courses that would have an adverse impact upon the student community at large.

78. Since Mr. G.Sankaran, learned counsel for some of the contesting respondents, opened up the issue of XII Plan, I think it is necessary to bring on record some matters of historical importance, relating to Extension Education. It appears that the history of evolution of Extension Education could be traced to the Morrill Act of 1862 (Land Grant College Act), which created an endowment for the University of Wisconsin, U.S.A. The object was to support instructions in Agriculture and Mechanic Arts and to encourage research in those fields. Between 1885 and 1887, Farmers Institutes were established by the University of Wisconsin College of Agriculture. In 1888, Teachers Institutes were run through Extension Programmes. In 1890, Mechanics Institutes were established.

79. In 1891, the University created three extension programmes viz., (i) Lecture Courses in general subjects, (ii) Courses on industrial subjects for working people and (iii) Correspondence Courses, designed as Independent Study Programmes. In 1901, Robert M. La Follette was inaugurated as the Governor of the State of Wisconsin. In his address to the Legislature, he endorsed the importance of the University's Extension Function in the following words "The State will not have discharged its duty to the University nor the University fulfilled its mission to the people until adequate means have been furnished to every young man and woman in the State to acquire an education at home in every department of learning". With the success of the Extension Education in Public Health Programmes, Professional and Labour Education and Municipal and Social Service, McCarthy, the founder of the Legislative Reference Library, described Extension Education as "The Wisconsin Idea". In his book "The Wisconsin Idea" McCarthy said that the Extension Division had actually shown all Universities, the means of shedding the light of knowledge from within its walls to every home.

80. In 2001, the European Commission issued a communication for making life long learning, a reality in Europe. In October 2006, the European Commission published a communication titled "Adult learning It is never too late to learn". This communication defined adult learning as "all forms of learning undertaken by adults after having left initial education and training". The communication pointed out that investment in adult learning has both public and private benefits such as greater employability, increased productivity, better quality employment, reduced expenditure in areas such as unemployment benefits, welfare payments and early retirement pensions, increased social returns in terms of improved civic participation, better health, lower incidents of criminality and greater individual well being and fulfilment.

81. But a careful study of the history of evolution of Extension Education in the world would reveal that it was conceived with the noble intention of enhancing the skills and improving the knowledge of persons who did not or could not afford to go to Higher Educational Institutions. But unfortunately, after its adoption in India, in the form of Distance Education or Adult and Continuing Education, some of the Universities in the country started perverting the whole objective, by making available all kinds of Degrees, solely with a view to enable the acquirers of such Degrees to claim a right for being considered for appointment in Government Service. Eventually, the Supreme Court took note of such perversions in Annamalai University. A one year Degree, by whatever name called (either dual degree or second degree, if not a duplicate degree), is one another perversion of the system which was evolved more than a century ago as an Extension Programme with a noble objective. It will be interesting to note that persons who acquired such one year degrees or open university degrees, do not get employment in the Private Sector. It is only in Government Service that such persons seek appointments, promotions, incentive increments etc., on the basis of such degrees. Therefore, these degrees are actually specially designed and tailor made by Universities for serving or aspiring Government Servants.

82. It must be noted that the recruitment of teachers in schools, is being made by the Government, merely on the basis of seniority of registration in the Employment Exchanges, in the past few years. This itself has struck at the root of quality, in the matter of selection. If one year degrees are also recognised as equivalent to 3 year degrees, that would sound the death knell for the schools run by Government. Therefore, the stand taken by the Department in their communication dated 19.7.2012, not to recognise dual degrees, is a correct and appreciable step. In view of the above, the writ petitions are allowed and the official respondents are directed not to recognise, both for appointment as well as for promotion, the dual degrees obtained by candidates after undergoing a Course of a duration of one year, as equivalent to a degree obtained after undergoing a Course of a duration of 3 years. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.