**IN THE HIGH COURT OF ANDHRA PRADESH**

Writ Appeal Nos. 610, 611 and 612 of 2012

Decided On: 04.01.2013

Appellants: **Aila Upender and 51 Others**
**Vs.**
Respondent: **The Government of Andhra Pradesh, Rep. by its Principal Secretary, School Education, Secretariat, Hyderabad**

**Hon'ble Judges/Coram:**Hon'ble Ms. G. Rohini and Sri K.G. Shankar, JJ.

**JUDGMENT**

**G. Rohini, J.**

1. By common order dated 09.05.2012, a learned Single Judge dismissed a batch of writ petitions, including W.P.Nos. 6833, 8015 and 8043 of 2012 filed by the appellants herein challenging the notification dated 06.02.2012 issued by the Commissioner and Director of School Education, A.P., Hyderabad in his capacity as ex-officio Project Director, Rashtriya Madhyamik Shiksha Abhiyan for recruitment to the posts of Principals, Post Graduate and Trained Graduate Teachers for Model Schools set up in the State of A.P. under a Scheme called Rashtriya Madhyamik Shiksha Abhiyan. Aggrieved by the said order, the petitioners in W.P. Nos. 6833, 8015 & 8043 of 2012 filed these three Writ Appeals.

FACTS:-

With an object of enhancing the enrolment at secondary stage by providing a secondary school within a reasonable distance of habitation and to improve the quality of education imparted at secondary level, a Scheme called "Rashtriya Madhyamik Shiksha Abhiyan" (RMSA) was formulated with the approval of the Government of India, Ministry of Human Resource Development. The said scheme envisages providing quality education to talented rural children by setting up 6000 model schools as benchmark of excellence at block level at the rate of one school per block. The targets of the scheme included opening of 11000 new Secondary Schools and appointment of additional teachers to improve Pupil Teacher Ratio. The scheme is to be implemented by the societies established by the State Government for the said purpose. The sharing pattern for both recurring and non-recurring cost is 75:25 between the Centre and the State Governments. The Central share and the State share would be released to the implementing agency directly. The scheme was launched in 2008-2009 and has been implemented from 2009-2010.

During the year 2011-2012, 786 Model Schools have been sanctioned in seven (7) States and so far as the State of Andhra Pradesh is concerned, 355 schools were sanctioned and a sum of Rs. 412.09 crores was released as first instalment of Central share.

For implementation of the said Scheme in the State of Andhra Pradesh, a society called "A.P. Secondary Education Society" was registered on 21.10.2009 under the A.P. Societies Registration Act, 2001. In terms of the Articles and Memorandum of Association of the Society, A.P. Secondary Education Society Rules, 2009 have been made and the same have come into force from the date of registration of the society. As per the said Rules, Chairman of the Governing Council shall be the Chief Minister of the State of A.P. The Secretary, in-charge of School Education, shall be the Chairman and the Commissioner and the Director of School Education who is also the Ex-Officio Project Director of RMSA shall be the Member Secretary respectively of the Executive Committee.

For setting up of 355 Model Schools that were sanctioned under RMSA for the year 2011-2012, the Commissioner and Director of School Education and Ex. Officio Project Director of RMSA, A.P., Hyderabad submitted a proposal for creation of different categories of posts. In pursuance thereof, sanction was accorded by the State for creation of 39 posts at the State Level, 138 posts at the District level and 7100 posts at school level vide G.O.Ms. No. 254, Finance (SMPC. I) Department, dated 3.12.2011. Sanction was also accorded for engagement of 5074 personnel on contract/outsourcing basis at various levels.

So far as the 7100 posts created at the school level are concerned, it was made clear that they shall be filled by direct recruitment. The said posts included 355 posts of Principals (one post for each school), 4260 posts of Post Graduate Teachers (PGT) (12 posts for each school) and 2485 posts of Trained Graduate Teachers (TGT) (7 posts for each school).

For filling up the above said 7100 posts by direct recruitment, Rules have been made by the Executive Committee of the APSE Society. The said Rules, called A.P. Adhoc Rules for Direct Recruitment for the posts of Principals, PGTs and TGTs in Model Schools in English Medium (Scheme of Selection) 2012, prescribed the academic qualifications and experience required for the posts of Principals, PGTs & TGTs apart from the method of selection. Rule 2 of the said Rules deals with the qualifications and experience. Rule 6 provides for constitution of State Level Committee to oversee the entire process of recruitment and approve the selection lists. As per Rule 7 the State Level Committee shall nominate a Selection Committee to conduct written tests and interviews as per the Rules and finalize the selection lists. As per Rule 9, the Member Convenor of the Selection Committee shall issue a notification in the leading newspapers and in the Official website inviting applications for direct recruitment for the above said posts.

Notification impugned in the writ petitions:

In pursuance of the sanction accorded under G.O.Ms. No. 254 dated 03.12.2011, the Commissioner & Director of School Education and Ex. Officio Project Director, RMSA issued the impugned notification dated 6.2.2012 inviting applications for recruitment of 355 posts of Principals, 4615 posts of PGTs and 2130 posts of TGTs for 355 Model Schools set up in the State. The written tests were scheduled on 10.05.2012 for PGTs and TGTs and on 11.5.2012 for the Principals. Clause 12 of the notification in which the qualifications for the posts of Principal, PGT and TGT were prescribed in terms of Rule 2 of the above noticed Ad hoc rules reads as under:

12. Qualifications

A candidate for selection to the posts of Principal/PGT/TGT shall possess the academic and professional/training qualifications prescribed for the post under this Rule given as below.

1) Principal:

Qualifications & Experience:

A. Academic Qualifications

(i) Two year integrated Post Graduate Course from Regional Institute of Education of NCERT; (or) Master's Degree from UGC recognized University with at least 50% marks in aggregate. And

(ii) B.Ed. or equivalent teaching degree. And

(iii) Must have studied in English Medium at any three levels of School/Junior College/Degree College/Post Graduation.

...

2) PGT

Qualifications & Experience:

A. Academic Qualifications

(i) Two year integrated Post Graduate course from Regional Institute of Education of NCERT in the concerned subject or Master's degree from UGC recognized University with at least 50% marks in aggregate in the following subjects.

...

(ii) B.Ed. or equivalent degree with methodology in the concerned subject from UGC recognized University.

(iii) Must have studied in English medium at any two levels of School/Junior College/Degree College/Post Graduation except for the post of PGT (Telugu).

...

3) TGT

Qualifications & Experience:

A. Academic Qualifications

(i) Four year integrated degree course from Regional Institute of Education of NCERT in the concerned subject with at least 50% marks in aggregate; or Second Class Bachelor's Degree from UGC recognized University with at least 50% marks in the concerned subject (s) and in aggregate including electives and languages in the combination of subjects as under:

a. For TGT (Telugu)-Must possess a Bachelor's Degree with Telugu as the main subject or one of the three equal optional subjects or Bachelor's Degree in Oriental Language in Telugu (B.O.L.) or its equivalent or a Post Graduate Degree in Telugu and B.Ed. with Telugu as methodology subject or Telugu Pandit Training or its equivalent.

b. For TGT (Hindi)-Must possess a Bachelor's Degree with Hindi as one of the full elective subject or Bachelor's Degree in Oriental Language in Hindi (B.O.L.) or Praveena of Dakshina Bharat Hindi Prachar Sabha or Vidwan of Hindi Pracharak Sabha, Hyderabad or any other equivalent recognized qualification in Hindi (BA degree standard) or Post Graduate Degree in Hindi and along with any one of the following training qualifications.

...

c. For TGT (English)-A Bachelors Degree with English as the main subject or one of the optional subjects or a Post Graduate Degree in English and a B.Ed. Degree with English as methodology subject. The candidates who have studied SSC, Intermediate and Graduation through English Medium only are eligible.

d....

...

(iii) must have studied in English medium at any two levels of School/Junior College/Degree College except for the post of TGT (Telugu) and TGT (Hindi).

(iv) must have passed A.P. TET Paper-II or its equivalent.

...

(Emphasis supplied)

As could be seen, one of the conditions prescribed in the impugned notification is that the candidates must have studied in English medium for the post of Principal at any three levels of School/Junior College/Degree College/Post Graduation and for the posts of PGT and TGT, at any two levels of School/Junior College/Degree College/Post Graduation.

Grievance of the writ petitioners:

Many of the aspiring candidates who are otherwise qualified as per the educational qualifications stipulated in the notification, dated 6.2.2012, but have not studied in English medium at three/two levels as required in the notification, filed writ petitions seeking a declaration that excluding them from consideration only on the ground that they did not study in English medium is arbitrary, illegal and in violation of Rule 6 of NCTE (Determination of Minimum Qualification for Recruitment of Teachers in School) Regulations, 2001 as well as Articles 14, 16, 21, 21A, 254 and 256 of the Constitution of India. They also sought a consequential direction to receive their applications and permit them to write the examination and appoint them if they are otherwise eligible.

It was contended in the writ petitions that the respondents were bound to stipulate only those qualifications that were laid down by the National Council for Teacher Education (for short NCTE) and that the impugned condition that the candidates should have studied in English medium at any two/three levels being opposed to the qualifications prescribed under National Council for Teacher Education Act read with RTE Act was illegal.

On behalf of the State, a common counter-affidavit was filed contesting the writ petitions. After hearing both the parties, all the writ petitions were dismissed by a learned Single Judge by common order dated 9.5.2012. Aggrieved by the same, these three Writ Appeals came to be filed.

The petitioner in W.P.No. 6892 of 2012 who was an aspiring candidate for TGT post is the appellant in Writ Appeal No. 610 of 2012, whereas the petitioners 4, 7 and 12 to 16 in W.P.No. 8015 of 2012 who were also aspiring for TGT/PGT posts are the appellants in W.A.No. 611 of 2012. So far as W.A.No. 612 of 2012 is concerned, it is filed by the petitioners in W.P.No. 8043 of 2012, who claim to be the Graduates and Post Graduates in English Literature and aspiring for the post of TGT (English).

Apart from the contention that the respondents are not competent to prescribe the eligibility criteria in the impugned notification dated 6.2.2012 over and above the qualifications prescribed by NCTE, it was further contended on behalf of the petitioners in W.P.No. 8043 of 2012 that though for language teachers such as TGT (Hindi) or TGT (Telugu) the requirement of having studied in English medium at required levels was not prescribed, so far as the language teacher in English is concerned it was prescribed that the candidates who have studied SSC, Intermediate and Graduation through English medium are only eligible and that such prescription was arbitrary, illegal and discriminatory.

Conclusions of the learned single Judge:

The learned Single Judge rejected all the contentions advanced on behalf of the petitioners holding that the requirement of teaching faculty to satisfy the requisite qualifications with English medium background has close nexus with the object sought to be achieved by the scheme of the Government of India to establish Model Schools in identified locations in English medium and therefore the classification impugned in the writ petitions cannot be held to be violative of equality envisaged under Article 14 of the Constitution of India. It was also held that what was prescribed by NCTE Act and RTE Act were the minimum qualifications and as such the impugned action of the respondent in prescribing the requirement of having studied in English medium at two/three levels cannot be held to be illegal. The additional ground raised in W.P.No. 8043 of 2012 that all language teachers must be treated equally was also rejected observing that the teaching of English language assumes more importance and it would be wholly inconsistent with the object if non-English medium teachers are to be recruited on the basis of their Graduate or Post Graduate qualification in English Literature.

The said order dated 09.05.2012 passed by the learned Single Judge is assailed in the writ appeals before us.

We have heard Sri J. Ramachandra Rao, the learned counsel appearing for the appellants/writ petitioners as well as Sri Pratap Narayan Sanghi, the learned Special Government Pleader appearing for the respondents at length and perused the material available on record.

Contentions on behalf of the Appellants:

It is contended by Sri J. Ramachandra Rao, the learned counsel for the appellants that the respondents have no jurisdiction to determine the qualification for the post of TGT/PGT/Principals as the field is occupied by the National Council for Teacher Education Act, 1993 (NCTE Act) which is a Central legislation. Referring to the latest amendment to the NCTE Act by Act 18 of 2011 by amending the long title of the Act and by inserting Section 2(ka) and Section 12-A so as to extend the application of the Act to the schools imparting Pre-Primary, Primary, Upper Primary, Secondary or Senior Secondary Education and Section 2(n) read with Section 23(1) of the Right of Children to Free and Compulsory Education Act, 2009 (for short,RTE Act), the learned counsel further contended that by virtue of the amendment under Act 18 of 2011, the NCTE alone is empowered to determine the qualifications in respect of the teachers appointed not only in the Training Institutions under the control of NCTE but also the other schools.

In support of his submission that the NCTE alone is competent to determine the academic qualifications, the learned counsel has relied upon State of Maharashtra v. Sant Dyaneswar Shikshan Sastra Maha Vidyalaya   : (2006) 9 SCC 1 and Basic Education Board, U.P. v. Upendra Rai   : (2008) 3 SCC 432.

It is also urged by the learned counsel that the medium of education can never be treated as qualification and therefore it cannot be a ground to deprive the appellants of their right to employment. Relying upon State of Madras v. Smt. Champakam Dorai Rajan & Another   : AIR 1951 SC 226, State of Bombay v. Bombay Educatonal Society   : AIR 1954 SC 561, St. Stephens College v. University of Delhi   : (1992) 1 SCC 558, V.N. Sunanda Reddy & Others v. State of A.P.   : 1995 Supp. (2) SCC 235 and Gujarat University & Another v. Shri Krishna Ranganath Mudholkar & Others   : AIR 1963 SC 703, the learned counsel for the appellants vehemently contended that the impugned condition that the candidates must have studied in English medium in two/three levels is violative of the fundamental rights guaranteed under Articles 14, 16(2)and 29(2) of the Constitution of India. Contentions on behalf of the respondents:

Sri Pratap Narayan Sanghi, the learned Special Government Pleader appearing for the respondents contended that having regard to the object sought to be achieved under RMSA which is a scheme formulated by the Union of India, the classification in the impugned notification on the basis of the medium of education cannot be held to be violative of Article 14 or Article 16 much less Article 29(2) of the Constitution of India. It is also contended that the qualifications and eligibility criteria prescribed in the impugned notification being in terms of the Rules made by APSE Society, the writ petitioners cannot merely challenge the notification without questioning the Rules.

In the light of the rival submissions noticed above, the points that require consideration are as under:

(1) Whether the impugned condition in the notification dated 06.02.2012 that the candidates should have studied in English medium in three/two levels is bad on the ground that it is opposed to the qualifications prescribed by NCTE.

(2) Whether the said condition is violative of the Articles 14, 16 and 29(2)of the Constitution of India.

POINT No. 1:

2. The NCTE Act, 1993 is a Central enactment under which National Council for Teacher Education (NCTE), which is an expert body, has been established with a view to achieve planned and coordinated development for the teacher education system throughout the country as well as the regulation and proper maintenance of norms and standards in the teacher education system. In UPENDRA RAI'S case (2 supra) a question arose whether the provisions of the NCTE Act are applicable for regulation of appointment of teachers in ordinary educational institutions i.e., other than Teacher Training Institutions. It was held by the Supreme Court that the NCTE Act did not deal with the educational institutions like Primary Schools and etc., and therefore the qualifications for appointment as teacher in the ordinary educational institutions cannot be prescribed under the said Act and the essential qualifications are prescribed by the Local Acts and the Rules in each State.

3. Consequent to the said decision, the NCTE Act, 1993 has been amended by Act 18 of 2011 thereby extending the applicability of the NCTE Act to schools and the minimum qualifications for appointment of school teachers also. Under the Act 18 of 2011 not only the long title of the NCTE Act, 1993 was amended, but certain new provisions like Section 2(ka) which defines the expression "school" and Section 12A empowering the NCTE to make regulations to determine the qualifications of persons for being recruited as teachers in schools other than Teacher Training Institutions have been inserted.

4. For the purpose of the present case, it is necessary to refer to Section 2(ka) and Section 12A inserted by Act 18 of 2011:

(ka) "school" means any recognized school imparting pre-primary, primary, upper primary, secondary or senior secondary education, or a college imparting senior secondary education, and includes-

(i) a school established, owned and controlled by the Central Government, or the State Government or a local authority;

(ii) a school receiving aid or grants to meet whole or part of its expenses from the Central Government, the State Government or a local authority;

(iii) a school not receiving any aid or grants to meet the whole or part of its expenses from the Central Government, the State Government or a local authority:

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

5. 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 solely on the ground of non-fulfilment of such qualifications as may be specified by the Council:

Provided further that the minimum qualifications of 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.

(emphasis supplied)

6. As noticed above, the contention of the learned counsel for the appellants is that the Model Schools established under RMSA are also covered by the definition of Section 2(ka) and therefore they are brought within the purview of the NCTE Act, 1993.

7. It is no doubt true that the Model Schools established under RMSA are also brought within the purview of NCTE Act, 1993 by virtue of Act 18 of 2011 in view of the very wide definition of the 'school' under Section 2(ka). However, it is evident from a reading of Section 12A that for the purpose of maintaining the standards of education in schools defined in Section 2(ka) i.e., the schools other than the Teacher Training Institutions, regulations shall be made by the NCTE determining the qualifications of persons for being recruited as teachers. As could be seen from the first proviso to Section 12A, the regulations already made by the NCTE are not automatically extended to the schools covered by the definition of Section 2(ka), but fresh regulations are required to be made by NCTE determining the qualifications of persons for being recruited as teachers in such schools.

8. Admittedly no such fresh regulations/rules are made by NCTE in terms of newly inserted Section 12A under the Amendment Act 18 of 2011. In the absence of any such regulations prescribing the qualifications for recruitment of teachers in the schools other than the Teacher Training Institutions, it is not open for the appellants to contend that the requirement in Rule 2 of the Rules made by the APSE Society as well as the impugned notification that the candidates should have studied in English medium in two/three levels is opposed to the qualifications prescribed under NCTE Act.

9. However, the learned counsel for the appellants placed much reliance upon the Notifications dated 23.8.2010 and 29.7.2011 issued by the National Council for Teacher Education (NCTE) in exercise of the powers conferred by Section 23(1) of the RTE Act, 2009 laying down the minimum qualifications for a person to be eligible for appointment as a teacher in Class I to VIII in a school referred to in Section 2(n) of the RTE Act, 2009. It is sought to be contended by the learned counsel for the appellants that the respondents cannot go beyond the minimum qualifications prescribed by NCTE in the said notifications.

10. We may at the outset point out that RTE Act, 2009 is enacted for the purpose of providing free and compulsory education to all children of the age of 6 to 14 years till completion of elementary education. Section2(f) defines 'elementary education' as the education from first class to eighth class. Section 2(n) defines 'school' as any recognized school imparting elementary education and includes:

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school, not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;

11. Section 2(p) defines 'specified category' referred to Section 2(n)(iii) as under:

(p) "specified category", in relation to a school, means a school known as Kendriya Vidyalaya, Navodaya Vidyalaya, Sainik School or any other school having a distant character which may be specified, by the appropriate Government.

12. In the light of Section 2(n)(iii) read with Section 2(p), the learned counsel for the appellants contended that the Model Schools established under RMSA are also schools within the definition of Section 2(n) of the RTE Act, 2009 and consequently the respondents are bound by the qualifications prescribed by NCTE in the notifications dated 23.8.2010 and 29.7.2011.

13. It is also pointed out by the learned counsel for the appellants that Section 23(1) of the RTE Act empowers the 'academic authority' authorized by the Central Government to lay down the minimum qualifications for appointment as a teacher and that in exercise of the powers conferred by Section 23(1), the Central Government by notification dated 31.03.2010 authorized the NCTE as the 'academic authority' to lay down the minimum qualifications for a person to be eligible for appointment as a teacher.

14. It is no doubt true that by virtue of the said authorization the NCTE being the academic authority is competent to lay down the minimum qualifications for appointment as a teacher and accordingly the Notifications dated 23.8.2010 and 29.7.2011 came to be issued laying down the minimum qualifications for a person to be eligible for appointment as a teacher in Class I to VIII. However it is relevant to note that the qualifications so laid down are applicable only to the schools referred to in Section 2(n) of the RTE Act.

15. We have already noticed that RTE Act, 2009 is aimed at providing free and compulsory education till completion of elementary education. The definition of school under the first part of Section 2(n) read with Section3(1) of the RTE Act itself makes clear that the said Act deals with imparting only elementary education. Therefore, all the schools enumerated in clauses (i) to (iv) of the second part of Section 2(n) should be of only such schools imparting elementary education.

16. Admittedly the Model Schools have been established under RMSA for providing quality education in schools from Class VI to Class XII in English Medium. It is evident from the scheme of RMSA and the provisions of A.P. Secondary Education Society Rules, 2009 that the whole emphasis is on providing quality education at secondary stage to the rural children. Either the Scheme or the Rules nowhere deals with elementary education. Hence, we are of the opinion that the minimum qualifications prescribed by NCTE under the Notifications dated 23.8.2010 and 29.7.2011 for the purpose of the schools referred to in Section 2(n) of the RTE Act cannot be applied to the Model Schools under RMSA.

17. Even otherwise as held by the Apex Court in State of U.P. v. Bhupendra Nath Tripathi   : (2010) 13 SCC 203 and Visveswaraiah Technological University v. Krishnendu Halder   : (2011) 4 SCC 606, the State in its discretion is entitled to prescribe additional qualifications so long as the qualifications so prescribed are not lower than those prescribed by NCTE. Following the above said decisions the learned single Judge upheld the impugned condition in the notification dated 06.02.2012.

18. Viewed from any angle, the impugned condition, in our considered opinion, cannot be held to be bad on the ground that it is opposed to the qualifications prescribed by NCTE.

19. For the very same reasons, we are unable to agree with the contention of the learned counsel for the appellants that NCTE alone is competent to determine the academic qualifications. In fact the said issue lost its relevance in view of the amendment to NCTE Act by Act 18 of 2011, particularly in the absence of any Regulations under Section 12A of the Act.

20. We may also point out that the ratio laid down in UPENDRA RAI'S case (2 supra) that the regulations framed by the NCTE laying down qualifications for employment of teachers is binding on the State Government was considered by another two-judge Bench in Civil Appeal No. 7479 of 2009 and by order dated 9.11.2009 the issue has been referred to a three-judge bench for authoritative pronouncement.

21. So far as the recruitment of language teacher in English is concerned, the contention on behalf of the appellants is that the respondents were not justified in prescribing that the candidates who have studied SSC, Intermediate and Graduation through English Medium are only eligible. According to the appellants, such prescription is arbitrary, illegal and discriminatory since no such condition was prescribed so far as the other languages are concerned.

22. The very same contention was advanced in the writ petitions and the learned Single Judge rejected the same observing as under:

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

23. We entirely agree with the reasoning of the learned Single Judge. As rightly held by the learned Single Judge, the teaching of English language assumes more importance in the model schools which are aimed at providing quality education to the rural children on par with the children who studied in English medium right from the primary stage. Therefore, the respondents cannot be found fault with in insisting upon that the candidates should have studied in English medium at any two levels of school/junior college/degree college for TGTs in English.

POINT No. 2:

24. The next question that requires consideration is whether the action of the respondents in making only those candidates who have studied in English medium at two/three levels eligible for appointment to the posts notified amounts to discrimination on the basis of the language and whether it offends Articles 14, 16 and 29(2) of the Constitution of India.

25. Article 14 of the Constitution of India guarantees equality before the law and confers equal protection of laws whereas under Article 16 there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. However the law is well-settled that Article 14 does not forbid reasonable classification. It is also a well-settled principle of law that Article 16 being an instance of the application of the general rule of equality laid down in Article 14, it does not bar a reasonable classification of employees or reasonable tests for their selection.

26. A Constitution Bench of the Apex Court in the State of Mysore & Another v. P. Narasinga Rao  : AIR 1968 SC 349 has explained the relevant law on the subject as under:

It is well settled that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group, and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule. As we have already stated, Articles 14 and 16 form part of the same constitutional code of guarantees and supplement each other. In other words, Article 16 is only an instance of the application of the general rule of equality laid down in Article 14 and it should be construed as such. Hence, there is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured; Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection. It is true that the selective test adopted by the Government for making two different classes will be violative of Articles 14 and 16 if there is no relevant connection between the test prescribed and the interest of public service. In other words, there must be a reasonable relation of the prescribed test to the suitability of the candidate for the post or for employment to public service as such. The provisions of Article 14 or Article 16 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for public service as such.

27. Another Constitution Bench in a decision rendered more than half a century ago in State of West Bengal v. Anwar Ali Sarkar   : AIR 1952 SC 75 explained the ambit and scope of Article 14 of the Constitution of India as under:

54....It is now well established that while Article 14 is designed to prevent a person or class of persons from being singled out from others similarly situated for the purpose of being specially subjected to discriminating and hostile legislation, it does not insist on an 'abstract symmetry' in the sense that every piece of legislation must have universal application. All persons are not, by nature, attainment or circumstances, equal and the varying needs of different classes of persons often require separate treatment and, therefore, the protecting clause has been construed as a guarantee against discrimination amongst equals only and not as taking away from the State the power to classify persons for the purpose of legislation. This classification may be on different bases. It may be geographical or according to objects or occupations or the like. Mere classification, however, is not enough to get over the inhibition of the article. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while the article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense I have just explained.

(Emphasis supplied)

28. Reiterating the above said principles of law, a five-judge bench in Confederation of Ex-Servicemen Associations v. Union of India   : (2006) 8 SCC 399held that every classification to be legal, valid and permissible must fulfil the twin test namely:

(i) the classification must be founded on an intelligible differentia which must distinguish persons or things that are grouped together from others leaving out or left out; and

(ii) such a differentia must have rational nexus to the object sought to be achieved by the statute or legislation in question.

29. On application of the said tests, in the above case it was held that the classification between in-service and retired employees and differentiation between defence personnel and civil personnel was valid observing that they form different class and Article 14 could not be said to have been violated. Similarly it was held in State of Bihar v. Bihar State Plus-2 Lecturers Assns.   : (2008) 7 SCC 231 that the classification between the trained teachers and untrained teachers was reasonable and valid.

30. In Arun Kumar v. Union of India   : (2007) 1 SCC 732the Supreme Court while negativing the contention that classification between Government employees and employees of Companies, Corporations and other Public Sector Undertakings was arbitrary and capricious observed that distinction between employees of the Central Government and the State Governments (Civil Servants) on the one hand and other employees (employees of Companies & Corporations) on the other hand was well founded and well defined.

31. In State of J & K V. Triloki Nath Khosa   : (1974) 1 SCC 19 the classification for promotion on the basis of academic and technical qualifications was upheld by the Supreme Court holding that the classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstance and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification. In the light of the legal position noticed above, we shall now proceed to consider whether the restriction imposed in the impugned notification on the basis of the medium of education offends Articles 14 and 16 of the Constitution of India.

32. According to the appellants/writ petitioners, the above said restriction has no nexus with the object sought to be achieved under the Scheme-RMSA and therefore the classification sought to be drawn in the impugned notification is arbitrary and unreasonable.

33. It is not disputed before us by the respondents that the writ petitioners possessed the educational qualifications prescribed in the notification. However they have not studied in English medium at three/two levels of school/junior college/degree college/post graduation as required in the notification and therefore their candidature was not considered.

34. Thus admittedly a classification is sought to be drawn among the persons who satisfied the prescribed educational qualification on the basis of the medium in which they acquired the prescribed educational qualification. In other words, a distinction has been drawn in the impugned notification between the persons who acquired the prescribed educational qualifications in English medium at two/three levels on the one hand and the writ petitioners and others who did not acquire the prescribed educational qualification in English medium at two/three levels on the other hand.

35. Whether the said classification is valid and permissible under law is the question that requires consideration by us.

36. As noticed above, Articles 14 and 16 of the Constitution of India do not forbid reasonable classification and the Apex Court held that two conditions must be satisfied to sustain the classification.

37. On application of the two tests laid down by the Courts, it is necessary for us to examine whether the classification in the impugned notification is founded on an intelligible differentia which distinguishes the persons who studied in English medium at two/three levels from others and whether such a differentia has rational nexus to the object sought to be achieved by the scheme under which the model schools are established.

38. At the outset, it is to be noticed that the model schools have been established in the State with a laudable object of providing quality education in English medium to the rural children at secondary stage i.e., from Class VI to Class XII. Admittedly it is in pursuance of a policy decision of the State for upliftment of children of rural areas and to equip them to compete for admission into professional courses and other higher studies on par with the children of urban background who have opportunity to study in English medium right from the primary stage. For the said purpose, according to the respondents it is essential to ensure high teaching standards which is possible only when the teaching faculty is in a position to teach all the subjects in English with absolute command over the terminology in English.

39. It may be true that the writ petitioners are possessing the prescribed educational qualifications and are also fluent in spoken English. However the fact remains that they did not study in English medium in two/three levels specified in the impugned notification. Teaching in English at secondary stage invariably requires proficiency in English terminology of all the subjects in the curriculum. As the model schools are set up under RMSA for the purpose of providing quality education in secondary stage and the teaching faculty is required to teach in English from Class VI to Class XII, we find force in the submission of the respondents that only those candidates who have studied in English medium at least in three/two levels are suitable for appointment as teachers since they would be well versed with the English terminology of the various subjects included in the curriculum.

40. Having regard to the purpose for which the Model Schools are set up, we are also of the opinion that the condition in the impugned notification that the candidates should have studied in English medium is not an additional qualification, but it only relates to the suitability of the candidates to meet the specific need of the respondents.

41. In that view of the matter, the contention on behalf of the writ petitioners that by virtue of the said condition the persons who have studied in English medium are placed in a higher category while those who have not studied in English medium are placed in a lower category is unfounded and untenable. In the light of the specific object for which the model schools are set up, the respondents thought it fit to recruit only those persons who have studied in English medium to serve the purpose of providing quality education in English medium.

42. Looking from that angle, the respondents are justified in grouping the persons who have studied in English medium at any two/three levels as a class different from those persons who have not studied in English medium and such classification in our considered opinion cannot be said to be arbitrary or unreasonable.

43. At the cost of repetition, it may be reiterated that the students in model schools should be taught in English upto XII standard which invariably requires proficiency in English terminology of various subjects like Mathematics and Sciences. Whereas the candidates who acquired the prescribed educational qualification in English medium and thus well versed with such English terminology are capable of teaching in English all the subjects, the same competence may not be expected from the candidates who have not studied in English medium. Therefore, the distinction drawn by the respondents between the candidates who have studied in English medium and those who have not studied in English medium cannot be held to be illegal, irrational or unreasonable. We may hasten to add that the validity of the impugned distinction has to be tested keeping in view the interest of the rural children who are sought to be uplifted by providing quality education so as to equip them to compete for admission to professional courses on par with the children of urban background. It also appears to us that in the facts and circumstances of the case it would be appropriate to test the reasonableness of the classification drawn in the impugned notification giving preference to the larger public interest rather than the interest of the individuals.

44. We are also satisfied that the classification drawn in the impugned notification has a rational nexus to the object sought to be achieved under the scheme apart from involving an element of public interest. The scheme is aimed at upliftment of rural children by providing quality education in English Medium at secondary stage, and the same can be achieved only when suitable teaching faculty is recruited. Therefore, the impugned classification in our considered opinion cannot be held to be violative of Article 14 or Article 16 of the Constitution of India.

45. So far as his submission on the basis of Article 29(2) of the Constitution of India is concerned, the learned counsel for the petitioners relied upon CHAMPAKAN DORAI RAJAN'S case (3 supra) wherein it was held that the classification which proceeded on the basis of religion, race and caste was opposed to the constitution and thus constitutes a clear violation of the fundamental rights guaranteed to the citizen under Article 29(2).

46. As we could see, it is a case where a G.O. called communal G.O. was issued, according to which for every 14 seats to be filled in for Engineering course by the Selection Committee, candidates were selected on the basis of the religion, race and caste. The said G.O. was therefore held to be void.

47. Similarly in Bombay Educational Society's case (4 supra) the impugned Circular, dated 6.1.1954 was issued by the State of Bombay restricting the admission to schools in which the medium of instruction was English to the children belonging to the Anglo-Indian and European communities whose language is English, thus resulting in debarring the admission to the citizens whose language is not English. Hence it was held that the power exercised by the State Government in determining the medium of instruction must yield to the fundamental right guaranteed under Article 29 (1) and accordingly the circular was declared bad since it contravened the provisions of Article29(2) and Article 337.

48. In Shri Krishna Ranganath Mudholkar's case (7 supra), the question that fell for consideration was whether the State of Gujarat has power to legislate prescribing the medium in which instruction should be imparted in institutions of Higher Education and in other institutions. While interpreting the provisions of the Gujarat University Act, 1949, the Apex Court held that no power was conferred on the University by the Act to impose Gujarati or Hindi or both as exclusive medium of instruction and in the absence of such power the Senate which is a body acting on behalf of the University could not exercise such a power.

49. Following the above decisions in ST. STEPHENS COLLEGE'S case (5 supra) wherein the admission programme of the college giving preference to Christian students was under challenge, the Supreme Court while observing that clause (2) of Article 29 offers protection to all citizens whether they belong to majority or minority groups, whereas clause (1) protects the rights of a section of the citizens having a distinct language, script or culture of its own, concluded that though the college is a minority institution since it is receiving aid out of State funds, it has to abide by the rigour of Article 29(2) in the matter of admission to the students in the college.

50. Apparently, in all the above decisions the Apex Court was dealing with a special right conferred under Article29(2) of the Constitution of India on citizens for admission into educational institutions maintained or aided by the State. All the said decisions are clearly distinguishable on facts and thus the ratio laid down therein has no bearing on the issue involved in the case on hand since we are not concerned with admission into any educational institution but the allegation is that the writ petitioners are discriminated on the basis of the medium of education for the purpose of public employment. For the aforesaid reasons, we do not find substance in any of the contentions advanced on behalf of the appellants. Accordingly, we hold that the learned Single Judge has not committed any illegality or irregularity in dismissing the writ petitions and therefore the interference by us is not warranted on any ground whatsoever. Hence, all the Writ Appeals are dismissed. No costs. Consequently the miscellaneous petitions if any pending in the Writ Appeals shall stand closed.