

**IN THE SUPREME COURT OF INDIA
EXTRAORDINARY APPELLATE JURISDICTION**

Special Leave Petition (Civil) No 9151 of 2021

Probirth D Marak & Ors

... Petitioner(s)

Versus

The State of Meghalaya & Ors

... Respondent(s)

ORDER

1 The fifty two petitioners before this Court in proceedings under Article 136 of the Constitution were appointed on a contractual basis as teachers in the State of Meghalaya. They moved the High Court under Article 226 of the Constitution seeking:

- (i) To challenge the orders dated 18 February 2020 issued by the Director of School Education and Literacy granting a one time final extension to all contractual teachers;
- (ii) The cancellation of the Meghalaya Teachers' Eligibility Test¹ Examination which was conducted on 31 January 2019; and
- (iii) For the regularisation of the services of the petitioners.

1 "TET"

2 The writ petition was dismissed by an order of the Single Judge dated 5 October 2020. The order of the Single Judge was upheld by the Division Bench on 10 December 2020.

3 While issuing notice on 9 July 2021, this Court noted the submissions which were urged on behalf of the petitioners in the following terms:

“2 Mr Salman Khurshid, learned Senior Counsel appearing on behalf of the petitioners, submits that during the course of the nine years’ service which was rendered by the petitioners as contractual employees, only one Teachers’ Eligibility Test was held by the State of Meghalaya in January 2019. In these circumstances, it has been submitted that the State of Meghalaya ought to have given another chance to candidates such as the petitioners to appear in the TET in order to allow them to seek the benefit of regular appointment in terms of the policy of the State Government. Learned Senior Counsel states that in the absence of such an opportunity, the petitioners would become age barred.”

4 In pursuance of the order issuing notice, the State of Meghalaya has filed a counter affidavit.

5 We have heard Mr Salman Khurshid, senior counsel appearing on behalf of the petitioners and Mr Amit Kumar, Advocate General appearing on behalf of the State of Meghalaya.

6 Section 23 of the Right of Children to Free and Compulsory Education Act 2009² provides as follows:

“23. Qualifications for appointment and terms and conditions of service of teachers.—

2 “RTE Act”

- (1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.
- (2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification: Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.
- (3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed."

7 On 23 August 2010, the National Council for Teacher Education³ issued a notification in exercise of its powers under Section 23(1) of the RTE Act laying down the minimum qualifications for appointment of a teacher. The TET was stipulated as a mandatory requirement for eligibility for appointment as a teacher for Classes I to VIII.

8 On 1 June 2012, Section 12A was introduced in the National Council for Teacher Education Act 1993 giving statutory powers to the NCTE to determine the minimum standards of education. On 29 July 2011, the NCTE issued a notification amending its earlier notification dated 23 August 2010.

3 "NCTE"

- 9 On 29 October 2018, the Government of Meghalaya issued an advertisement for conducting the Meghalaya TET⁴. The test was conducted on 21 January 2019 in several centres. Following certain complaints in regard to the conduct of the test, the Government of Meghalaya appointed an enquiry officer. Upon the submission of the report, the results of the TET were declared on 25 February 2020 except for one sub-division. On 18 February 2021, the Director of School Education and Literacy directed all Sub Divisional School Education Officers to ensure that schools under their jurisdiction issued a one time extension for a period of 59 days to contractual teachers.
- 10 While the writ petitions impugning the above letter were pending in the High Court, the Director of School Education and Literacy issued a communication dated 29 May 2020 directing that all vacant posts of Assistant Teachers in elementary schools be advertised. Advertisements were issued inviting applications from MTET qualified candidates.
- 11 The petitioners, as noted earlier, instituted a writ petition before the High Court, which was dismissed by the Single Judge. The order has been upheld in a writ appeal. The High Court has, however, held that the dismissal of the appeal will not prejudice the rights of the petitioners to participate in any further examination which may be conducted by the authorities.
- 12 In this backdrop, when the Special Leave Petition was entertained by this Court on 9 July 2021, the State of Meghalaya was requested to respond to the submissions that another chance ought to have been given to candidates to

4 “MTET”

appear in the TET so as to seek the benefit of engagement on a regular basis in terms of the policy of the State Government.

- 13 Mr Salman Khurshid submitted that Clause 11 of the Guidelines framed by the NCTE on 11 February 2011 for conducting the MTET stipulates that it should be held at least once every year. The submission is that though the petitioners were in contractual service for nine to ten years, the test was held only in 2019, as a result of which they lost the opportunity of appearing in multiple chances, which should have otherwise been available.
- 14 In the counter affidavit which has been filed by the State of Meghalaya, it has been stated that pursuant to the order of this Court dated 9 July 2021, the State scheduled another MTET Examination on 28 August 2021 by a notification dated 22 April 2021. Due to the delay caused by the pandemic, the examination was conducted on 9 October 2021 and the results have been declared on 8 December 2021. Hence, it is submitted that the grievance of the petitioners stands met. Moreover, it has been submitted that the Education Department's notification dated 22 April 2022 prescribing the procedure for the conduct of the MTET for elementary school teachers provides that the age limit for appearing in the examination is 32 years for general candidates which is relaxable up to 37 years in the case of SC/ST and PWD candidates. The relevant provision of the notification is extracted below :

“2.2 Age Limit.-

- a) The candidate should not have crossed 32 years of age (relaxable up to 37 years in the case of SC/ST/Persons With Disabilities (PWD) candidates as on the first day of the first

month of the year in which the advertisement was made.

b) In respect of in-service school teachers, there is no age bar. However, he/she has to obtain a No Objection Certificate (NOC) from the head of school/institution for applying and appearing for the MTET.

c) In case of candidates already in government service, he/she should have first entered service within the age limit mentioned at Clause (I) above and he/she shall have to obtain a No Objection Certificate (NOC) from the concerned Office/Department for applying and appearing for the examination.

Note:

i) Relaxation upto 5% in the qualifying marks in the Minimum Qualifications shall be allowed to the candidates belonging to reserved categories, such as SC/ST/OBC/Persons with Disabilities.

ii) Only Diploma /Degree Course in Teacher Education recognized by the NCTE will be considered. However, in case of D.Ed (Special Education) and B.Ed (Special Education), a course recognized by the RCI only will be considered.

iii) Before applying, a candidate has to make sure that he/she is eligible to apply and appear the MTETC."

15 Para 2.2(b) extracted above provides that in respect of in-service school teachers, there is no age bar, but the teacher has to obtain a No Objection Certificate from the Head of the School/Institution.

16 The substantive grievance of the petitioners would stand resolved to a significant extent by the decision which has been taken by the State Government to conduct an examination. The results of the MTET have already been declared on 8 December 2021. Those teachers who have qualified at the

MTET would be eligible to seek appointment subject to fulfillment of all other conditions.

- 17 However, we also perceive some element of hardship because of the fact that the MTET was held for the first time on 31 January 2019 and, after the notice issued by this Court, again on 9 October 2021.
- 18 Be that as it may, para 2.2(b) of the notification of the State Government dated 22 April, 2021 specifies that there will be no age bar for in-service candidates. We are of the view that the candidates such as the petitioners who technically may not be in service today as a result of the termination, but who were in service at the relevant time may be sympathetically considered for giving an age relaxation. In any event, the age limit is relaxable up to 37 years in the case of SC/ST candidates and for persons with disabilities.
- 19 We request the State Government to consider whether a similar age relaxation which is available to in-service candidates should be granted to persons such as the petitioners who had in the past served for several years and who may now become age barred. If such a concession is granted, it would substantially assuage the grievance of the petitioners that the inability of the State to hold the TET at more frequent intervals in the past had disabled them from appearing for the examination. In the event that the State grants a concession, it may be granted on an even footing to all similarly placed candidates.
- 20 The application for intervention is accordingly disposed of in terms of the above directions.

- 21 The Special Leave Petition is disposed of in the above terms.
- 22 Pending application, if any, stands disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Hima Kohli]

**New Delhi;
September 30, 2022**

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ITEM NO.58

COURT NO.2

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).9151/2021

(Arising out of impugned final judgment and order dated 10-12-2020
in WA No. 21/2020 passed by the High Court of Meghalaya at Shilong)

PROBIRTH D. MARAK & ORS.

Petitioner(s)

VERSUS

THE STATE OF MEGHALAYA & ORS.

Respondent(s)

(WITH IA No. 67668/2021 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES, APPLICATION FOR INTERVENTION)

Date : 30-09-2022 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE HIMA KOHLI

For Petitioner(s) Mr. Salman Khurshid, Sr. Adv.
Ms. Sakshi Kotiyal, Adv.
Ms. Lubna Naaz, AOR

For Respondent(s) Mr. Amit Kumar, Adv. Gen.
Mr. Avijit Mani Tripathi, AOR
Mr. Upendra Mishra, Adv.
Mr. J.K. Nayak, Adv.
Mr. Shaurya Sahay, Adv.
Mr. Aditya Shankar Pandey, Adv.
Mr. P.S. Negi, Adv.
Mr. T.K. Nayak, Adv.

Mr. Vikramaditya Singh, AOR
Mr. Kynpham V. Kharlyngdoh, Adv.
Mr. Shreyank Tiwari, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 The Special Leave Petition is disposed of in terms of the signed order.
- 2 Pending application, if any, stands disposed of.

**(SANJAY KUMAR-I)
DEPUTY REGISTRAR**

**(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR**

(Signed order is placed on the file)