

by the respondent No. 6, for filling up of 71 vacancies in Ampati Sub-Division of South West Garo Hills. In the said advertisement, at para 3 thereof, the qualifications prescribed was as follows:

“Para 3 – Qualifications

- 1. Essential Qualification for Lower Primary School Teachers: Class 12th Passed with 50% for General Candidates & 45% for ST/SC Candidates with D.El.Ed. or Graduate with B.Ed. As Per NCTE Notification dated 23/08/2010 - Sl. 1.***
- 2. MTET Passed Certificate: Compulsory.***
- 3. D.El.Ed. Passed Certificate: Compulsory.***
- 4. Language proficiency will be required as per the medium of the instruction of the school.***
- 5. Age limit:***
 - a. In pursuance to the Personnel & A.R.(A) Department Office Memorandum vide No. PER. 38/2021/30 dated Shillong, 3rd February 2022, the candidate upper age limit will be 32 years on the first day of the year in which the advertisement is made i.e. as on 1st January 2023 and 5 years additional relaxation in case of candidates belonging to ST/SC will be applicable.***
 - b. Age relaxation for Persons with Disabilities (PwDs) will be as per Personnel & A.R.(B) Department Office Memorandum vide No. PER (AR) 150/88/560 dated Shillong, 18th January 2023.***
 - c. In the case of candidates already in government service, he/she should have first entered service within the age limit mentioned in Clause 4(a) above and he/she shall have to obtain a No Objection Certificate (NOC) from the concerned office/department for applying.***
 - d. In pursuance of Memo. No. PER (AR). 60/2023/Pt./5 – A dated Shillong, the 24th May 2023, a one-time age***

relaxation is provided for those who have passed MTET in 2021 but are now overage for consideration of this advertisement.

6. Basic Computer literacy will be an added preference.”

2. From the above, it can be noted that Graduates of B.Ed. as per NCTE Notification dated 23-08-2010 have been mentioned. It appears that the said Notification was amended, to provide for the said condition of eligibility by a Notification dated 28-06-2018, which later became a subject matter in issue, as regards the eligibility and suitability of candidates having a B.Ed. Degree, to teach in Primary Schools, before the Rajasthan and Chhattisgarh High Courts. This was then also adjudicated by the Supreme Court on an appeal being carried against the judgment of the Rajasthan High Court, by a judgment dated 11-08-2023, the Supreme Court then in ***Civil Appeal No. 5068 of 2023 (Devesh Sharma vs. Union of India)*** along with other connected matters, quashed and set aside the Notification dated 28-06-2018. With the setting aside of the Notification, candidates who held a B.Ed. Degree therefore, in effect, were no longer eligible to apply for the post of Primary School Teachers.

3. The petitioners' main grievance, is with the rejection of their candidature as given in the impugned list dated 06-11-2023, for not possessing D.El.Ed. Diploma which was one of the qualifications prescribed by the advertisement. It has been contended by the petitioners

that at the time when the advertisement was issued, there was no bar as to aspirants who possessed a B.Ed. Degree and MTET qualification and their rejection therefore, which they allege is on the basis of the quashing of the Notification dated 28-06-2018 by the Supreme Court, being a subsequent event, the same cannot be taken into account for rejecting their applications.

4. Mr. K.Paul, learned Sr. counsel for the petitioners, has strenuously argued that the setting aside of the Notification by the Supreme Court, will not affect the candidature or eligibility of the petitioners as the same is a prospective declaration of law, and that if recourse by the respondents is to be taken to the same to disqualify the petitioners, the advertisement would have to be withdrawn, as the Notification has been found to be bad in law. In this context, the learned Sr. counsel has referred to the order of the High Court of Chhattisgarh dated 21-08-2023, passed in WPS No. 5788 of 2023, wherein he submits, in a similar situation, the entire recruitment process was kept in abeyance with regard to candidates having B.Ed. qualification which however, was interfered with by the Supreme Court *in SLP No. 35325/2023, (Harishankar & Anr. vs. State of Chhattisgarh & Ors.)* wherein by order dated 29-08-2023, the order dated 21-08-2023 of the Chhattisgarh High Court, was stayed and the recruitment process was allowed to continue, however, with the appointments made subject to the

result of the final outcome of WPS. No. 5788 of 2023. He therefore, submits that the situation in the present case being similar and identical, the candidature of the petitioners, should be taken into consideration in the selection process which has commenced since the issuance of the advertisement by the respondents.

5. Mr. A.Kumar, learned AG for the respondents, in his reply, has submitted that possession of a B.Ed. Degree is no longer a qualification in the eye of law. The advertisement, he contends, has clearly at Sl. No. 3 of paragraph 3, stipulated that D.El.Ed. Pass Certificate is compulsory and this has to be read in isolation, as regards qualifying criteria notwithstanding the criteria mentioned in Sl. No. 1, which provided for Graduates with B.Ed. qualification to be eligible. Reliance has been placed on the Rajasthan judgment, to advance his argument that the B.Ed qualification was found not suitable or designed for teaching at the primary level, by referring to paragraph 25, 26 and 27 of the said judgment, and that the quashing and setting aside of Notification dated 28-06-2018, which allowed candidates with B.Ed. to apply, has extinguished any right vested or otherwise, of the petitioners to claim eligibility.

6. Another limb of argument advanced by the learned AG, is that the advertisement was issued after the NCTE Notification had been declared unconstitutional by the Rajasthan High Court vide its judgment dated 25-

11-2021, passed in Civil Writ Petition No. 2109 of 2021, and that the advertisement being issued on 14-06-2023, even on a date of the issuance of the advertisement, there existed no right in favour of the petitioners to be appointed as teachers at the primary school level. The learned AG has placed reliance on the case of ***CBI vs. R.R.Kishore, 2023 SCC Online SC 1146***, and submits that where a notification is declared unconstitutional, the same would be void-ab-initio and non-est in law. Reliance has also been placed on the case of ***State of Manipur vs. Surjakumar Okram, 2022 SCC Online SC 130***, wherein the Supreme Court at para 22 and 23 of the judgment, has held that where a statute is adjudged to be unconstitutional, it is as if it had never been, and rights cannot be built up under it. He further submits that the selection process is ongoing and it has not ceased, and as such, selection is to be based upon the rules and regulations which are in force, as on the date of consideration, and not on the basis of the rules which were in force on the date of the advertisement of the vacancies. In support of this argument, the learned AG has cited the following cases ***(i) State of Uttar Pradesh vs. Rachna Hills & Ors. 2023 SCC Online SC 506, (ii) Deepak Agarwal vs. State of UP (2011) 6 SCC 72, (iii) State of Himachal Pradesh vs. Raj Kumar 2022 SCC Online SC 680.***

7. The learned AG lastly submits, that incorrect reliance has been placed upon the case arising out of Chhattisgarh High Court, inasmuch as,

in that case, the writ petition was instituted challenging the inclusion of B.Ed. qualified candidates by the Government which was stayed by that High Court. The Supreme Court, he submits, by the stay order dated 29-08-2023, did not declare any law vesting any right in favour of the B.Ed. candidates, but only directed that the entitlement of the candidates for recruitment would be subject to the determination of the writ petition by the High Court. He therefore, contends that the Notification wherefrom B.Ed. qualified candidates were allowed to offer their candidature being no longer in existence, and in view of the decision of the Supreme Court in holding that a B.Ed. Degree holder was not suitable for teaching in primary schools, and with the selection yet to be completed, the petitioners do not possess any vested or legal right to be considered for selection. The argument advanced earlier that D.El.Ed. was compulsory and is a must was reiterated by the learned AG.

8. Having heard the learned counsel for the parties and looking into the materials and the facts at hand, the issue before this Court is twofold. First, whether the rejection is justified considering the finding in the judgment of the Supreme Court that B.Ed. qualification was not suitable for primary level education, and secondly, whether the requirement of D.El.Ed. which was made compulsory at Sl. 3 of the advertisement dated 14-06-2023 is to

be read independently of Sl. No. 1 wherein B.Ed. qualification has been mentioned.

9. On the first issue, the judgment of the Supreme Court will no doubt have a decisive bearing on the present case. This observation is made in view of the findings recorded at paragraphs 31, 32, 33 which are reproduced herein below:

“31. The sequence of events show that what started as an exercise for consideration of B.Ed. qualified candidates as teachers for Primary classes in Central schools, was expanded to include all primary schools throughout the country. The apparent reasoning given is that B.Ed. qualified candidates are better suited for appointment as teachers in Primary schools, as they have 'higher qualifications', and as such they should be appointed as teachers in all Primary schools. Another reason for doing this is the dearth of qualified TET candidates. The figures given in the meeting suggests that only 6% to 16% of the candidates who appear in the TET examination qualify the test. The suggestion appears to be that with the inclusion of B.Ed. candidates the number of TET qualified candidates would increase. But this logic does not hold good when B.Ed. as a qualification has not passed the basic pedagogical threshold for teaching primary classes.

We have already examined this aspect in great detail. B.Ed. is not a qualification for teaching at Primary level of classes, much less a better or higher qualification, in context of Primary classes. This finding is self-evident in the very admission of NCTE which mandates that all B.Ed. qualified teachers who are appointed to teach Primary level classes must mandatorily undergo a pedagogical course for

elementary classes within two years of their appointment.

32. In Society for Unaided Private Schools of Rajasthan v. Union of India & Anr. (supra) this Court while upholding the validity of the RTE Act, held that primary education, which is now a part of fundamental right under Part III of the Constitution, has to be a meaningful education, and not just a formality. When Diploma in elementary education (D.El.Ed.), was placed as an essential qualification for teachers in Primary school, it was with a purpose, and the purpose was to declare only such teachers as qualified who are trained to impart education to children at 'primary level'. The pedagogy for a child who has just entered the school, is an important consideration. A child has come to face a "teacher", so to speak, for the first time in a class room. It is the beginning of a journey for the child student and therefore world over great care is taken in laying down proper foundations in these formative years. Well qualified and trained teacher in elementary school is an extremely vital aspect. A teacher must be trained to teach students at "primary level", and this is precisely what the training of Diploma in elementary education (D.El.Ed.) does; it trains a person to teach children at primary level. B.Ed. is not a 'higher qualification', or a better qualification, as is being canvassed in its favour, while comparing it with 'Diploma in elementary education'. B.Ed. is a different qualification; a different training. Even assuming it is a higher qualification, it would still not be a suitable qualification for primary level of classes. Unlike Diploma in elementary education (D.El.Ed.), B.Ed. does not equip a teacher to teach at primary level. This fact is implicitly recognised in the Notification as well (notification dated 28.06.2018), which still requires a person, who is appointed as a teacher with B.Ed. qualification to 'mandatorily undergo a six-month Bridge Course in Elementary Education'. This defeats the very logic of including B.Ed. as a qualification, as the very notification which pushes for the inclusion of B.Ed., also recognises its

inherent pedagogical weakness in its relation to primary classes. It is to cover this defect, that all such candidates, must undergo a mandatory six months Bridge Course in elementary education! The irony here is that all this is being done when the State of Rajasthan already has more than the required number of Diploma qualified candidates available. This is besides the fact that there is presently no such "bridge course" available; at least there was none till the disposal of the petition by the Rajasthan High Court.

33. Under these circumstances, we are unable to comprehend as to what was the pressing need to include B.Ed. candidates, who are admittedly not fully trained to take up Primary Classes! Consequently, the decision of the NCTE to include B.Ed. as a qualification for teachers in a primary school seems arbitrary, unreasonable and in fact has no nexus with the object sought to be achieved by the Act i.e. Right to Education Act, which is to give to children not only free and compulsory but also 'quality' education.

10. Further, in para 36 of the same judgment, the Supreme Court was also of the opinion that the Notification dated 28-06-2018, was violative of the principles as laid down in the RTE Act, and that the same was against the purpose and mandate of law which was to provide a meaningful and quality primary education to children. The Supreme Court had then gone on to record the finding that the State of Rajasthan was clearly in error in not calling for applications from B.Ed. qualified candidates for the reasons that till that time when such advertisement was issued by the Rajasthan Government, B.Ed. candidates were included as eligible candidates as per

the statutory notification of the NCTE, which is binding on the Rajasthan Government till it was declared illegal or unconstitutional by the Court.

11. In the above context therefore, applying the facts of the instant case to the judgment discussed hereinabove, the advertisement in question was published on 14-06-2023, and the Notification dated 28-06-2018 had been quashed by the Rajasthan High Court by order dated 25-01-2021, which was then upheld by the Supreme Court by order dated 11-08-2023. Though at the relevant point of time, prior to the issuance of the advertisement, the Notification dated 28-06-2018, had been quashed by the Rajasthan High Court, the final binding verdict i.e., the order of the Supreme Court which has settled the issue finally as to the legality of the Notification dated 28-06-2018 cannot be ignored. This observation is made in view of the fact that notwithstanding any other factors that may be in favour of B.Ed. qualified candidates to apply for selection for appointment to the post of primary school teachers, the fact that B.Ed. qualification has been found to be unsuitable for primary level education, will make any other discussion on other points of law as purely academic.

12. Similarly, in the case arising from an order of the Chhattisgarh High Court in WPS. No. 5788 of 2023, the Supreme Court in *SLP No. 35325/2023, (Harishankar & Anr. vs. State of Chhattisgarh & Ors.)* (*supra*) had only allowed the recruitment process to continue, but made the

same subject to the outcome or result of the consideration to be made by the High Court in WPS. No. 5788 of 2023. The relevant paragraphs wherein this direction is contained is reproduced hereinbelow:

“In the meantime, taking into consideration that the recruitment process which was in progress, is now interrupted by the ad-interim order dated 21.08.2023 and the aspect ultimately to be considered by the High Court is with regard to the manner in which the judgment in C.A. No. 5068 of 2023 passed by this Court is to be construed, at this stage interrupting the recruitment process would not be justified.

Therefore to the said extent, we hereby stay the order dated 21.08.2023 passed by the High Court and clarify that the recruitment process, which was in progress prior to the date of the said interim order passed by the High Court, shall continue and the appointments, if any, made thereunder will however remain subject to result of the consideration to be made by the High Court in W.P.S No. 5788 of 2023. The selected candidates shall be informed of the same by the Appointing Authority concerned.”

13. Though it has been argued by the Sr. counsel for the petitioners that the quashing of the Notification dated 28-06-2018, will amount to a prospective declaration of law and that the advertisement being issued prior to its quashing should be saved and the B.Ed. qualified candidates be permitted to take part in the selection process, the peculiar facts of the instant case warrant that this proposition be viewed from a different angle.

No doubt, as held in the case of *N.T. Devin Katti & Ors. vs. Karnataka Public Service Commission (1990) 3 SCC 157*, when a selection process is initiated by issuing an advertisement, the selection normally should be regulated by the rule or order then prevailing, and any subsequent amendment or order will not affect the pending selection process, in the present case, the implication of the judgment of the Supreme Court whereby the Notification was set aside and quashed, is necessary and vital to be given due consideration, and will surely operate as a contrary indication to the principles laid down by the judgment in *N.T. Devin Katti (supra)*.

14. Another aspect which though lesser in importance in this discourse, is the requirement as stipulated in Sl. No. 3 of the advertisement with regard to qualification wherein it has been prescribed that D.El.Ed. is compulsory. This requirement it is noted, has categorically been provided in the advertisement itself, and a perusal of the impugned rejection of the petitioners, reflects that the same was on account of the candidates not having the said qualification without any other reason being ascribed. The inference that can be drawn therefore, is that notwithstanding the essential qualifications as given in Sl. No. 1, the respondent authority while considering the applications had treated the said requirement as given in the advertisement at Sl. No. 3 as compulsory.

15. Without further dwelling on the other judgments and propositions of law that has been advanced by the parties, in the considered view of this Court, the judgement of the Supreme Court in ***Civil Appeal No. 5068 of 2023 (Devesh Sharma vs. Union of India)***, is the existing law in force as far as the suitability of B.Ed. qualified candidates is for teaching at the primary level. Further, the selection process which was initiated by the advertisement dated 14-06-2023, is ongoing and is yet to be concluded, which in the facts of the present case, that is, with the setting aside of the Notification dated 28-06-2018, should not serve as a legal bar for the application of the existing law in the consideration of eligible candidates.

16. Taking into account the situation as it pertains today, with the eligibility and suitability of the B.Ed. qualified candidates having been conclusively determined by the Supreme Court, this Court is of the view that notwithstanding any other circumstances, such as, if any rights have accrued or can be derived from the advertisement dated 14-06-2023, any further discussion on this point will be but a futile academic exercise.

17. Accordingly, for the reasons hereinbefore mentioned, due to the peculiar facts and circumstances of the case, the reliefs as claimed, if

granted being opposed to approved educational standards and also against public policy, the writ petition is accordingly dismissed.

18. No order as to costs.

Chief Justice (Acting)

Meghalaya
21.11.2023
"Samantha PS"

