

GAHC020001452020



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

Case No. : WP(C)/59/2020

ROBEN EZUNG
G/T(MATHS) GMS YENECHUCHO, DIS, WOKHA, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
NAGALAND, KOHIMA

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
NAGALAND

SCHOOL EDUCATION DEPT.
NAGALAND
KOHIMA

3:THE PRINCIPAL DIRECTOR

SCHOOL EDUCATION DEPT.
NAGALAND
KOHIMA

4:THE DIRECTOR

SCHOOL EDUCATION DEPT.
NAGALAND
KOHIMA

5:THE SUB-DIVISIONAL EDUCATION OFFICER

WOKHA
NAGALAND

Advocate for the Petitioner : TONGPOK PONGENER

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HONBLE MR JUSTICE KARDAK ETE**

JUDGMENT & ORDER (CAV)

Date : 21.09.2023

Heard Mr. Tongpok Pongener, learned counsel for the petitioner and also heard Ms. Livika, learned State counsel for the State respondents.

2. By filing this writ petition, the petitioner has prayed for a direction to the respondent authority to consider for regularization of his service with retrospective effect from the date of initial appointment, *i.e.* 07.06.2011 with all consequential benefits. The petitioner also challenges the requirement of 45% marks in degree course for Graduate Teacher prescribed in the advertisement dated 20.11.2023 on the ground that no such requirements is prescribed in the State Government notifications/Rules and the National Council for Teacher Education.

3. The case projected by the petitioner is that the Directorate of School Education, Nagaland published an advertisement bearing No. ED/ADMN/1/2009-10 dated 20.11.2009 inviting application from eligible indigenous inhabitants of Nagaland for filling up of posts of Graduate Teachers and Primary Teachers in the Government Middle School and Government Primary School under the Government of Nagaland for the posts created *vide* Government Notification No. EDS/SSA-CPA/009-2008(I) dated 20.10.2009 and No. EDS/SSA-CPA/009-2008(II) dated 20.10.2009.

In the said advertisement, besides posts for other Schools, altogether 8 (eight) posts of Graduate Teachers (Mathematics) were published for the district of Wokha. The minimum qualification for the Graduate Teachers (non-gazetted) is B.A./B.Sc/B.Com from a recognized University securing not less than 45% of marks with B.Ed and the post specification for Mathematics is B.Sc with Mathematics, Physics and Chemistry.

4. According to the petitioner since there were no sufficient candidates having B.Sc qualification in the district, candidates having B.Com degree with Mathematics background were allowed to apply for the post of Graduate Teacher (Mathematics). The petitioner being B.Com (Hons) applied for the said post of Graduate Teacher (Mathematics) and was allowed to participate in the common written test. After the written test the result was declared showing 9 (nine) candidates including the petitioner to be qualified for oral interview for the post of Graduate Teacher (Mathematics) *vide* Notification No. ED/ADMN/1/2009-10 dated 29.01.2010, wherein the petitioner's name appeared at Sl.No. 1. The petitioner appeared for the oral interview on 04.02.2010. Final result was published on 07.04.2010 whereby it was shown against the post of Graduate Teacher (Mathematics) under GMS, Yonchucho as no candidate and for the other 7 (seven) posts, candidates were shown to have been selected and the appointment orders were issued *vide* order No. ED/EL/L/I/09-10(Pt.III) dated 03.05.2010.

5. Since the result, *i.e.* the notification dated 07.04.2010 was shown as having no candidate for the post of Graduate Teacher (Mathematics) at GMS, Yonchucho for which the petitioner has appeared

in the selection test, the petitioner submitted an application for consideration of his candidature for appointment on the said post of Graduate Teacher (Mathematics) at GMS, Yonchucho. Thereafter, the Director of School Education having compiled the list of applicants who have submitted application as that of the petitioner forwarded the list for consideration of the Government. Having been approved by the Government *vide* letter No. EDS/SSA-CPA/009-2008/75 dated 30.05.2011, which conveys the approval of the Government for appointment of the petitioner as adhoc Graduate Teacher (Mathematics) at GMS, Yonchucho in the district of Wokha on a fixed monthly salary of Rs. 8,400/- per month, the petitioner was appointed as Graduate Teacher (Mathematics) on fixed pay of Rs. 8,400/- (Rupees Eight Thousand Four Hundred) only per month *vide* order dated 07.06.2011. The petitioner accordingly submitted his joining report on 08.06.2011. Since then the petitioner is serving continuously on being extended from time to time.

6. *Vide* order dated 12.09.2017, the petitioner was selected and approved to undergo B.Ed training at S.L.V. College of Education at Rayalaseema University, Andhra Pradesh for the academic session 2017-19 and according to the petitioner he has successfully completed the course of B.Ed at the said University.

7. The Department of Education *vide* Office Memorandum No. ED/EL/WKA-5/10-11 (Pt.) dated 27.01.2016 notified that all the Graduate Teachers and Primary Teachers who were appointed on adhoc basis against the SSA post creation shall be paid salaries as per the sanction by the Ministry of Human Resources Development, Government of India at

fixed pay of Rs. 27,400/- (Rupees Twenty Seven Thousand Four Hundred) only for the Graduate Teacher and Rs. 20,080/- (Rupees Twenty Thousand Eighty) only for the Primary Teacher. Based on the said OM, the petitioner's pay was enhanced from Rs. 8,400/- to Rs. 27,400/-.

8. The Department issued a press release *vide* No. ED/MNE/REG-1/2015 dated 02.05.2017, which informed that all the categories of adhoc employees under the Directorate of School Education, Nagaland who have completed 3 (three) years or more of continuous service as on 31.12.2015 and have submitted documents that a written test would be conducted on 20.05.2017 and *inter alia* directed to collect Admit Card from 16th to 19th of May 2017. In the Annexure-B to the Press release it had informed that 11 (eleven) adhoc employees, including the petitioner would be deleted from the list of first submission. Thus, the petitioner was not allowed to appear for the eligibility test. Accordingly, the petitioner contended that those who have appeared the test were subsequently regularized in the service.

9. The petitioner submitted representation on 24.08.2017 to the respondent authority praying for regularization of his service on the ground that he had appeared the selection test conducted in 2009 pursuant to the advertisement dated 20.11.2019 and having been selected in written examination and had appeared in the interview and in the result notification the post against which the petitioner was subsequently appointed was shown as having no candidate.

10. The representation of the petitioner having not been attended to, he has approached this Court by filing writ petition registered as WP(C)/131(K)/2018 praying for a direction to the respondent authority to

regularize his service. In the affidavit in opposition to the said writ petition, the respondent authority stated that the final review of selection and posting of Graduate and Undergraduate Teachers was held on 05.03.2010. Candidates securing less than 45% of marks at graduation examination were cancelled and the next candidates with requisite qualification were selected and the petitioner was not selected because he possessed less than 45% marks at the graduation level. The writ petition was disposed of *vide* order dated 24.04.2019 with a direction to the State respondents to examine and take a decision on the petitioner's representation dated 24.08.2017 within a period of 2 (two) months.

11. The respondent authority by letter No. DSE/LEGAL/10-116/2018/546 dated 13.06.2019, in pursuance to the order of this Court dated 24.04.2019 passed in WP(C)/131(K)/2018, had informed the petitioner that his representation dated 24.08.2017 cannot be considered by the Department for the reasons that he did not possess 45% marks in his degree course. It also stated that the petitioner has not been appointed through selection process and that he was appointed purely under the Scheme of SSA on adhoc basis and the case of the petitioner does not fall within the ambit of exception provided by the Hon'ble Apex Court in the case of **State of Karnataka and Others -Versus- Uma Devi** (3) reported in (2006) 4 SCC 1 and the **State of Karnataka -Versus- M.L. Kesari** reported in AIR 2010 SC 2587.

12. The contention of the petitioner is that subsequent to the receipt of the letter dated 13.06.2019, he came to know that the Government of Nagaland, School Education Department had issued

notification *vide* No. EDS(A)-5/2002 dated 04.01.2008 whereby the minimum educational qualification for recruitment of teachers in elementary, secondary and higher secondary schools was prescribed as Graduate with B.Ed. *Vide* notification dated 10.03.2008, in continuation of the earlier notification Government has notified that the policy of the recruitment of teachers prescribing minimum educational qualification as contained in the aforesaid notification shall be applicable in all cases including the adhoc appointments. Therefore, it clearly prescribes that no percentage of marks is required and the same were holding the field when the 2009 selection examination was conducted.

13. It is the contention of the petitioner that *vide* notification dated 03.09.2001 and 23.08.2010 on determination of minimum qualification for the recruitment of teachers issued by the National Council for Teacher Education (in short, NCTE) and a notification dated 28.09.2012 issued by the Ministry of Human Resource Development it grants relaxation of minimum requirement prescribed by the NCTE in respect of the State of Nagaland.

14. *Vide* notification No. 238 of 04.09.2001, dated 03.09.2001, the NCTE (Determination of minimum qualifications for recruitment of teachers in schools) Regulations, 2001 was notified and in the said notification the NCTE did not specify minimum percentage of marks. *Vide* notification dated 23.08.2010, the NCTE has laid down the minimum qualification for a person to be eligible for appointment as teacher for Class I to VIII wherein the requirement of percentage of marks was prescribed. However, since there is a relaxation of the NCTE mark by the

Ministry of Human Resource Development dated 28.09.2012 whereby relaxation is granted in respect of the State of Nagaland relating to the appointment of teachers for Class I to VIII the authorities ought not to have prescribed 45% of marks in the graduation.

15. The State Government notification dated 04.01.2008 and 10.03.2008, the minimum educational qualification prescribed for appointment of teachers had no requirement of any percentage of marks in the degree course which is in tune with the NCTE notification wherein no requirements of percentage of marks has been laid down. The petitioner, after all this information filed another representation for reconsideration of his case for regularization of his service with retrospective effect.

16. The learned counsel for the petitioner submits that although the petitioner was appointed on adhoc basis after selection process held in 2009, yet from the record it can be ascertained that the petitioner was selected at the said examination and only because the State respondents applied the criterion of 45% marks in the degree examination which admittedly he did not possess, his selection was cancelled. He further submits that it is clear from the record at the time selection examination was conducted the standing Government policy as well as the NCTE notification did not require any percentage of marks in the degree course for a person to be eligible for appointment as a teacher but the Directorate of School Education arbitrarily inserted the condition that the candidate must possess 45% marks in the degree course. Therefore requirement of 45% marks in degree course was void *ab initio* being

contrary to the existing Government policy.

17. Mr. Tongpok Pongener, learned counsel for the petitioner submits that the fact that the petitioner was subsequently appointed on adhoc basis to one of the advertised posts shows that the Department deemed the petitioner eligible for appointment and certainly consideration of his performance must have played a role in the appointment on adhoc basis. He submits that the respondent authority as required by the relevant rules selected the petitioner to undergo B.Ed course which he had successfully completed, the respondent authority ought to have permitted the petitioner to appear for eligibility test conducted by the Department for serving adhoc teachers who have completed 3 (three) years or more of service. He further submits that the petitioner has not been allowed to participate in the eligibility test conducted by the Government by denying the petitioner to participate for reasons best known to the respondent authority and as a consequence, while the petitioner continued to render his service on adhoc basis those teachers who have been permitted to appear in the eligibility test have been regularized in service. Therefore, he prays that it would be just and fair and reasonable that the State respondents are directed to consider the regularization of the service of the petitioner in the light of unique facts and circumstances of the present case with retrospective effect from the date of his adhoc appointment.

18. The learned counsel for the petitioner submits that since the policy of the State Government as well as the NCTE notification does not prescribe a minimum requirement of 45% in the degree course, the prescription of 45% marks in the degree course by the respondent

authority in the advertisement dated 20.11.2009 is not permissible as it deprives the petitioner from consideration on the basis of his performance in the selection process in as much as the respondent authority knowingly permitted the petitioner to take the written examination and the interview. Therefore, in the fitness of the scheme of things it would be appropriate to regularize the adhoc service of the petitioner from the date of his initial appointment and as the post on which the petitioner is serving is a sanctioned post as advertised *vide* advertisement dated 20.11.2009.

19. In support of his submission the learned counsel for the petitioner has placed reliance of the judgement of the High Court in the case of **Tayenjam Herojit Singh -versus- State of Manipur** reported in 2013 (2) GLT 131. The relevant paragraphs 27, 28 and 29 relied by the learned Counsel are reproduced herein below:

"27. It is well settled principle as referred by Mr. Singh, learned senior counsel that the recruitment in the Government service must be carried out in terms of the rules framed under the relevant statute. In State of Uttaranchal Vs. Alok Sharma & Ors., as reported in (2009) 7 SCC 647, the Apex Court held that:

15. The relationship between the respondents herein and the said government companies was that of employee and employer. The companies under liquidation although were incorporated and registered under the Companies Act, 1956, they are 'State' within the meaning of Article 12 of the Constitution of India. As 'State', therefore, they were bound to comply with the equality clause contained in Articles 14 and 16 of the Constitution of India; in terms whereof cases of all the eligible candidates for appointment were required to be considered. Recruitment in government service must be carried out in terms of the Rules framed under a statute or the proviso appended to Article 309 of the Constitution of India.

Xxxxxx xxxxxx xxxxxx

22. Keeping in view the principles laid down by the Constitution Bench of this Court in State of Karnataka v. Umadevi (3) : (2006) 4 SCC 1, there cannot be any doubt whatsoever that any condition laid down in any rules which is in derogation for the recruitment rules framed by the State, should receive strict construction.

28. *In State of Orissa & Ors. Vs. Prasana Kumar Sahoo, as reported in (2007) 15*

SCC 129, it has been held that the policy decision is subject to the statutory circumspection. The state is bound by the constitutional scheme to treat all persons equally in the matter of grant of public employment as envisaged under Article 14 and 16 of the Constitution. The policy decision taken by the State in exercise of its jurisdiction under Article 162 would be subservient to the recruitment rules framed by the State either in terms of a legislative Act or under the proviso to Article 309. A purported policy decision issued by way of an executive instruction cannot override the statute or statutory rules far less the constitutional provisions. In Prasana Lumar Sahoo (supra), the Apex Court held as under:

11. It is now well-settled that a State is bound by the constitutional scheme to treat all employment as envisaged under Articles 14 and 16 of the Constitution of India.

12. Even a policy decision taken by the State in exercise of its jurisdiction under Article 162 of the Constitution of India would be subservient to the recruitment rules framed by the State either in terms of a legislative act or the proviso appended to Article 309 of the Constitution of India. A purported policy decision issued by way of an executive instruction cannot override the statute or statutory rules far less the constitutional provisions.

29. *Any appointment made in violation of the prescribed qualification laid down under a statute is nullity. The Apex Court in Pramod Kumar Vs. U.P. Secondary Education Services Commission & Ors., as reported in (2008) 7 SCC 153, held as follows:*

16. The qualifications for holding a post have been laid down under a statute. Any appointment in violation thereof would be a nullity.

Pramod Kumar (supra) further enunciated that an appointment which is contrary to the statute/statutory rules would be void in law and an illegality cannot be regularized, particularly when the statute in no unmistakable terms say so. In Pramod Kumar (supra), the Apex Court observed as under:

18. If the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified. An appointment which is contrary to the statute/statutory rules would be void in law. An illegality cannot be regularized, particularly, when the statute in no unmistakable terms says so. Only an irregularity can be. "

20. The respondents Nos. 1 to 5 have filed their affidavit-in-opposition wherein the contentions of the petitioner has been refuted at paragraph Nos. 5, 6, 8, 10 and 11 which are reproduced herein below:

"5. That the statements made in paragraph 3 of the writ petition is admitted to

the extent that the petitioner who is a degree holder in B.com (Hons) was one of the candidates who qualified the written examination conducted for the post of Mathematics teacher under Wokha District vide the notification number ED/ADMIN/ 1/2009 -10 dated 29.01.2010. It is also admitted that the petitioner was allowed to appear the viva voce (oral) Interview after qualifying the written examination. After both the written and the oral examination was conducted the department of school education on 05.03.2010 held a meeting for final review of selection and posting of graduate and undergraduate teachers in the office chamber of the chairman of NBSE (Nagaland Board of school education), where in the candidates securing less than 45% of marks in the graduation examination were not considered for appointment. The petitioner had secured only 43.75% in the B.com (Hons.) graduation examination and therefore in the result declared and published in the local media on 08. 04. 2010, The Graduate teacher post for the mathematics subject at government Middle School, Yonchucho, Wokha, in which the petitioner had applied was declared as" no candidate". Likewise 23 posts of mathematics in different District of the state could also not be filled up as there were no qualified candidates. In so far as the appointment of Shri A. Stephen Patton is concerned he was appointed as a graduate teacher in the government Middle School (GMS) Okotso under the establishment of the Deputy Inspector of School, Wokha and had also qualified both the written as well as the viva voce exam conducted for the said post. Same was the case with Shri Metchei who has secured 51% in his B.Com degree examination and was appointed as a graduate teacher in the government Middle School (GMS) Yongam under the establishment of the Deputy Inspector of Schools, Longleng.

6. That in regard to the statements made in paragraph 4 of the writ petition the deponent states that the petitioner who did not qualify the interview for the post of graduate teacher (Maths) again submitted application for appointment as a graduate teacher (mathematics) at GMS Yonchucho in the district of Wokha. So also similarly situated candidates also applied for appointment to the post of graduate teacher (Maths) at different schools in different districts. All the applications received for appointment were compiled and put up to the Government for necessary order. Consequent thereto vide the letter No. EDS/SSA-CPA/009-2008/75 dated 30.05.2011 the Government approval was given for ad hoc appointment of the petitioner as graduate teacher (Maths) at GMS, Yonchucho under the Sarva Shiksha Abhiyan (SSA) on a fixed monthly salary of Rs. 8,400/-. Pursuant thereto the order dated 07.06.2011 was issued by the Directorate of School Education appointing the petitioner as graduate teacher on ad hoc basis at GMS, Yonchucho.

8. That in regard to the statements made in paragraph 9 of the Writ petition the deponent states that the eligibility / suitability test conducted by the department in the year 2017 was only for the adhoc employees who were holding post under the State Government including those graduate teachers and undergraduate teachers who underwent the selection process and qualified

the interview conducted by the department on 08. 01. 2010 but did not include the petitioner and other similarly circumstanced persons who did not qualify the selection process but were subsequently appointed as graduate teacher (Maths) on ad hoc basis under the RMFA/SSA scheme.

10. That the statements made in paragraph 13, 14, 15, 16 and 17 of the writ petition are admitted to the extent borne by the records. The notification dated 04.01.2008 issued by the Government of Nagaland, Education Department, as well as the Regulation 2001 issued by the National Council for Teacher Education open (NCTE) lays down the minimum qualifications for recruitment for teachers in the elementary, secondary and higher secondary/ Sr. secondary schools. The minimum educational qualification prescribed for recruitment of teachers as per the notification dated 04.01.2008 and the Regulation Act 2001, in the Elementary Schools for upper primary classes V to VIII, is graduate with B.Ed. Admittedly both the Notification and the Regulation does not prescribe the percentage of marks in the degree course required for appointment as a teacher in the elementary schools. The government / department is however not debarred from laying down a minimum percentage of marks in the prescribed qualification(s). Advertisement dated 20.11.2009 inviting applications for filling up the posts of Graduate teachers and primary teachers in the Government Middle Schools and primary schools it was clearly stipulated that the minimum qualification for appointment as a graduate teacher is B.A./B.Sc/B.Com from a recognized University with not less than 45% of marks with B.Ed. The petitioner who is a graduate in the commerce stream has secured only 43.75% marks in the B.Com (Hons) degree course. He was therefore not found eligible and qualified for selection to the post of Graduate teacher. It is needless state that the petitioner had applied for the post knowing fully well that the qualification required was a graduate with not less than 45% of marks in the respective stream. Therefore after unsuccessfully appearing the exam the petitioner cannot now turn around and complain that only the qualification was prescribed by the notification dated 04.01.2008 and the Regulation 2001 but not the percentage of marks. Even otherwise the petitioner at no point of time challenged the advertisement dated 20.11.2009 issued by the Directorate of School Education, Nagaland, Kohima. In so far as the representation dated 07.08.2019 of the petitioner for regularization of service is concerned, the same was disposed of by the department by the letter dated 30.09.2019, by conveying that the representation cannot be considered as the petitioner was appointed purely on adhoc basis under the SSA scheme but not through any selection process conducted by the department.

11. That in regards to the statements made in paragraph 18 of the writ petition the deponent states that placing the petitioner at Serial No. 1 of the successful candidates in the written examination for maths teacher under Wokha district, which is brought out by the Notification dated 29.09.2010, is only for the purpose of short listing the candidates for appearing the oral interview but not

the result in merit. So also allowing the petitioner to undergo the B.Ed training course which he had successfully completed does not give any weightage for regularization in service. All categories of teachers whether regular, contract, adhoc are required to be professionally qualified and trained. Importantly, the petitioner, unless he possess the eligible criteria of marks as prescribed in the advertisement dated 20.11.2009 has not right to be appointment to the post of graduate teacher irrespective of whether he was allowed to participate in the selection process. Over and above, specifying the minimum percentage of marks in the prescribed qualification for the post of graduate teacher, besides not being illegal, was solely for the purpose of maintaining a minimum standard of appointment of teachers for imparting quality education to the students."

21. Ms. Livika, learned State counsel, while referring to the affidavit in opposition, submits that the petitioner has not challenged the conditions of advertisement dated 20.11.2009, which prescribes for 45% marks in degree course at the relevant time. The petitioner has knowingly participated in the selection process and after participation in the selection process knowingly, when the result is not palatable to the petitioner, he cannot be permitted to contend that the policy of the State Government as well as the NCTE notification does not provide for minimum marks in the graduation course that too in a belated stage at this very long distant point of time.

22. Ms. Livika, learned State counsel submits that the petitioner was not eligible as per the requirements prescribed in the advertisement for appointment to the post of Graduate Teacher (Mathematics). The respondent authority was gracious enough to appoint him on adhoc basis on the basis of his application in view of the fact that there was a dearth of Graduate Teachers (Mathematics). She submits that it is clearly evident from the appointment of the petitioner *vide* order dated 07.06.2011 that the appointment is admittedly on adhoc basis and terminable without any

prior notice and does not confer any claim for regularization without routing through interview board. Moreover, the post in which the petitioner is serving is a post under the SSA/Samagra Scheme, which is under the Central (Govt. of India) sponsored scheme and it is not a State sanctioned post. Therefore, prayer of the petitioner for regularization of his service with retrospective effect cannot be considered at all.

23. Ms. Livika, learned State counsel submits that the respondent authority had fairly considered the case of the petitioner in compliance with the order of this Court dated 24.04.2019 passed in WP(C)/131(K)/2018 filed by the petitioner *vide* 13.06.2019 which has been communicated to the petitioner. The petitioner has not challenged the said order as on date and as such no further consideration on the part of the respondent authority is required.

24. Ms. Livika, learned State counsel while referring to the copy of the order dated 20.02.2018, submits that that the petitioner's pay and allowance payable will be as per the sanction of the Ministry of Human Resource Development (MHRD) Government of India and there is no right to claim for regularization. Therefore, writ petition is liable to be dismissed.

25. Ms. Livika, learned State counsel, in support of her submissions has relied on the following judgments:

1) **Municipal Corporation of Greater Bombay and others -Versus- Dr. Sushil V. Patkar** reported in 1991 Supp (2) SCC 432.

2) **High Court Hyderabad -Versus- P. Murali Mohana Reddy** reported in

(2019) 3 SCC 672.

3) **Gurmeet Pal Singh -Versus- State of Punjab** reported in (2018) 7 SCC 260.

4) **Mohd. Abdul Kadir –Versus- Director General of Police** reported in (2009) 6 SCC 611.

26. I have considered the rival submissions advanced by the learned counsel for the parties and materials available on record.

27. Advertisement *vide* No. ED/ADMN/1/2009-10 dated 20.11.2009 provides for minimum qualification for Graduate Teachers as B.A./B.Sc/B.Com from a recognized University possessing not less than 45% marks with B.Ed. for the Graduate Teacher (Mathematics) the post specification is B.Sc with Mathematics, Physics and Chemistry, and for Science Biology, Physics and Chemistry and for English B.A. preference would be given to candidates with English major/honours.

28. On the perusal of the advertisement dated 20.11.2009, it is noticed that the minimum qualifications with post specification have been clearly prescribed. However, it is noticed that the respondent authority has not strictly adhered to the minimum qualifications as well as the post specification in as much as it is the submission at the bar that for the Graduate Teacher (Mathematics) the candidates having B.Com have been permitted to take the examination pursuant to an advertisement dated 20.11.2009 though the post specification for the Graduate Teacher (Mathematics) is B.Sc with Mathematics, Physics and Chemistry. It appears that the respondent authority had only stuck to the requirement of minimum marks of not less than 45% in graduation examination and

even the requirement of having B.Ed appears to have been dispensed with.

29. The meeting for Final Review of Selection and Posting of Graduate and Undergraduate Teachers was held on 5th March 2010, in the office chamber of the Chairman, NBSE.

30. On bare reading of the Minutes of Final Review of Selection above it is noticed that at the final review of selection, candidates securing less than 45% of marks at the graduation examination were cancelled and the next candidate(s) with requisite qualification were selected and it also provides that Graduate Teacher (Mathematics) could not be filled up as there were no qualified candidates in respect of the six districts including the district of Wokha the post wherein the petitioner is serving.

31. This Court takes note of the fact that the petitioner was not selected in view of the fact that he does not have the minimum marks of 45% in his B.Com degree examination. The petitioner has been appointed on adhoc basis on the application submitted by him after the selection process was completed pursuant to the advertisement dated 20.11.2009. It is not in dispute that the petitioner has accepted his appointment with certain terms and conditions.

32. It is apt to refer to the appointment order of the petitioner dated 07.06.2011, which is reproduced herein below:

**"GOVERNMENT OF NAGALAND
DIRECTORATE OF SCHOOL EDUCATION
NAGALAND, KOHIMA
O R D E R**

Dated Kohima the 7th June, 2011

No. ED/EL/WKA/26/2011-12 : Shri Roben Ezung B.Com (Hons) son of Shri Elamo E. date of birth 16-02-1984 as per HSLC admit card and permanent address as Wokha Town P.O. Wokha Pin Code 797111 P.S. Wokha District Wokha is hereby appointed on adhoc basis as G/T at Govt. Middle School Yonchucho under the establishment of Deputy Inspector of Schools, Wokha on fixed pay of Rs. 8,400/- per month.

2. The appointment is made against the existing vacancy vide post creation order No. EDS/SSA-CPA/009-2008 (1) dated 20.10.2009 with effect from the date of joining upto 6 (six) months or till regularization through interview board which is earlier on the condition that he will undergo B.Ed training within 2 (two) years. If he fails to obtain the said professional qualification of his service will be terminated.

3. The adhoc appointment is made vide Govt. approval No. EDS/SSA-CPA/009-2008/75 dated 30-05-2011.

4. The appointment is purely on adhoc basis and terminable without any prior notice and does not confer any right to claim for regularization without routing through interview board.

5. No deduction toward GPF and Group Insurance Scheme shall be made.

6. The incumbent is informed to join his duties within one month from the date of issue of this order failing which this offer of appointment shall be treated as not accepted and cancelled without any further notice.

Approved by DSE
at note sheet page- 10 (Ten)

SD/-
N. Khevito Sema
Director

No. ED/EL/WKA/26/2011-12

Dated Kohima the 7th June, 2011"

33. On bare perusal of the appointment order of the petitioner it is clear that the petitioner has been appointed on adhoc basis as Graduate Teacher (mathematics) at GMS, Yonchucho on fixed pay of Rs 8,400/- per month. It also provides that appointment is made against the existing vacancy by post-creation order No. EDS/SSA-CPA/009-2008 (1) dated

20.10.2009 with effect from the date of joining up to 6 (six) months or till regularization through interview board with further condition that the petitioner will have to undergo B.Ed training within 2 (two) months. In the event of failure to obtain the professional qualification, his service would be terminated. It also provides that the appointment is purely on adhoc basis and terminable without any prior notice and does not confer any right to claim for regularization without routing through interview board.

34. In my considered view, as per the above terms and conditions of the appointment order, there exists a scope for consideration for regularization provided the professional qualification certificate of B.Ed is obtained and if the claim for regularization is routed through interview board. As the appointment of the petitioner is, of course, on adhoc basis but the terms and conditions prescribed gives scope for consideration for regularization and such conditions have been duly approved by the Government *vide* EDS/SSA-CPA/009-2008/75 dated 30.05.2011, the case of the petitioner requires reconsideration.

35. This Court is in agreement with the submission of the learned counsel for the State respondents that at this belated stage or at this distant point of time, the petitioner cannot be permitted to raise issue with regard to the advertisement dated 20.11.2009 and its terms and conditions as he has participated without any protest at the relevant point of time. Besides that, in my considered view it is too late in the day to raise such issues questioning the conditions prescribed in the advertisement dated 20.11.2009 as he has accepted his adhoc appointment without any demur and has been continuously serving till

then. However, in my view the case of the petitioner could be considered as per the terms and conditions of the appointment order as approved by the Government.

36. It is also noticed that the petitioner has undergone the B.Ed course and obtained the required qualification of B.Ed by now. It is further seen that all along the petitioner has not been allowed to participate for qualifying examination conducted by the respondent authority without there being any cogent reason. Having considered the fact that respondent authority has dispensed with all other qualifications except the securing of minimum marks of 45% in degree examination as prescribed in the advertisement dated 20.11.2009 and the fact that the State Government notification dated 04.01.2008 and 10.03.2008, the minimum educational qualification prescribed for appointment of teachers had no requirement of any percentage of marks in the degree course which is in tune with the NCTE notification wherein no requirements of percentage of marks has been laid down, this court is of the considered view that the case of the petitioner needs reconsideration.

37. Having viewed above I would proceed to refer to the case laws relied by the learned State counsel. In the case of **Municipal Corporation of Greater Bombay and others –Versus- Dr. Sushil V. Patkar and other** reported in 1991 Supp (2) SCC 432, the Hon'ble Supreme Court observed, which is reproduced herein below:

"2. Heard counsel on both sides. The eligibility for appointment was that the candidate should possess M.Ch. qualification. The last date for forwarding the applications was 20th April, 1990 on which date, admittedly, the respondent No. 1 did not possess the said qualification since he claims to have qualified on 22nd May, 1990. Even so, respondent No. 1 was called for interview and he was

asked to produce the certificate showing that he had acquired the qualification in question. He failed to do so even at the interview stage and hence the Selection Board did not select him and informed him about the same. The Selection Board completed the selection and granted appointments accordingly. The respondent No. 1 filed a writ petition in the High Court and the High Court by the impugned order directed that the Selection Board may undertake a reappraisal of the claim of respondent No. 1 along with respondents Nos. 2 to 5 and prepare a fresh list of eligible candidates in accordance with merit for the post in question. In doing so, the appellant complain that the High Court had departed from the earlier decision of another Division Bench on the question of relaxation of time limit for furnishing the required certificate. We need not go into that question because, in our view, it is not possible to sustain the decision of the High Court for the simple reason that a candidate who was given an opportunity even at the belated stage of interviews to show that he possessed the necessary qualification for selection, having failed to furnish the certificate showing acquisition of qualification cannot be allowed to upset the selection and thereby interfere with the lights of third parties for his default. The Selection Board had no option but to ignore his candidature on his failure to satisfy it on the question of eligibility by producing the certificate of his having acquired the necessary qualification. He could not therefore, be heard to say that his default should be condoned and the selection be upset notwithstanding its adverse impact on the rights of third parties. We are therefore clearly of the opinion that it was not a fit case for interference by the High Court under Article 226 of the Constitution."

In the case of **High Court Hyderabad –Versus- P. Murali Mohana Reddy and others** reported in (2019) 3 SCC 672, the Hon'ble Supreme Court has observed, which is reproduced herein below:

"13. *Regarding the move of the appellant in changing the criteria after issuing the advertisement, the High Court has held that it could not be permitted and the discussion in this behalf proceeds as under:*

"22. Moreover, it is rightly contended by the learned counsel for the petitioners, relying on the aforesaid judgment of Supreme Court in Umesh Chandra Shukla v. Union of India (3 supra) and A.A. Calton v. Director of Education (2 supra), that the respondents and each of them cannot act contrary to the norms as published in the advertisement or the Rules and admittedly, the advertisement does not stipulate a minimum qualifying mark for the viva voce test or that of aggregate marks both in written and viva voce test. As the petitioners and each of them, in terms of the advertisement as well as the rules, have acted upon and that they acquired a vested right to be considered in terms of the advertisement and the rules.

23. It is not that the norms cannot be changed or varied, but this has to be

done in terms of the statutory rules. If they do not permit, the Selection Committee cannot lay down the same as it will be ultra vires.

24. Moreover, as it appears from the original record produced before us, we find that the assessment was made on the basis of minimum qualifying marks in the aggregate as well as in viva voce tests and it does not appear that the aforesaid norms were ever published."

***15.** We may mention at the outset that the High Court is right to the extent that the appointments are to be made in terms of stipulations contained in the advertisement. Though, such terms can be changed, but that has to be done in terms of statutory Rules. Insofar as advertisement is concerned, there was no mention of securing minimum qualifying marks in the viva voce test. The High Court is also right in pointing out that Rule 6 of the Rules does not contains any provision of securing minimum qualifying marks in the interview. At the same time, it stipulates qualifying aggregate marks in written examination and viva voce, as 40% for general category, 35% for backward category and 30% for SC/ST category in the written examination. This requirement of securing minimum qualifying marks in the written examination was fulfilled by the respondents."*

In the case of **Gurmeet Pal Singh –Versus- State of Punjab and another** reported in (2018) 7 SCC 260, the Hon'ble Supreme Court held, which is reproduced herein below:

*"**16.** The undisputed fact is that the advertisement was issued on the basis of cadre strength of 107. Twenty-seven (27) posts would arise in the category in question and six (6) were already occupied and, thus, the advertisement was issued for twenty-one (21) posts. The advertisement was not challenged by any of the appellants. It is a well-settled principle of law that when a candidate appears in an examination without objection and is subsequently found to be not successful a challenge to the process is precluded. In a recent judgment in Ashok Kumar v. State of Bihar, this principle has been re-emphasized by referring to earlier judgments on this point starting from Chandra Prakash Tiwari v. Shakuntala Shukla. Thus, undoubtedly the appellants not having challenged the advertisement at the relevant point of time, cannot be permitted to contend that having not made the mark in the cut-off for the select list, something must be done to somehow accommodate them. The plea of the existence of a larger number of posts is in this direction. No doubt every endeavour should be made to fill up the existing vacancies and prospective vacancies keeping in mind the judgment in Malik Mazhar Sultan (3) v. U.P. Public Service Commission. However, there cannot be a blanket proposition that the advertisement is defective merely because every vacancy which existed or which is contemplated is not taken into account. Certainly, a subsequent vacancy arising from an elevation can hardly be treated as in contemplation.*

17. *We agree with the contention advanced by the learned counsel appearing for the High Court, more so when merely because the name of a candidate finds a place in the select merit list does not give an indefeasible right to appointment as well and it is always open to not even fill up a vacancy (Kulwinder Pal Singh v. State of Punjab)."*

In the case of **Mohd. Abdul Kadir –Versus- Director General of Police** reported in (2009) 6 SCC 611 the Hon'ble Supreme Court has observed, which is reproduced herein below:

"13. *The fact that the appellants were employed under the PIF Additional Scheme is not disputed. The duration of PIF Additional Scheme under which they are employed was initially two years, to be reviewed for continuation along with the original PIF Scheme. The said scheme is being extended from time to time and is being continued. If the temporary or ad-hoc engagement or appointment is in connection with a particular project or a specific scheme, the ad hoc or temporary service of the persons employed under the Project or Scheme would come to an end, on completion/closure/cessation of the Project or the Scheme.*

14. *The fact that the Scheme had been in operation for some decades or that the employee concerned has continued on ad hoc basis for one or two decades would not entitle the employee to seek permanency or regularization. Even if any posts are sanctioned with reference to the Scheme, such sanction is of ad hoc or temporary posts co-terminus with the scheme and not of permanent posts.*

15. *On completion of the project or discontinuance of the scheme, those who were engaged with reference to or in connection with such Project or Scheme cannot claim any right to continue in service, nor seek regularization in some other project or service. (See Bhagwan Dass v. State of Haryana - 1987 (4) SCC 634, Delhi Development Horticulture Employees Union v. Delhi Administration - 1992 (4) SCC 99, Hindustan Steel Works Construction Ltd., vs. Employees Union - 1995 (3) SCC 474, UP Land Development Corporation vs. Amar Singh - 2003 (5) SCC 388, Madhyamik Shiksha Parishad UP v. Anil Kumar Mishra - 2005 (5) SCC 122, Secretary, State of Karnataka v. Umadevi - 2006 (4) SCC 31, Indian Council of Medical Research vs. K. Rajyalakshmi - 2007 (2) SCC 332, and Lal Mohammed vs. Indian Railway Construction Co. Ltd. - 2007 (2) SCC 513). In view of this settled position, the appellants will not be entitled to regularization."*

38. This Court has considered the judgments relied on by the learned counsel for the parties. On such consideration of the judgments

(*Supra*) relied upon by the learned counsel for the parties in my view there would not be any disagreement to the observations and the law enunciated by the Hon'ble Supreme Court and the High Court and as such, this Court deem it not relevant as the same have been rendered in facts and circumstances of those cases.

39. In view of the above discussion and conclusion, this Court is of the view that in the peculiar attending facts and circumstances of the present case it would be appropriate to direct the respondent authorities to reconsider the case of the petitioner for regularization of his service. Accordingly, it is directed that the respondent authorities shall reconsider the case of the petitioner for regularization of his service by allowing the petitioner to participate in the selection process for adhoc employees as per the policy of the State and in accordance with the relevant Rules/Act.

40. With the above observations and directions this writ petition stands disposed of. No order as to costs.

Sd/-
JUDGE

Comparing Assistant