



IN THE GAUHATI HIGH COURT

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

KOHIMA BENCH

W.P.(C)/339/2022

1. Shri. Manto Konyak,
S/o Phanglem Konyak,
Changlangshu Village,
District - Mon, Nagaland.
2. Smti. Anikali,
D/o Ihoto,
Shishimi Village,
District – Kiphire,
Nagaland.
3. Smti. Tsumian Khamnuingan,
D/o Yano Khamnuingan,
New Pangsha Village,
District – Noklak,
Nagaland.

-VS-

1. The State of Nagaland,
Represented by the Chief Secretary
to the Government of Nagaland.
2. The Commissioner and Secretary,
Department of School Education,
Nagaland, Kohima.
3. The Principal Director,
Department of School Education,
Nagaland, Kohima.

4. The Secretary,
Nagaland Public Service Commission,
Nagaland, Kohima.

For the petitioners : Ms. Z. Zhimomi, Advocate
For the State respondent nos. 1-3 : Ms. V. Suokhrie
Additional Advocate General, Nagaland
For the private respondent no. 4 : Mr. C.T. Jamir, Senior Advocate
Mr. Aliba Ozukum, Advocate
Date of Hearing : 14.11.2023
Date of Judgment and Order : 24.11.2023

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & O R D E R

The petitioners, 3 [three] in nos., have joined together to institute the present writ petition under Article 226 of the Constitution of India stating that they have a common cause of action to espouse. Assailment is made to a part of Clause [iv] of a Notification bearing no. EDS[A]-5/2005 [Pt] dated 18.02.2010 issued by the Education Department, Government of Nagaland whereby relaxation was extended to candidates without B.Ed. Degree qualification to apply for the post of Post Graduate Teachers for a period of 10 [ten] years with retrospective effect from 27.10.2008. The petitioners have also challenged two letters, that is, Letter no. DSE/ESTT-SM/1-182/2020/113 dated 11.08.2022 & Letter no. DSE/ESTT-SM-1-182/2020/430 dated 19.10.2022, issued by the School Education Department, Nagaland. A writ in the nature of mandamus has been sought for directions to the State respondents, *firstly*, to consider a Communication dated 23.08.2022 of the Secretary, Nagaland Police Service Commission favorably and, *secondly*, to appoint the three petitioners in the posts of Post Graduate Teacher [Computer Science], Post Graduate Teacher [English] and Post Graduate Teacher [Commerce] respectively, as recommended by the Nagaland Public Service Commission for appointment vide a Communication dated 18.07.2022.

2. In order to appreciate the nature of assailment made and the reliefs sought for, it appears necessary, at first, to exposit the necessary background facts leading to the institution of the writ petition :- The Nagaland Public Service Commission [hereinafter referred to as 'the NPSC' or 'the Commission', as the case may be, at places, for the purpose of easy reference] published an advertisement being Advertisement no. NPSC-3/2019 on 13.11.2019 whereby applications were invited for filling up a number of vacancies under the Government of Nagaland. The vacancies included fresh vacancies as well as backlog vacancies in various departments. The posts sought to be filled up by the Advertisement no. NPSC-3/2019 *inter alia* included posts of [i] Assistant Professors under the Higher Education Department; [ii] Assistant Professors [College of Teachers Education] under the Higher Education Department; [iii] Lecturer under the Technical Education Department; [iv] Post Graduate Teachers [PGTs] in the Government Higher Secondary Schools under the School Education Department; [v] Post Graduate Teachers [PGTs] under the School Education Department; [vi] Research Associates under the SCERT Department. The present lis is in respect of filling up of vacancies in the posts of Post Graduate Teachers [PGTs] in the Government Higher Secondary Schools and backlog vacancies of Post Graduate Teachers [PGTs] under the School Education Department. By the said Advertisement, applications were invited for [i] 2 [two] posts of PGT [English]; [ii] 1 [one] post of PGT [History]; [iii] 1 [one] post of PGT [Political Science]; [iv] 2 [two] posts of PGT [Computer Science]; [v] 1 [one] post of PGT [Tenyidie]; [v] 1 [one] post of PGT [Commerce]; [vi] 2 [two] backlog posts of PGT [Mathematics]; and [vii] 1 [one] backlog post of PGT [Physics]. The relevant excerpts from the Advertisement no. NPSC-3/2019 relating to Post Graduate Teachers [PGTs] were as under :-

A. Fresh Vacancies under various departments.

IV. Post Graduate Teachers under Govt. Higher Secondary Schools, under School Education Department				
Item Nos.	Subject	No. of Posts[s]	No. of post[s] Reserved for BT	Educational Qualifications
27	PGT [English]	2 [Posts]	1 [One] post reserved for Indigenous Inhabitants of Nagaland. 1 [One] post reserved for BT Sumi of Kiphire	[i] Post Graduate with atleast 50% marks [or an equivalent] relaxed by 5% for SC/ST/Differently abled

28	PGT [History]	1 [Post]	Unreserved	candidates at the master's degree level in the relevant subject from recognized university. [ii] B.Ed.
29	PGT [Political Science]	1 [Post]	Reserved for Indigenous Inhabitants of Nagaland	
30	PGT [Computer Science]	2 [Posts]	1 [One] post unreserved. 1 [One] post reserved for Indigenous Inhabitants of Nagaland	
31	PGT [Tenyidie]	1 [Post]		
32	PGT [Commerce]	1 [Post]	Reserved for BT Khamniungan	

B. Backlog Vacancies under various departments. Year 2016.

1. Post Graduate Teacher [PGT] under School Education Department.				
Item Nos.	Subject	No. of Posts[s]	No. of post[s] Reserved for BT	Educational Qualifications
33	Mathematics	2 [Two]	1 [one] post each reserved for BT Yimchunger & Zeliang	Post Graduate with at least 50% marks [or an equivalent] relaxable by 5% for ST/SC/Differently abled candidates in the relevant subject from a recognized University with B.Ed from any National Council of Teacher Education recognized institution.
34	Physics	1 [One]	Reserved for BT Yimchunger	

C. Backlog Vacancies under various departments. Year 2018.

IV. Post Graduate Teacher [PGT] under School Education Department.				
Item Nos.	Subject	No. of Posts[s]	No. of post[s] Reserved for BT	Educational Qualifications
47	Hindi	1 [One]	Reserved for BT Chang	Post Graduate with at least 50% marks [or an equivalent] relaxable by 5% for ST/SC/Differently abled candidates in the relevant subject from a

				recognized University with B.Ed. from any National Council of Teacher Education recognized institution.
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Relaxation in Educational Qualification :

1. In respect of PGT candidates not possessing the prescribed B.Ed. qualification, relaxation shall be admissible to the candidates belonging to the Backward Tribes of Konyak, Chang, Khiamniungan, Yiumchunger, Sangtam, Phom, Chakhesang, Pochury and Zeliang and Sumis of Kiphire provided the selected candidates complete the said course within 5 [five] years [Notification no. EDS[A]-5/2002 dated 27.10.2008, 09.01.2009, 18.11.2009, 10.01.2010 and 18.02.2010]. However, in respect of other Naga Tribes, B.Ed. qualification relaxation shall not be admissible as per School Education Department's letter no. EDS/HSS/4-1/2008/464 dated 12.06.2015.
2. B.Ed. degree relaxation shall be admissible for PGT in Maths and Physics ONLY for a period of 5 years on the condition that the selected candidates should acquire B.Ed. within 5 years of appointment failing which further promotion, service confirmation will not be given and increments stopped as provided in the new training policy. However, preference shall be given to candidates having requisite qualification of B.Ed. vide Government's OM no. EDS/HSS/4-1/2008 dated 16.08.2016 & 23.08.2016.

- 2.1. In so far as the credentials of the petitioners are concerned, the petitioners in the writ petition have projected as follows :- the petitioner no. 1 belongs to Konyak Tribe and has the requisite qualification for being appointed to the post of PGT [Computer Science]. The petitioner no. 2 belongs to Sumi Tribe of Kiphire District and has the requisite qualification for being appointed to the post of PGT [English]. The petitioner no. 3 belongs to Khiamniungan Tribe from Noklak District and has the qualification required for the post of PGT [Commerce]. The petitioners have not, however, disclosed their specific academic qualifications nor they have annexed their testimonials in support of their academic qualifications. It has been asserted that all the three petitioners are from Backward Tribes of Nagaland and are eligible under 33% Reservation Policy for Backward Tribes in the State Services, notified vide a Notification no. RCBT-5/87 dated 20.09.1989 and the Reservation Policy notified vide a Notification no. RCBT-5/87 [Pt-II] dated 14.04.2011 of the Department of Personnel & Administrative Reforms, Government of Nagaland.

- 2.2. The Notification no. RCBT-5/87 dated 20.09.1989 had provided for 33% reservation for Backward Tribes in the State Services till further orders. The Notification no. RCBT-5/87 [Pt-II] dated 14.04.2011 was issued in partial modification of an earlier Notification no. RCBT-5/87 [Pt-II] dated 23.07.2008, whereby, the State Government in exercise of powers conferred by Article 16[4] of the Constitution of India had directed that 25% of all categories of posts, both Gazetted and non-Gazetted, under the Government of Nagaland shall be reserved for the persons belonging to 6 [six] Tribes viz. [i] Konyak; [ii] Phom; [iii] Sangtam; [iv] Yimchunger; [v] Chang; & [vi] Khiamniungan; of 4 [four] districts of Mon, Tuensang, Kiphire & Longleng. The Notification dated 14.04.2011 had further provided that 12% of all categories of posts, both Gazetted and non-Gazetted, under the Government of Nagaland shall be reserved for the 4 [four] Tribes :- [i] Chkheshang : 4%; [ii] Pochury : 2% [iii] Zeliang : 4%; & [iv] Sumis of Kiphire District : 2%.
- 2.3. Subsequent to publication of the Advertisement no. NPSC-3/2019 on 13.11.2019, an Addendum/Corrigendum bearing no. NPSC/ADVT/EDS-2012 dated 27.01.2021 was published by the Commission to bring certain amendments in the Advertisement no. NPSC-3/2019 dated 13.11.2019. There was, however, no amendments made in respect of Item no. 27, Item no. 30 & Item no. 32 of the Advertisement no. NPSC-3/2019 dated 13.11.2019 whereby the posts of PGT [Computer Science], PGT [English] & PGT [Commerce] respectively were advertised. Meaning thereby, there were no changes in respect of the particulars mentioned in the Advertisement no. NPSC-3/2019 dated 13.11.2019 for the posts of PGT [Computer Science], PGT [English] & PGT [Commerce]. The intending candidates were asked to submit their applications online. By the Addendum/Corrigendum dated 27.01.2021, it was informed that the dates for Written Examination would be notified through local media/the Commission's website at a later date.
- 2.4. The three petitioners responded to the Advertisement no. NPSC-3/2019 dated 13.11.2019 by submitting their applications for the posts of PGT [Computer Science], PGT [English] & PGT [Commerce] respectively. Their applications were accepted by the Commission and Admission Certificates were accordingly issued on 09.08.2021 individually by the Commission to them for appearing in the Written Examination segment of the Common Educational Services Examination – 2019, scheduled from 14.08.2021 to 19.08.2021. The three petitioners had accordingly appeared in the

Written Examination part of the Common Educational Services Examination – 2019 held for the posts of PGT [Computer Science], PGT [English] & PGT [Commerce] respectively. Subsequently, their names appeared in the list of candidates who were found successful in the Written Examination, published by the NPSC. On being successfully cleared the Written Examination, the three petitioners were issued individual Call Letters dated 07.06.2022, asking them to appear in interview before an Interview Board constituted by the Commission. On receipt of the Call Letter dated 07.06.2022, the petitioner no. 1 appeared before the Interview Board on the scheduled date of interview, 16.06.2022. Similarly, the petitioner no. 2 and the petitioner no. 3 appeared before the Interview Boards on the dates fixed for their interviews, that is, on 29.06.2022 and on 15.06.2022 respectively.

- 2.5. It was on 08.07.2022, the Commission vide a Notification no. NPSC/EXAM-5/2022 published the list of successful candidates recommending their names for appointment to the posts including the posts of Post Graduate Teachers [PGTs], advertised vide the Advertisement no. NPSC-3/2019 on 13.11.2019 and the Addendum/Corrigendum no. NPSC/ADVT/EDS-2012 dated 27.01.2021. The said Notification mentioned that the lists of candidates were prepared in order of merit on the basis of aggregate marks obtained in the Written Examination, academic weightage and viva-voce. The excerpts of the Notification, relevant for the purpose of present lis, are quoted hereinbelow :-

**NAGALAND PUBLIC SERVICE COMMISSION
KOHIMA**

NO. NPSC EXAM-5/2022

Dated Kohima, the 8th July, 2022

NOTIFICATION

In pursuance of the Commission's Advertisement No. NPSC-3/2019 dated 13.11.2019 & Addendum/Corrigendum dated 27.01.2021, the Nagaland Public Service Commission, on the basis of aggregate marks obtained in the written examination, academic weightage and viva-voce, is pleased to recommend the following candidates in order of merit for appointment to the posts of Assistant Professors, Librarian, Research Associates, Training-Cum-Research Assistant, Lecturers and Post Graduate Teachers under the Government of Nagaland.

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Item no. 27 2 [Two] Posts of Post Graduate Teacher in **English** under School Education.

Rank	Name	Roll No.	Remarks
1 st	Taliyula Kichu	1968	
2 nd	Anikali	2044	B.T. Sumi [Kiphire]

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Item no. 30 1 [One] Post of Post Graduate Teacher in **Political Science** under School Education.

Rank	Name	Roll No.	Remarks
1 st	Manto Konyak	1718	

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Item no. 32 1 [One] Post of Post Graduate Teacher in **Commerce** under School Education.

Rank	Name	Roll No.	Remarks
1 st	Tsumian Khamniungan	1845	B.T. Khamniungan

2.6. Subsequent to publication of the Notification dated 08.07.2022, a Communication was sent by the Secretary, NPSC on 18.07.2022 to the Special Secretary to the Government of Nagaland, School Education Department forwarding therewith the names of the successful candidates recommended for appointment to the posts of Post Graduate Teachers [PGTs] in various subjects including those of PGT [Computer Science], PGT [English] & PGT [Commerce]. The names of the three petitioners figured amongst the candidates so recommended for the posts of PGT [Computer Science], PGT [English] and PGT [Commerce] respectively. The original applications of the recommended candidates were also forwarded with the Communication dated 18.07.2022.

2.7. In response to the Communication dated 18.07.2022, the Government in the School Education Department wrote back to the Secretary, NPSC on 11.08.2022 vide a Communication bearing no. DSE/ESTT-SM/1-182/2020/113. The Commission was informed to the effect that on careful examination of the original applications and the folders forwarded to the School Education Department by the Commission, it was noticed that the three petitioners whose names had been recommended for the posts of PGT [Computer Science], PGT [English] & PGT [Commerce], did not possess the requisite professional qualification [B.Ed.], necessary for appointment under the School Education Department as per the provisions of the Nagaland School Education

Service Rules, 2017. It was pointed out that as per the Requisition submitted by the School Education Department, there was relaxation in respect of B.Ed. qualification only for the posts of PGT [Mathematics] and PGT [Physics], which was as per an Office Memorandum no. EDS/HSS/4-1/2008 dated 19.08.2016 of the School Education Department, Government of Nagaland.

- 2.8. On 23.08.2022, the Secretary, NPSC wrote to the Commissioner & Secretary to the Government of Nagaland, School Education Department vide a Communication bearing no. NPSC/EXAM-5/2022. The Secretary, NPSC had clarified therein that clerical mistake had occurred at the time of releasing the Advertisement. It was mentioned that the Commission vide Advertisement no. NPSC-3/2019 dated 13.11.2019 and the Addendum/Corrigendum no. NPSC/ADVT/EDS-2012 dated 27.01.2021 advertised a total of 207 nos. of vacancies under the Higher Education Department, the Technical Education Department, the SCERT Department and the School Education Department which included 3 [three] nos. of backlog vacancies of Post Graduate Teachers [PGTs] advertised in the year 2016 in respect of which the Notification bearing no. EDS[A]-5/2002 [Pt] dated 18.02.2010 was valid. It was mentioned that the problem had arisen due to failure in specifically indicating relaxation only for the backlog vacancies of the year 2016. The Secretary, NPSC had further mentioned that since the recruitment process had been completed, victimization of the candidates at that stage would not be appropriate as there was no fault on their part and it was a clear case of mistake committed inadvertently. The Secretary, NPSC had thereby made a request to the School Education Department to consider the matter as an unintentional error and to initiate steps for extending relaxation of B.Ed. qualification as a basic qualification for recruitment only for the year 2019 to bring the recruitment process to a logical conclusion.
- 2.9. In response, the School Education Department, Government of Nagaland through the Joint Secretary informed the Secretary, NPSC vide a Communication bearing no. DSE/ESTT-SM-182/2020/430 dated 19.10.2022 that as per the provisions of the Nagaland School Education Service Rules, 2017, the requisite qualification for the post of Post Graduate Teacher [PGT] is Post Graduate degree with B.Ed. It was conveyed that the Right to Education Act, 2009 [the Right of Children to Free and Compulsory Education Act, 2009] had clearly mandated for appointing teachers with the requisite entry and academic qualifications. It was further informed that the

matter was consulted with the Law and Justice Department as well as with the Department of Personnel & Administrative Reforms, who had, in turn, conveyed that if an advertisement was inconsistent with recruitment rules, the recruitment rules would prevail.

- 2.10. The Commission through its Secretary had, thereafter, wrote to the Personnel and Administrative Reforms Department by a Communication bearing no. NPSC/EXAM-5/2022 dated 15.11.2022 making a request for reconsideration in respect of the three petitioners, who were already recommended by the Commission for the posts of Post Graduate Teachers [PGTs] under the School Education Department. It had referred to the Notification bearing no. EDS[A]-5/2002[Pt] dated 18.02.2010 of the Education Department, Government of Nagaland and the Commission had thereby, sought the Department to reconsider the matter by granting relaxation to the candidates not possessing B.Ed. qualification, for a period of 10 [ten] years w.e.f. 18.02.2010 instead of 27.10.2008, the date wherefrom the period of 10 [ten] years of relaxation was made effective.
- 2.11. It was at that stage of the recruitment process, the three petitioners had approached this Court by the instant writ petition with prayers, mentioned above.
3. I have heard Ms. Z. Zhimomi, learned counsel for the petitioners; Ms. V. Suokhrie, learned Additional Advocate General, Nagaland for the respondent nos. 1 – 3; and Mr. C.T. Jamir, learned Senior Counsel assisted by Mr. Aliba Ozukum, learned counsel for the respondent no. 4.
4. Ms. Zhimomi, learned counsel for the petitioners has submitted that the Advertisement had specified that 1 [one] of the 2 [two] posts of PGT [Computer Science] advertised vide Item no. 30 of the Advertisement no. MPSC-3/2019 dated 13.11.2019 was reserved for indigenous inhabitants of Nagaland and against the said post, the petitioner no. 1 belonging to Konyak Tribe, was rightly recommended for appointment by the Commission. The 2 [two] posts of PGT [English] were reserved for indigenous inhabitants of Nagaland and for Backward Tribe [BT] – Sumi of Kiphire District respectively and the petitioner no. 2 belongs to Sumi Tribe of Kiphire District. Thus, it is clear that the petitioner no. 2 was rightly recommended for appointment in 1 [one] of the 2 [two] posts of PGT [English] so advertised. Ms.

Zhimomi has further contended that the post of PGT [Commerce] were specifically reserved in the Advertisement for Backward Tribe [BT] – Khaimanungam and since the petitioner no. 3 belongs to Khaimanungam tribe his name was properly recommended by the Commission for appointment against the said post. All the three petitioners had cleared the Written Examination and performed well in the viva-voce. It has, thus, been contended that it is not open for the State Government as the Appointing Authority not to act upon the recommendations made by the Commission which had selected and recommended the successful candidates in strict adherence to the Advertisement no. NPSC-3/2019.

- 4.1. The learned counsel for the petitioners has referred to the Notification dated 27.10.2008 and the Notification dated 18.02.2010 to contend that by the said two Notifications, the State Government had taken a policy decision to provide relaxation to a specified category of candidates seeking appointment to the posts of Post Graduate Teachers [PGTs] in the Higher Secondary Schools of the State. The Notifications had *inter alia* provided that all the candidates selected for appointment shall have to undergo the prescribed professional course of B.Ed. and to complete the same within a period of 5 [five] years if the candidates belonging to the Backward Tribes of Konyak, Chang, Khaimanungam, Yimchunger, Sangtam, Phom, Chakhesang, Pochury and Zeliang. Such period of relaxation was, however, made limited to 2 [two] years in respect of other Naga tribes. By the Notification dated 18.02.2010, the order of relaxation was deemed to have come into effect from the date of issue of first Notification relating to relaxation of recruitment policy dated 27.10.2008 and it further provided that the relaxation shall be valid for a period of 10 [ten] years in respect of candidates belonging to the Backward Tribes of Konyak, Chang, Khaimanungam, Yimchunger, Sangtam, Phom, Chakhesang, Pochury and Zeliang and for 5 [five] years in respect of the other Naga tribes. It has been strenuously urged that the relaxation policy, notified vide Notification dated 18.02.2010 cannot be given retrospective effect from 27.10.2008. Such a policy can only be given prospective effect. As the Advertisement was published in the year 2019 and a period of 10 [ten] years from 18.02.2010 did not expire at the time of the said Advertisement, the three petitioners were eligible for relaxation in respect of the qualification of B.Ed.

5. Ms. Suokhrie, learned Additional Advocate General, Nagaland has opposed the contentions advanced on behalf of the petitioners, by submitting that none of the grounds urged on behalf of the petitioners is tenable in law. It has been submitted that the Advertisement no. NPSC-3/2019 was published pursuant to 2 [two] Requisitions forwarded by the State Government in the prescribed formats vide Letter no. EDS/HSS/4-2/2017/894 dated 27.08.2019 and Letter no. EDS/HSS/4-2/2017/1073 dated 10.10.2019. By the two Requisitions, dated 27.08.2019 & dated 10.10.2019, the State Government in the School Education Department had conveyed to the Commission that the posts of Post Graduate Teachers [PGTs] including those of PGT [Computer Science], PGT [English] & PGT [Commerce] so requisitioned, were to be filled up with candidates having Post Graduate degree with at least 50% marks [or an equivalent], relaxable by 5% for SC/ST/Differently abled candidates at the Master's Degree level in the relevant subject from a recognized University with B.Ed. qualification. It was also clearly conveyed to the Commission that the Service Rules viz. the Nagaland School Education Service Rules, 2017 would be applicable in the matter of recruitment to such posts of Post Graduate Teachers [PGTs]. It was also conveyed that relaxation of B.Ed. qualification would be applicable only for the posts of PGT [Mathematics] and PGT [Physics]. But the Commission while publishing the Advertisement no. NPSC-3/2019, had clearly deviated from the mandate given in the Requisitions and had incorporated additional criteria or relaxation clauses, without concurrence of the Appointing Authority. When the School Education Department gave a mandate to the Commission to recommend candidates for the post of Post Graduate Teachers [PGTs] under reference in conformity with the qualifications given in the Requisitions and as per the Nagaland School Education Service Rules, 2017, it was not open for the Commission to make such deviation in the Advertisement and thereafter, to recommend candidates who did not fulfill the qualifications prescribed in the Nagaland School Education Service Rules, 2017, more particularly, Rule 7.B.I r/w Schedule II [3][8] thereof. It has been contended that apart from the Post Graduate degree, the qualification of B.Ed. is an essential qualification for appointment to the posts of Post Graduate Teachers [PGTs] under the School Education Department, as per the Nagaland School Education Service Rules, 2017. Reference has also been made to the provisions of the Nagaland Public Service Commission [State Civil & Other Services] Recruitment Rules, 2008, as amended by the Nagaland Public Service Commission [State Civil & Other Services] Recruitment [6th Amendment] Rules, 2011, to buttress the contention that when the

candidates recommended by the Commission for the posts of PGT [Computer Science], PGT [English] & PGT [Commerce] did not fulfill the prescribed essential qualification set forth in the Service Rules, the Appointing Authority is not obligated to appoint such ineligible candidates.

- 5.1. The learned Additional Advocate General has asserted that contention of the petitioners as regards reservation, made on the basis of the 2 [two] Notifications, dated 27.10.2008 & dated 18.02.2010, is not acceptable and misconceived. It has been contended that Rule 8 of the Nagaland School Education Service Rules, 2017 has provided for reservation of posts for the Backward Tribes of the State of Nagaland to the extent and in the manner laid down only by the State Government from time to time. The petitioners cannot claim any relaxation in respect of the prescribed essential qualification as the validity of 10 [ten] years period on and from 27.10.2008 extended to the candidates belonging to the identified backward tribes vide the Notification dated 27.10.2008 had already expired on 27.10.2018. Attention has been drawn also to an Order dated 30.10.2019 of the Department of School Education & Literacy, Ministry of Human Resource Development [MHRD], Government of India [GoI] to bring an analogy for the proposition that there is no question of relaxation in respect of minimum qualification of teachers and after expiry of the deadline for relaxation, there cannot be any recommendation by the Commission for appointment of a candidate without B.Ed. qualification.
6. The stand of the respondent no. 4, that is, the Secretary, NPSC taken in the affidavit-in-opposition is to the effect that the Commission taking note of the relaxation clause provided in the Notification dated 18.02.2010, was of the view that the Notification would remain operative only from the date of issuance of the Notification, meaning thereby, relaxation for undergoing B.Ed. course after being successful in the selection process would be open to the selectee for a period of 10 [ten] years from 18.02.2010. It was in such scenario, the Commission being satisfied that the cases of the petitioners were eligible for relaxation under the Notification dated 18.02.2010, recommended their names for the posts of PGT [Computer Science], PGT [English] & PGT [Commerce] respectively.

7. I have given due consideration to the rival submissions advanced by the learned counsel for the parties and have also gone through the materials brought on record by the parties through their pleadings.
8. It is not in dispute that the matters of recruitment and conditions of service of Post Graduate Teachers [PGTs] in the Higher Secondary Schools under the School Education Department, Government of Nagaland are regulated and governed by the Nagaland School Education Service Rules, 2017 [‘the NSE Service Rules, 2017’, for short], a set of rules framed under the proviso to Article 309 of the Constitution of India and published vide a Notification no. DSE/GEN/12-34/2014 dated 29.11.2017, in the Nagaland Gazette in its issue dated 29.11.2017. As per Rule 1[ii] thereof, the NSE Service Rules, 2017 had come into force from the date of their publication in the Official Gazette, that is, on and from 29.11.2017. As per Rule 5, one of the methods of recruitment to posts specified in the Schedule-I is by direct recruitment. Rule 6 A which provides for direct recruitment to the posts of Post Graduate Teacher [PGT], has *inter alia* provided that whenever there is a vacancy or expected vacancy in the service to be filled up by direct recruitment under the NSE Service Rules, 2017, the Department shall immediately send a requisition in the form prescribed by the Commission indicating the subject[s] or academic disciplines and the number of vacancies in respect of those posts which fall within the purview of the Commission. On receipt of such a requisition, the Commission has to advertise the post[s] specifying as far as possible the terms and conditions under the NSE Service Rules, 2017 and the number of vacancies to be filled up. After holding a Written Examination and Interview for selection to the Service, the Commission is required to prepare a list of candidates who have qualified in the Written Examination and Oral Interview in order of merit and the order of merit shall be determined on the basis of the academic records of the candidates, performance in the Written Examination and in the Oral Interview. The Commission shall thereafter, forward the names of the successful candidates in order of merit upto the number of vacancies requisitioned for direct recruitment to the School Education Department. It has been provided that the arrangement of the names of the qualifying candidates in order of merit shall be subject to the reservation policy for Scheduled Tribes and Backward Tribes as per instruction issued by the Government from time to time.

- 8.1. Rule 7.B.I of the NSE Service Rules, 2017 has provided for the required academic qualification for direct recruitment to the posts of Post Graduate Teacher [PGT] in various disciplines/subjects. For ready reference, Rule 7.B.I. is quoted hereinbelow :-

7. Qualification for Direct Recruitment

B. Educational Qualification

- I. The required educational qualifications for direct recruitment to the post of Post Graduate Teacher in Arts, Humanities, Science, Social Science, Commerce, Education and Language shall be as follows :-

- [a] Post Graduate with at least 5% marks [or an equivalent] relaxable by 5% for Scheduled Tribe/Scheduled Caste/differently abled candidates, at the master's degree level in the relevant subject from a recognized university; and
- [b] Bachelor of Education [B.Ed.]/B.A. Ed./B.Sc. Ed. from any National Council of Teacher Education recognized institution.

- 8.2. In the Schedule to the NSE Service Rules, 2017, the mode of recruitment, eligibility, etc. for the post of Post Graduate Teachers [PGTs] have been provided as under :-

Sl. No.	Name of the Post	Mode of recruitment	Pay Band	Grade Pay	Eligibility and other condition for promotion/recruitment
8	PGT [Junior Grade-III]	70% by Direct Recruitment 30% by Recruitment from lower grades	9300-34800	4400	[i] Direct Recruitment [a] Post Graduate with at least 50% marks [or an equivalent] relaxable by 5% for Scheduled Tribe/Scheduled Caste/differently abled candidates, at the master's degree level in the relevant subject from a recognized university; and [b] Bachelor of Education [B.Ed.], B.A.Ed./B.Sc. Ed. from any National Council of Teacher Education recognized institution. [ii] Recruitment from

					lower grades 30% of vacant posts of Post Graduate Teachers occurring in a year shall be filled up through a selection process by recruitment from amongst Graduate Teachers and Primary Teachers having Post Graduate degree with 50% relaxable by 5% for Scheduled Tribe/Scheduled Caste/differently abled candidates at the master's degree level with B.Ed./B.A. B.Ed./B.Sc. B.Ed. and has rendered a continuous service of seven years as a Graduate Teachers or Primary Teacher.
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- 8.3. It is clearly demonstrated from the afore-mentioned provisions of the NSE Service Rules, 2017 that a Post Graduate degree with requisite percentage of marks in the Master's degree level in the relevant subject from a recognized university and a Bachelor of Education [B.Ed.], B.A.Ed./B.Sc.Ed. from any National Council of Teacher Education [NCTE] recognized institution are essential educational qualifications for direct recruitment to the post of Post Graduate Teacher [PGT].
9. Admittedly, the three petitioners herein do not have the B.Ed. qualification and their contention is that the Advertisement no. NPSC-3/2019 had provided that in respect of candidates belonging to the Backward Tribes of Konyak, Chang, Khiamniungan, Yimchunger, Sangtam, Phom, Chakhesand, Pochury and Zeliang and Sumis of Kiphire and not possessing B.Ed. qualification, relaxation would be provided to the selected candidates to complete the B.Ed. course within 5 [five] years, after being appointed. As the three petitioners belong to Konyak Tribe, Sumi Tribe of Kiphire District and Khiamniungan Tribe respectively and their names have already been

recommended by the Commission to the School Education Department, it has been contended that they have acquired right to be appointed against the posts of PGT [Computer Science], PGT [English] & PGT [Commerce].

10. As has been provided in Rule 6.A of the NSE Service Rules, 2017, the process of recruitment is to be initiated by the Commission on the basis and in terms of the requisition forwarded by the concerned Department in the prescribed form. In the case in hand, the School Education Department forwarded two Requisitions, dated 27.08.2019 & dated 10.10.2019, in prescribed forms to the Commission for filling up of posts of Post Graduate Teachers [PGTs] including the posts of PGT [Computer Science], PGT [English] & PGT [Commerce]. The said two Requisitions are found partly annexed to the writ petition and fully annexed to the affidavit-in-opposition filed by the respondent nos. 1, 2 & 3. In the said two Requisitions in prescribed form, it was mentioned that the vacancies in the post of Post Graduate Teachers [PGTs] were in the Higher Secondary Schools under the School Education Department, Government of Nagaland. It was clearly stated therein that the Service Rules applicable would be the Nagaland School Education Service Rules, 2017 [the NSE Service Rules, 2017]. The essential academic qualifications were mentioned as [i] Post Graduate degree with at least 50% marks [or an equivalent], relaxable by 5% for SC/ST/differently abled candidates, at the Master's degree level in the relevant subject from recognized university; and [ii] B.Ed. It was specifically mentioned therein that relaxation for B.Ed. qualification would only be provided to the candidates applying for the posts of PGT [Mathematics] and PGT [Physics] in terms of an Office Memorandum no. EDS/HSS/4-1/2008 dated 19.08.2016.

- 10.1. The Office Memorandum no. EDS/HSS/4-1/2008 dated 19.08.2016, a copy of which has been placed before the Court, read as under :-

**GOVERNMENT OF NAGALAND
DEPARTMENT OF SCHOOL EDUCATION**

OFFICE MEMORANDUM

NO.EDS/HSS/4-1/2008

Dated Kohima the 19th August, 2016

Sub: RELAXATION OF B.ED. QUALIFICATION FOR APPOINTMENT AS POST GRADUATE TEACHER [MATHS] AND POST GRADUATE TEACHER [PHYSICS] IN NPSC EXAMINATION.

It has been brought to the notice of the Government that examination for recruitment to the post of Post Graduate Teachers in Mathematics and Physics could not be conducted by NPSC for some time now due to non-availability of candidates with the prescribed requisite professional qualification of B.Ed. degree.

Therefore, in the interest of the students community who are badly affected due to non-posting of subject teachers of Mathematics and Physics in the Higher Secondary Schools in the State. The Government hereby relaxes the professional degree of B.Ed. for recruitment as PGT only in Maths and Physics for a period of 5 [five] years, on the conditions that, the selected candidates should acquire B.Ed. degree within 5 [five] years of appointment failing which further promotion, service confirmation will not be given and increments stopped as provided in the new training policy.

Sd/-[F.P.SOLO]

Commissioner & Secretary to the Govt. of Nagaland.

- 10.2. From the Requisitions [supra], it has emerged that there was no directive from the Appointing Authority in the School Education Department, Government of Nagaland to the Commission, prior to the Advertisement no. NPSC-3/2019 dated 13.11.2019, to the effect that the benefit of relaxation to acquire B.Ed. qualification in a period of 5 [five] years after selection/appointment would be extended to the candidates belonging to Konyak, Chang, Khiamniungan, Yimchunger, Sangtam, Phom, Chakhesand, Pochury and Zeliang and Sumis of Kiphire, as mentioned in the Advertisement no. NPSC-3/2019 dated 13.11.2019. The incorporation of the said relaxation clause in the Advertisement no. NPSC-3/2019 dated 13.11.2019, already extracted in paragraph 2 hereinabove, was solely attributable to the Commission. When it was pointed out to the Commission by the School Education Department vide the Communication dated 11.08.2022 and the Commission was asked to clarify as to why the names of the petitioners who lacked B.Ed. qualification, were recommended for appointment, the Commission vide its Communication dated 23.08.2022 clarified that a clerical mistake had been committed at the time of releasing the Advertisement. The Commission while admitting the mistake, had sought to explain that the problem had arisen due to failure to indicate specifically that relaxation would only be limited to the backlog vacancies of 2016. The Commission had made a request therein that since the recruitment process was

completed, there was no fault on the part of the selected candidates and it was a clear case of mistake committed inadvertently, it was open for the Appointing Authority in the School Education Department, Government of Nagaland to consider the matter of relaxation of B.Ed. qualification in respect of the recruitment process undertaken in the year 2019.

11. As per Article 315[1] of the Constitution of India, there shall be a Public Service Commission for each State. Clause [1] of Article 320 of the Constitution of India has *inter alia* provided that it shall be the duty of the State Public Service Commission to conduct examinations for appointments to the services of the State. Thus, the duty of the Public Service Commission is only to conduct examinations for appointments in terms of the request made by the Appointing Authority. It is settled that the selection made by the Public Service Commission is only recommendatory in nature and it is open to the Appointing Authority in the Government either to accept the recommendation or not to accept the recommendation. The Public Service Commission has the duty and responsibility to conduct the recruitment process strictly in terms of the requisition received and the service rules, if any, regulating and governing the matter of recruitment to the post to be filled up, send by the requisition. In the case in hand, the Commission was obligated to conduct the recruitment process for appointment to the posts of PGT [Computer Science], PGT [English] & PGT [Commerce] strictly in terms of the Requisitions, dated 27.08.2019 & dated 10.10.2019, send to it in the prescribed format. The Commission was, thus, under obligation to notify the essential qualification for the posts of PGT [Computer Science], PGT [English] & PGT [Commerce] strictly in terms of the NSE Service Rules, 2017, which have prescribed the essential qualifications for the posts of PGT [Computer Science], PGT [English] & PGT [Commerce]. The NSE Service Rules, 2017 have not provided for any relaxation to the candidates belonging to Konyak, Chang, Khiamniungan, Yimchunger, Sangtam, Phom, Chakhesand, Pochury and Zeliang and Sumis of Kiphire district, to submit their applications for the posts of Post Graduate Teachers [PGTs] even without B.Ed. qualification and to acquire the B.Ed. qualification in a period of 5 [five] years in the event they get selected in the recruitment process and appointed to these posts thereafter. Thus, the act of providing relaxation to the candidates belonging to Konyak, Chang, Khiamniungan, Yimchunger, Sangtam, Phom, Chakhesand, Pochury and Zeliang and Sumis of

Kiphire from the B.Ed. qualification in the Advertisement no. NPSC-3/2019 was beyond the power, authority and jurisdiction of the Commission.

12. It is well settled that just because the name of a candidate has figured in the list recommended by a Public Service Commission for appointment, the candidate has no indefeasible right to get appointment as well. It is always open to the Appointing Authority in the Government not to fill up the vacancies. However, such a decision not to fill up the vacancies and not to act on the list of candidates or a part of such list recommended by the Commission shall not be arbitrary or unreasonable. The Hon'ble Supreme Court of India, in the case of **Manoj Manu vs. Union of India**, reported in [2013] 12 SCC 171, has observed that once the decision of the Government not to fill up the vacancy is found to be based on some valid reason the Court exercising the power judicial review under Article 226 of the Constitution of India would not issue any mandamus to the Appointing Authority in the Government to fill up the vacancies. It has been held by the Hon'ble Supreme Court of India in **S.S. Balu and another vs. State of Kerala and other**, reported in [2009] 2 SCC 479, that the State as an employer has a right to fill up all the posts or not to fill up the posts. Unless a discrimination is made in regard to the filling up of the vacancies or an arbitrariness is committed, the candidates concerned will have no legal right for obtaining a writ or in the nature of mandamus.
13. The Notification dated 20.09.1989 and the Notification dated 14.04.2011, reference of which are made in paragraph 2.2 above, pertain to percentage of reservation for Backward Tribes [BTs] in general and percentage of reservation for persons belonging to certain identified categories of tribes in posts under the State Services. The Notifications, dated 20.09.1989 & the Notification dated 14.04.2011, do not touch upon the matter of relaxation in respect of essential educational qualifications laid down in the Service Rules like the NSE Service Rules, 2017, framed under the proviso to Article 309 of the Constitution of India.
14. From a perusal of the Notification dated 27.10.2008, it appears that it contains a State policy on recruitment of teachers under the Department of School Education, Government of Nagaland covering the matter of relaxation in respect of candidates who do not possess the prescribed professional qualification. The Notification dated 27.10.2008 provided for appointment of candidates to the posts of Pre-Primary,

Primary and Graduate Teachers without having the required professional qualification of PSTE/B.Ed. It was stipulated therein that a candidate must have the minimum prescribed academic qualification of 10 + 2 for the posts of Pre-Primary/Primary Teacher and a Bachelor's Degree with not less than 45% for the post of Graduate Teacher. A shortlisted candidate would be required to give an undertaking that he/she would undergo the PSTE/B.Ed. course and clear it within 2 [two] years, failing with his/her service would be terminated. As per the said Notification, the relaxation came into force with immediate effect and would continue for a period of 3 [three] years. It further mentioned that the same would be subject to review after 3 [three] years, either for extension or discontinuance. The Notification had, however, made it specific that the relaxation did not supersede the notified policy on recruitment and preference in appointment would be considered in respect of candidates possessing the prescribed qualification. The Notification dated 18.02.2010 was also on the State policy on recruitment of teachers under the Department of School Education. By the Notification, the State Government had declared for a relaxation of the said policy in respect of the candidates for the posts of Post Graduate Teachers [PGTs] in the Higher Secondary Schools in the State of Nagaland, who did not possess the professional qualification, B.Ed. It was stipulated therein that the recruitment of candidates to the posts of Post Graduate Teachers [PGTs] shall be done through the NPSC and in accordance with the Service Rules. The candidates must have the minimum prescribed qualification of Post Graduate Degree in the relevant subject with 50% aggregate marks [relaxable by 5% for ST/SC]. It required that every selected candidate on appointment, shall have to undergo the prescribed professional course of B.Ed. and to complete the course [i] within a period of 5 [five] years if the selected candidate belong to any of the backward tribes - Konyak, Chang, Khiamniungan, Yimchunger, Sangtam, Phom, Chakhesand, Pochury and Zeliang and [ii] within a period of 2 [two] years if the selected candidates belong to any other Naga Tribes. As per Clause [iv] of the Notification dated 18.02.2010, the said order of relaxation shall be deemed to have come into effect from the date of issue of the 1st Notification relating to relaxation of recruitment policy dated 27.10.2008. It had provided that the relaxation would be valid [i] for a period of 10 [ten] years in respect of candidates belonging to the backward tribe of Konyak, Chang, Khiamniungan, Yimchunger, Sangtam, Phom, Chakhesand, Pochury and Zeliang and [ii] for a period of 5 [five] years in respect of other Naga Tribes. As per Clause [v] thereof, the policy on relaxation of professional qualification for

recruitment of teachers would be subject to review after submission of report on reservation policy by a committee named Kevichusa Committee.

15. The matter of grant of relaxation is also to be looked at from the aspect of the extant Service Rules, that is, the NSE Service Rules, 2017. Rule 32 thereof has provided the power to relax rules and it reads as under :-

32. Power to Relax Rules

Where undue hardship is likely to be caused to any person by the application of any of these rules, the Governor shall have the powers to relax the application of that rule in respect of that person for good and sufficient reason which shall be without prejudice to the interest of any other member of service.

- 15.1. A similar rule providing the power of relaxation came to be considered in the case of **J.C. Yadav vs. State of Haryana**, reported in [1992] 2 SCC 189. In paragraph no. 6 in **J.C. Yadav** [supra], the Hon'ble Supreme Court of India has observed as under :-

6. The Rule confers power on the Government to dispense with or to relax the requirement of any of the Rules to the extent, and with such conditions as it may consider necessary for dealing with the case in a just and equitable manner. The object and purpose of conferring this power on the Government is to mitigate undue hardship in any particular case, and to deal with a case in a just and equitable manner. If the Rules cause undue hardship or Rules operate in an inequitable manner in that event the State Government has power to dispense with or to relax the requirement of Rules. The Rules do not restrict the exercise of power to individual cases. The Government may in certain circumstances relax the requirement of Rules to meet a particular situation. The expression 'in any particular case' does not mean that the relaxation should be confined only to an individual case. One of the meanings of the expression 'particular' means 'peculiar or pertaining, to a specified person - thing time or place not common or general'. The meaning of the word particular in relation to law means separate or special, limited or specific. The word 'case' in ordinary usage means 'event', 'happening', 'situation', 'circumstances'. The expression 'case' in legal sense means 'a case', 'suit' or 'proceeding in Court or Tribunal'. Having regard to these meanings of the words 'particular' and 'case' the expression 'in any particular case' would mean, in a particular or pertaining to an event, situation or circumstance. Rule 22 postulates relaxation of Rules to meet a particular event or situation, if the operation of the Rules causes hardship. The relaxation of the Rules may be to the extent the State Government may consider necessary for dealing with a particular situation in a just and equitable manner. The scope of Rule is wide, enough to confer power on the State Government to relax the requirement of Rules in respect of an individual or class of individuals to the extent it may consider necessary for dealing with the case in a just and equitable manner. The power of relaxation is generally contained in the

Rules with a view to mitigate undue hardship or to meet a particular situation. Many a times strict application of service rules create a situation where a particular individual or a set of individuals may suffer undue hardship and further there may be a situation where requisite qualified persons may not be available for appointment to the service. In such a situation the Government has power to relax requirement of Rules. The State Government may in exercise of its powers issue a general order relaxing any particular Rule with a view to avail the services of requisite officers. The relaxation even if granted in a general manner would enure to the benefit of individual officers.”

- 15.2. With regard to the power of relaxation, the Hon’ble Supreme Court of India in **State of Gujarat and others vs. Arvindkumar T. Tiwari and another**, reported in [2012] 9 SCC 545, has observed as under :-

10... In a particular case, where it is so required, relaxation of even educational qualification[s] may be permissible, provided that the rules empower the authority to relax such eligibility in general, or with regard to an individual case or class of cases of undue hardship. However, the said power should be exercised for justifiable reasons and it must not be exercised arbitrarily, only to favour an individual. The power to relax the recruitment rules or any other rule made by the State Government/Authority is conferred upon the Government/Authority to meet any emergent situation where injustice might have been caused or, is likely to be caused to any person or class of persons or, where the working of the said rules might have become impossible. [Vide: **State of Haryana vs. Subhash Chandra Marwah**, [1974] 3 SCC 220; **J.C. Yadav vs. State of Haryana**, [1992] 2 SCC 189; and **Ashok Kumar Uppal vs. State of J & K**, [1998] 4 SCC 179].”

- 15.3. When the principles laid down in the above two decisions with regard to relaxation of rules and Rule 32 of the NSE Service Rules, 2017 are read and considered together, it emerges that if the Government is conferred with the power to relax application of any rule, then such power of relaxing application of any rule can be exercised in a just and equitable manner and for good and sufficient reason where undue hardship is likely to be caused to a person or a class of persons or where relaxation of any rule might have become necessary. For example, the power can be exercised when the Government arrives at a satisfaction that qualified persons in requisite nos. are not available for appointment to a post/service. The principle that can be deduced from the above decisions is that relaxation of application of any rule is permissible only in case there is undue hardship. Undue hardship means something more than only hardship. It is the situation of only undue hardship which will permit the Government to consider making any relaxation under Rule 32 of the NSE Service Rules, 2017. If proceeded with the assumption that it is implicit in Rule 32 that the relaxation can be

in the form of not having the professional qualification of B.Ed. at the time of submission of application for the post of Post Graduate Teachers [PGTs], then as and when a process of selection is sought to be undertaken for recruitment through the NPSC by way of the Common Educational Services Examination, as envisaged in the Nagaland Public Service Commission [State Civil & Other Services] Recruitment Rules, 2008, as amended by the Nagaland Public Service Commission [State Civil & Other Services] Recruitment [6th Amendment] Rules, 2011, any relaxation in respect of the professional qualification of B.Ed. has to be envisaged by the Government at the inception, meaning thereby, at a time, either anterior to or at the time of sending the Requisition in the prescribed format to the NPSC. This Court is of the considered view that it is at the inception, that is, either before or at the time of sending the Requisition in terms of Rule 6.A of the NSE Service Rules, 2017, there has to be a conscious decision on the part of the Government that there is good and sufficient reason to exercise the discretion for granting relaxation in respect of the B.Ed. degree, otherwise an essential qualification for the post of Post Graduate Teacher [PGT]. The grant of such relaxation has also to meet twin requirements, **firstly**, undue hardship is likely to be caused to a person or a class of persons in the event such relaxation is not granted; and **secondly**, there shall not be any prejudice to the interest of any other members in the service.

- 15.4. Reverting back to the facts of the case in hand, it is clearly demonstrated from the contents of the two Requisitions, dated 27.08.2019 & dated 10.10.2019, sent by the Government in the School Education Department, Government of Nagaland in the prescribed format for filling up the posts of Post Graduate Teachers [PGTs] in different subjects, the Government had clearly specified that relaxation in respect of the essential qualification of B.Ed. would be applicable only in respect of the posts of PGT [Mathematics] and PGT [Physics], in terms of the Office Memorandum no. EDS/HSS/4-1/2008 dated 19.08.2016. As is evident from the Office Memorandum dated 19.08.2016, as extracted above, the Government has been facing difficulties in making recruitment to the posts of PGT [Mathematics] and PGT [Physics] through the NPSC for quite a long period of time due to non-availability of candidates having the prescribed requisite professional qualification of B.Ed. degree. Non-availability of Post Graduate Teachers [PGTs] in Schools is clearly to the prejudice to the student community in particular, and the academic interests of the State in general. The Government has thereby, relaxed the requirement of having the prescribed requisite

professional qualification of B.Ed. degree for recruitment only to the posts of PGT [Mathematics] and PGT [Physics] for a period of 5 [five] years, subject to the condition that the selected candidate should acquire the B.Ed. degree within 5 [five] years of appointment, failing which further promotion, service confirmation would not be given and increments would be stopped as provided in the new training policy. There was, however, no direction in the Requisitions, dated 27.08.2019 & dated 10.10.2019, that there would also be similar kind of relaxation to the candidates not possessing the prescribed requisite professional qualification of B.Ed. degree, if they belong to the Backward Tribes of Konyak, Chang, Khiamniungan, Yiumchunger, Sangtam, Phom, Chakhesang, Pochury and Zeliang and Sumis of Kiphire and have applied for any posts of Post Graduate Teachers [PGTs], other than PGT [Mathematics] and PGT [Physics]. From the Communications of the Commission, dated 23.08.2022 & dated 15.11.2022, it has been revealed that incorporation of the relaxation clause ["In respect of PGT, candidates not possessing the prescribed B.Ed. qualification, relaxation shall be admissible to the candidates belonging to Backward Tribes of Konyak, Chang, Khiamniungan, Yiumchunger, Sangtam, Phom, Chakhesang, Pochury and Zeliang and Sumis of Kiphire provided the selected candidates complete the said course within 5 [five] years"] in the Advertisement no. NPSE-3/2019 was clearly an unilateral act on the part of the Commission and such unilateral incorporation of the relaxation clause in the Advertisement is already found to be beyond the power, authority and jurisdiction of the Commission, being a Public Service Commission authorized only to conduct the selection process on the basis of Requisitions received from the Government.

- 15.5. The Government in the School Education Department by its Communications, dated 11.08.2022 & dated 19.10.2022, had clearly brought to the notice of the Commission that the recommendations of the three petitioners the Commission had made as successful candidates for the posts of PGT [Computer Science], PGT [English] & PGT [Commerce], were not in conformity with the NSE Service Rules, 2017 and also the Right of Children to Free and Compulsory Education [RTE] Act, 2009. It was further pointed out that the Government in the School Education Department had provided relaxation from B.Ed. qualification only in respect of the posts of PGT [Mathematics] and PGT [Physics]. Thus, it is evident that the Government in the School Education Department had not provided any relaxation in respect of any other posts of Post Graduate Teachers [PGTs] including those of the PGT [Computer Science], PGT

[English] & PGT [Commerce] in the Requisitions, dated 27.08.2019 & dated 10.10.2019, and for the selection process that had been undertaken vide the Advertisement no. NPSC-3/2019. It has, thus, clearly emerged that there was no conscious decision on the part of the Government to exercise discretion for invoking Rule 32 of the NSE Service Rules, 2017 at any point of time to grant any relaxation from not possessing the B.Ed. qualification, to apply for the other posts of Post Graduate Teachers [PGTs] including the posts of PGT [Computer Science], PGT [English] & PGT [Commerce]. In such obtaining fact situation, justification sought to be advanced by the Commission through its Communications, dated 23.08.2022 & dated 15.11.2022, is unhesitantly found unsustainable in law. Consequently, there cannot be any direction of or in the nature of mandamus to the State respondents to consider the justification provided by the Commission in the Communication dated 23.08.2022. The matter of granting relaxation or not granting relaxation of any qualification, which qualification is otherwise an essential qualification under the governing Service Rules, is a policy decision, which is to be left to the Government as it alone can decide which policy should be adopted after considering all the relevant aspects from all perspectives. Similarly, if any relaxation is to be granted then till what time period is also a policy decision, which is to be best left to the Government. It is settled that in the matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental rights is not shown the courts will have no occasion to interfere and the court will not and should not substitute its own judgment for the judgment of the Government in such matters. In assessing the propriety of a decision of the Government the court cannot interfere even if a second view is possible from that of the Government [Ref: **Ekta Shakti Foundation vs. Govt. of NCT of Delhi, (2006) 10 SCC 337**]. The decision to grant exemption of B.Ed. qualification to the identified category of candidates for a period of 10 [ten] years w.e.f. 27.10.2008 and not to extend the exemption for any period thereafter, are policy decisions of the Government. The only plea raised by the petitioners is about its retrospectivity or prospectivity. There are no materials to decipher that undue hardship is likely to be caused to any person or a class of persons and the public interest would suffer if such exemption from B.Ed. qualification is not granted. Therefore, this Court is not inclined to embark on a journey to examine as to why the Government took the policy decision to limit the period to 10 [ten] years in retrospective manner. The justification given by the State respondents not to act upon the recommendations made by the Commission in

favour of the three petitioners for the posts of PGT [Computer Science], PGT [English] & PGT [Commerce] vide the Communications dated 18.07.2022 is found completely justified as the recommendations were made in deviations of the essential academic qualifications for these posts laid down in the NSE Service Rules, 2017.

16. In view of the above discussions and for the reasons assigned therein, the grounds urged on behalf of the petitioners are found of no substance. Consequently, the writ petition is liable to be dismissed. It is accordingly dismissed. The interim order stands recalled. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant