

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**  
**THE ACTING CHIEF JUSTICE SHRI MANOJ KUMAR TIWARI**  
**AND**  
**JUSTICE SHRI VIVEK BHARTI SHARMA**

**6<sup>TH</sup> DECEMBER, 2023**

**WRIT PETITION (S/S) No. 574 OF 2019**

Neetu Pathak and others .....Petitioners  
Versus  
State of Uttarakhand & others. ...Respondents  
with

**WRIT PETITION (S/S) No. 590 OF 2019**

Ashok Singh Rawat and another. .... Petitioners  
Versus  
State of Uttarakhand & others. .... Respondents  
with

**WRIT PETITION (S/S) No. 601 OF 2019**

Mahendra Singh and others. .... Petitioners  
Versus  
State of Uttarakhand & others. .... Respondents  
with

**WRIT PETITION (S/S) No. 635 OF 2019**

Rajendra Singh Chauhan and others. .... Petitioners  
Versus  
State of Uttarakhand & others. .... Respondents  
with

**WRIT PETITION (S/S) No. 637 OF 2019**

Anil Kumar and others. .... Petitioners  
Versus  
State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/S) No. 638 OF 2019**

Kusum Nirala. .... Petitioner

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/S) No. 649 OF 2019**

Charan Singh and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/S) No. 670 OF 2019**

Chandra Prakash and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/S) No. 704 OF 2019**

Km. Nirmala and another. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/S) No. 772 OF 2019**

Braj Mohan Singh and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/S) No. 910 OF 2019**

Mohd. Iqram and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/S) No. 980 OF 2019**

Sanjeev Kumar. .... Petitioner

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/S) No. 1060 OF 2019**

Rajendra Mohan and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 375 OF 2020**

Vinay Kumar Tripathi. .... Petitioner

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 379 OF 2020**

Arjun Singh and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/S) No. 1546 OF 2020**

Harsh Tiwari .... Petitioner

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 419 OF 2021**

Amit Kumar and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 420 OF 2021**

Kuldeep Kumar and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 423 OF 2021**

Manveer Singh and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 424 OF 2021**

Raj Kishor Shah and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 426 OF 2021**

Ranjan Kuthari and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 428 OF 2021**

Preeti Arya and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 430 OF 2021**

Poonam Gautam and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 435 OF 2021**

Shri Chand and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 436 OF 2021**

Vijay Laxmi Bhandari and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 446 OF 2021**

Makhan Singh and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 449 OF 2021**

Sahid Ali and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 452 OF 2021**

Santosh Kumar and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 457 OF 2021**

Manoj Kumar and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 460 OF 2021**

Naresh Kumar and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 462 OF 2021**

Mahendra Singh and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 564 OF 2021**

Shashi Bala and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 570 OF 2021**

Kamal Deep Agari and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/S) No. 1419 OF 2021**

Prakash Chandra Singh Danu .... Petitioner

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 65 OF 2022**

Charan Singh and others. .... Petitioners

Versus

State of Uttarakhand & others. .... Respondents

with

**WRIT PETITION (S/B) No. 102 OF 2022**

Jiwan Lal and others.

..... Petitioners

Versus

State of Uttarakhand & others.

..... Respondents

with

**WRIT PETITION (S/B) No. 169 OF 2022**

Rishi Ram Semwal.

..... Petitioner

Versus

State of Uttarakhand & others.

..... Respondents

**Present:**

Mr. Dushyant Mainiali, Mr. Naveen Chandra Tewari, Mr. Sandeep Tiwari, Mr. Prem Sing, Mr. G.D. Joshi, Mr. Harendra Belwal, Mr. Allauddin, Mr. Asif Ali, Mr. Vinay Kumar, Ms. Shruti Joshi, Mr. Ghanshyam Joshi, Mr. R.C. Tamta, Mr. Himanshu Joshi, Advocate, holding brief of Mr. Prashant Khanna, Mr. Vivek Pathak, Mr. Daves Bishnoi, Mohd. Umar & Mr. Hemant Pant, Advocates for petitioners.

Mr. J.C. Pandey, Standing Counsel for the State of Uttarakhand/respondent nos. 1 to 4 & 6 to 15.

Mr. Yogesh Kumar Pacholia, Advocate for respondent no. 5.

Mr. Shiv Pande, Advocate for the intervener.

***Upon hearing the learned Counsel, the Court made the following***

**JUDGMENT:** (per the Acting Chief Justice Shri Manoj Kumar Tiwari)

Since common questions of law and fact are involved in these writ petitions, therefore are being taken up together and are being decided by this common judgment. However, for the sake of brevity, facts of Writ Petition (S/S) No. 574 of 2019 alone are being considered.

2. Petitioners possess B.Ed. qualification from different universities established by law. According to them,

they are eligible for appointment as Assistant Teacher in Government Primary Schools run by State of Uttarakhand; however, their eligibility for appointment has been taken away by Rule 9 Column-2 of Uttarakhand Government Elementary Education School (Teachers) Service Rules, 2012, as amended in 2018. By Rule 9 Column-2, as amended in 2018, a condition was added in the Rules that, anyone who has scored less than 50% marks in graduation would not be eligible for appointment, however, for candidates belonging to Scheduled Castes and Scheduled Tribes community, the minimum qualifying marks in graduation was prescribed as 45%.

3. Petitioners have challenged the said condition on the ground that it is in contravention to notification issued by National Council for Teacher Education on 13.11.2019 and further that it is in conflict with the spirit and provisions of Right of Children to Free and Compulsory Education Act, 2009. Petitioners contended that the condition, which has been added through amendment, made in 2018, is in the teeth of judgment rendered by learned Single Judge of this Court in Writ Petition (S/S) No. 772 of 2011, '*Baldev Singh and others v. State of Uttarakhand and others*' and also the judgment rendered by Hon'ble Supreme Court in the case of

*Neeraj Kumar Rai v. State of Uttar Pradesh and others* in Civil Appeal No. 9732 of 2017.

4. Per contra, Mr. Yogesh Pacholia, learned counsel appearing for National Council for Teacher Education contends that the judgment rendered by learned Single Judge of this Court in the case of *Baldev Singh* (supra) was in respect of similar condition prescribed for participating in Teachers Eligibility Test and not for appointment as Assistant Teacher. He further contends that Hon'ble Supreme Court in a recent judgment rendered in the case of *Devesh Sharma v. Union of India*, 2023 SCC OnLine SC 985 has held that B.Ed. qualification holders are not eligible for appointment as Assistant Teacher in Elementary/Primary Schools. Paragraph nos. 79 to 82 of the said judgment are extracted below:-

**“79.** *In the present case and in the larger context of the matter, we cannot even see this as a policy decision. But without getting into this argument, even presuming for the sake of argument that the decision taken at the Government level to include B.Ed. as a qualification for teachers at primary level is a policy decision, we must say that this decision is not correct as it is contrary to the purpose of the Act. In fact, it goes against the letter and spirit of the Fundamental Right enshrined in the Constitution under Article 21A. It is against the specific mandate of the Act, which calls for a free, compulsory and meaningful primary education to*

children. By including B.Ed. as a qualification for teachers for primary school, the Central Government has acted against the provisions of the Constitution and the laws. The only logic given by the Central Government to include B.Ed. as a qualification is that it is a 'higher qualification'. This we have already seen is not correct. Under these circumstances, we have no hesitation to say that the notification has rightly been quashed and the decision of the Division Bench of the Rajasthan High Court has to be upheld.

**80.** In our considered opinion therefore the direction of the Central Government dated 30.05.2018 culminating in the notification dated 28.06.2018 of NCTE are violative of the principles as laid down in RTE Act. Not only this, the notification goes against the purpose and the mandate of law, which is to provide a meaningful and 'quality' primary education to children.

**81.** The entire exercise is also procedurally flawed. The notification dated 28.06.2018 is not an independent decision of NCTE taken after due deliberation, but it simply follows the direction of the Central Government, a direction which fails to take into consideration the objective realities of the day.

**82.** Having made the above determination we, all the same, are also of the considered opinion that the State of Rajasthan was clearly in error in not calling for applications from B.Ed. qualified candidates, for the reasons that till that time when such an advertisement was issued by the Rajasthan Government, B.Ed. candidates were included as eligible candidates as per the statutory notification of NCTE, which was binding on the Rajasthan Government, till it was declared illegal or unconstitutional by the Court. The Rajasthan High Court had rightly observed as under:

"..we are of the opinion that the State Government could not have ignored the notification

*while inviting applications for REET. Even if the State Government was of the opinion that such notification was unconstitutional or for any reason illegal, the same had to be stayed or set aside by a competent court before it could be ignored.”*

5. It is not in dispute that petitioners in these writ petitions are seeking appointment as Assistant Teacher in Government Primary Schools on the strength of B.Ed. qualification and none of them possesses Diploma in Elementary Education and Diploma in Education, which makes a candidate eligible for appointment as teacher in a Primary/Elementary School.

6. Hon'ble Supreme Court in the aforesaid judgment has held that B.Ed. qualification alone is not sufficient for appointment as teacher in Elementary/Primary Schools. In view of the judgment rendered by Hon'ble Supreme Court, petitioners are not eligible for appointment in Basic/Primary/Elementary Schools, therefore, the challenge thrown to provision contained in Rule 9 Column-2 of Uttarakhand Government Elementary Education School (Teachers) Service Rules, 2012, as amended in 2018, becomes only academic in nature, and this Court refrains from going into the issues raised by petitioners in these writ petitions.

7. Accordingly, writ petitions fail and are dismissed.  
Interim order, if any, stands vacated.

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**MANOJ KUMAR TIWARI, ACJ.**

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**VIVEK BHARTI SHARMA, J.**

Dt: 6<sup>th</sup> December, 2023  
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