

GAHC020007272023



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

Case No. : WA/15/2023

SHRI MANTO KONYAK AND 2 ORS
S/O PHANGLEM KONYAK
CHANGLANGSHU VILLAGE
MON NAGALAND

2: SMTI. ANIKALI

D/O IHOTO
SHISHIMI VILLAGE
DISTRICT - KIPHIRE
NAGALAND

3: SMTI. TSUMIAN KHIAMNUINGAN

D/O YANO KHIAMNUINGAN
NEW PANGSHA VILLAGE
DISTRICT - NOKLAK
NAGALAN

VERSUS

THE STATE OF NAGALAND AND 3ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. 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
KOHIM

Advocate for the Appellants : Ms. Z. Zhimomi , Advocate
Advocate for the Respondents : Ms. V. Suokhrie,
Addl. Advocate General, Nagaland

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of Hearing : 27.02.2024
Date of Judgment : 27.02.2024

JUDGMENT AND ORDER (ORAL)

(D. Baruah, J.)

This intra-Court appeal arises out of the judgment and order dated 24.11.2023 passed by the learned Single Judge in WP(C) No.339/2022 whereby the writ petition was dismissed on the grounds and reasons stated therein.

2. For the purpose of deciding as regards the legality and validity of the said judgment and order passed by the learned Single Judge, we find it relevant to take note of the brief facts of the instant case.
3. On 27.10.2008, a notification was issued by the Additional Chief Secretary to the Government of Nagaland which relates to the State policy of recruitment of teachers under the Department of School Education, Government of Nagaland. It was stipulated in the

said notification that the candidates who do not possess the prescribed professional qualifications, there would be a relaxation in respect to the conditions stipulated therein. It was also mentioned that the said relaxation shall come into force with immediate effect and the said relaxation shall continue for a period of three years which shall be subsequently reviewed either for extension or discontinuance. Subsequent thereto, another notification was issued on 18.02.2010 by the Additional Chief Secretary to the Government of Nagaland wherein the relaxation in respect of candidates for the post of Post Graduate Teachers in Higher Secondary Schools in the State who do not possess the prescribed professional qualifications were enumerated. Amongst the various conditions enumerated were that every selected candidate on appointment shall undergo the prescribed professional course of B.Ed and shall complete the said course within 5 years in respect of candidates belonging to the Backward Tribes of Konyak, Chang, Khianminungam, Yimchungru, Sangtam, Phom, Chakhesang, Pochury and Zeliang and within 2 years in respect of the other Naga tribes. Further to that, it was also mentioned that the order of relaxation shall be deemed to come into effect from the date of issue of the first notification relating to relaxation of recruitment policy vice order dated 27.10.2008 and shall be valid for a period of 10 years in respect to the candidates belong to the Backward Tribes of Konyak, Chang Khianminungam, Yimchungru, Sangtam, Phom, Chakhesang, Pochury and Zeliang and for 5 years in respect to other Tribes.

4. Pursuant thereto, a significant development took place in as

much as the Nagaland School Education Service Rules 2007 (herein after for short referred to as 'the Rules of 2017) was brought into effect. These Rules have been framed in terms with the provisions of Article 309 of the Constitution. The Rules of 2017 stipulates the Rules for regulating the recruitment and conditions of service of persons appointed to the Nagaland School Education Service.

5. Rule 5 of the Rules of 2017 stipulates the method of recruitment. In terms with the said Rule, the method of recruitment to the posts specified in Schedule-I shall either by way of direct recruitment; or by recruitment from lower grades; or by promotion; or by selection through limited Departmental Examinations. In Sub-Rule (ii) of Rule 5 of the Rules of 2017, the respective quota reserved for direct recruitment and by promotion, the qualifications and conditions for direct recruitment and for promotion/placement to various grades of the service have been stated to be specified in Schedule-II.

6. Rule 6 of the Rules of 2017 stipulates the direct recruitment process pertaining to the Post Graduate Teachers. In terms with Sub-Clause (i) of Rule 6(A) the Department shall send a requisition in the form prescribed by the Commission indicating the subject(s) or academic disciplines and the number of vacancies which have arisen or were expected to arise in the service which fall within the purview of the Commission. Thereupon, on the basis of the said requisition, in terms of Sub-Clause (ii), the Commission is required to advertise the posts specifying as far as possible the terms and conditions under the Rules of 2017 and the number of vacancies to be filled up. On the

basis of the said Advertisement, in terms with Sub-Clause (iii), a candidate must apply on or before such date and in such manner and in such form as may be prescribed by the Commission. Thereupon, there would be a written examination which would be followed by an oral interview as stipulated in Sub-Clause (iv) and (v). It is however very interesting to take note of Sub-Clause (viii) which stipulates on what basis, the weightage for academic records are to be given. Amongst the many, it would be seen that at Sl. No. (e) of the Table stipulated in Sub-Clause (viii), weightage of 30% of the aggregate marks would be given on the basis of the B.Ed. examination.

7. At this stage, this Court further finds it relevant to take note of Schedule-II and more particularly to the educational qualifications required for Post Graduate Teachers (Junior Grade-III) as stipulated in Sl. No.8 of the Higher Secondary Cadres. Taking into account its relevance, the same is quoted herein under:-

Sl. No.	Name of 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/ BSc.Ed from any National Council of Teacher

					Education recognized institution. (ii) Recruitment from lower grades 30% of the 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 Teacher or Primary Teacher.
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8. From the above portion of the Schedule-II, it would show that in respect to direct recruitment of Post Graduate Teachers (Junior Grade-III), the candidate must be a Post Graduate with at least 50% marks (or an equivalent) relaxable by 5% for Schedule Tribe/Schedule Caste/differently abled candidates, at the master degree level in the relevant subject from a recognized university and shall also possess a Bachelor of Education (B.Ed), B.A.Ed/BSc.Ed from any National Council of Teacher Education recognized University. It is also seen that in respect to those candidates who would be recruited from lower grades also there is a requirement of having B.Ed/B.A. B.Ed/B.Sc.B.Ed and has rendered a continuous service of seven years as a Graduate Teacher or Primary Teacher.

9. We further finds it relevant to take note of another Rule, i.e. Rule 32 of the Rules of 2017 which stipulates the power to relax Rules. The said Rule being relevant is reproduced herein 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 interests of any other member of the service”

10. A perusal of the above quoted Rule would show that on account of undue hardship which is likely to be caused to any person by the application of any of the Rules of 2017, 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 interests of any other member of the service. Therefore, a reading of the said Rule 32, makes it very clear that the relaxation in respect to the requirement can only be exercised by the Governor and that too only after the Rules of 2017 had come into force. This aspect is relevant which would be seen from the later segments of the instant judgment.

11. In the backdrop of the above, the facts would show the respondents in the Department of School Education submitted requisitions to the Secretary, Nagaland Public Service Commission (NPSC) on 27.08.2019 and 10.10.2019 for filling up of posts of Post Graduate Teachers in the Government Higher Secondary Schools under the School Education Department. The format of requisition for direct recruitment was also enclosed to the said communications. It was specifically mentioned in the requisition forms that the Advertisement would be in terms with the Rules of 2017. In Clause 5 of the Requisition Forms, it was specifically stated that the educational qualifications required would be Post Graduate with

B.Ed. However, there would be relaxation for Maths and Physics in respect to B.Ed. in terms with the O.M. No.EDS/HSS/4-1/2008 dated 19.08.2016. The number of vacant posts against which the advertisement was to be issued as also mentioned in the Requisition Forms.

12. Pursuant thereto, an advertisement was issued by the NPSC being advertisement No.NPSC-3/2019 dated 13.11.2019. In the said advertisement, at Sl. Nos.27 to 32, various posts were advertised in respect of Post Graduate Teachers in Government Higher Secondary Schools under the School Education Department. At Sl. No.33 & 34 of the said Advertisement, Post Graduate Teachers under the School Education Department in respect to Maths and Physics were also advertised. Relevant herein to mention that the said vacancies for Maths and Physics were shown as Backlog vacancies of 2016. The said advertisement contained a relaxation Clause which stipulates as under:-

“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, Yimchunger, Sangtam, Phom, Chakhesang, Pochury and Zeliang and Sumis of Kiphire provided the selected candidates complete the said course within 5(five) years. (Notifications NO.EDS (A)-5/2002 dt 27/10/08, 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 dt. 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 dt. 16.08.2016 & 23.08.2016."

13. From the said quoted section of the Advertisement "Relaxation in Educational Qualification", it would be seen in terms with the notification dated 18.02.2010 which has already been referred to herein above those candidates not possessing the prescribed B.Ed. qualification, relaxation shall be admissible to the candidates belonging to the Backward Tribes of Konyak, Chang, Khiamniungan, Yimchunger, Sangtam, Phom, Chakhesang, Pochury and Zeliang and Sumis of Kiphire provided the selected candidates complete the said course within 5 years. There is also a B.Ed degree relaxation in respect of Post Graduate Teachers in Maths and Physics 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. This was done so on the basis of another O.M. dated 16.08.2016.

14. On the basis of the said Advertisement, the Appellants herein duly participated in the said recruitment process. Admittedly, the Appellants did not have the B.Ed qualification. Subsequent thereto, a notification was issued by the Nagaland Public Service Commission on 08.07.2022 which shows that the Appellants herein were selected against the posts which were advertised and thereupon vide the communication dated 18.07.2022, the Nagaland Public Service Commission had made the

recommendation for appointment of Post Graduate Teachers which included the Appellants herein. Pursuant to the issuance of the said recommendation, on 11.08.2022, the Joint Secretary to the Government of Nagaland had issued a communication to the Secretary, Nagaland Public Service Commission stating inter-alia that the Appellants herein did not possess the requisite professional qualification, i.e. B.Ed degree which was necessary for appointment under the School Education Department as per the Rules of 2017. It was also mentioned that as per the requisition submitted there was a relaxation of B.Ed training only in Maths and Physics in terms with the Office Memorandum dated 19.08.2016. Under such circumstances, the Secretary, Nagaland Public Service Commission was requested to clarify as to how the three candidates, i.e. the Appellants herein without having the requisite training/professional qualifications were recommended and the anomalies be rectified.

15. The Secretary, Nagaland Public Service Commission issued a communication to the Commissioner and Secretary to the Government of Nagaland, School Education Department dated 23.08.2022 stating inter-alia that there was a clerical mistake committed at the time of releasing the advertisement. However, a request was made to the Department to consider the matter as an unintentional error and initiate for relaxation of B.Ed degree as a basic qualification for recruitment to be extended only for the particular year, i.e. 2019 for a logical conclusion. To the said communication, the Joint Secretary to the Government of Nagaland again informed to the Secretary, Nagaland Public Service Commission vide a communication dated 19.10.2022 that the requisite qualification for the post of Post Graduate Teachers is Post Graduate with B.Ed. The Right to

Education Act, 2009 also clearly mandated appointing teachers with the requisite entry and academic qualifications. It was also mentioned that as per the opinion rendered by the Law and Justice Department, if any advertisement is inconsistent with the Recruitment Rules, the Rules would prevail.

16. Taking into account that the respondent State Government did not act on the basis of the recommendation and on the other hand no steps were taken for appointing the Appellants to the posts where they have been selected and recommended, the Appellants preferred the writ petition before this Court which was registered and numbered as WP(C) No.339/2022 seeking inter-alia that the respondents in the State Government be directed to consider the letter dated 23.08.2022 issued by the Nagaland Public Service Commission and to appoint the petitioners as the Post Graduate Teachers in English, Computer Science and Commerce subjects as per the recommendation dated 18.07.2022. Further to that, the petitioners have also assailed Clause-(IV) of the Notification dated 18.02.2010 to the extent of giving relaxation of policy in respect of Post Graduate Teachers with retrospective effect from 27.10.2005 instead of prospective from 18.02.2010. Apart from that, the impugned letters dated 11.08.2022 and 19.10.2022 issued by the respondent No.2 to the NPSC.

17. Pursuant to the filing of the instant writ petition, an affidavit-in-opposition was filed by the respondent Nos.1 to 3. The specific case of the respondents in the affidavit-in-opposition was that there was no relaxation given in respect of other subjects other than Maths and Physics in the requisition form as regard the qualification of B.Ed. Under such circumstances, the respondent Nagaland Public Service Commission could

not have made the recommendation in respect to the Petitioners/Appellants. The requisitions have been enclosed to the said affidavit-in-opposition.

18. This Court also finds it relevant to take note of the affidavit-in-opposition filed by the Nagaland Public Service Commission wherein it has been mentioned that the Secretary, Nagaland Public Service Commission had written a letter on 15.11.2022 to the Commissioner and Secretary to the Government of Nagaland P&AR Department stating that the notification dated 27.10.2008 with regard to relaxation for undergoing B.Ed course was specified only for Pre-Primary, Primary and Graduate Teachers and as such the relaxation for undergoing B.Ed course after being appointed is governed by the notification dated 18.02.2010 for a period of 10 years which would be effective from the date of passing the notification dated 18.02.2010 and would lapse on 17.02.2020 in respect of the Post Graduate Teachers. It is under such circumstances, the Nagaland Public Service Commission was fully satisfied that the case of the petitioners/the appellants herein falls under the notification dated 18.02.2010 for appointment to the posts for which they had applied and duly recommended to the Government for appointment which was later declined by the State respondents in its letter dated 11.08.2022 and 19.10.2022.

19. The learned Single Judge vide its judgment and order dated 24.11.2023, dismissed the writ petition holding inter-alia that the decision to grant exemption of B.Ed. qualification to the identified category of candidates for a period of 10 years w.e.f. 27.10.2008 was not extended for any period thereafter, are policy decisions of the Government. It was

observed that there was no material 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, it was the opinion of the learned Single Judge not to embark on a journey to examine as to why the Government took the policy decision to limit the period to years in retrospective manner. It was also mentioned that the justifications, 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 communication dated 18.07.2022 was found completely justified as the recommendations were made in deviations of the essential academic qualifications for those posts laid down in the Rules of 2017. On the basis thereof, the learned Single Judge dismissed the writ petition.

20. We have heard Ms. Z. Zhimomi, the learned counsel appearing on behalf of the appellants and Ms. V. Suokhrie, the learned Additional Advocate General, Nagaland representing the respondent Nos.1 to 3. The submissions which have been made by the learned counsel appearing on behalf of the appellants and the learned Additional Advocate General appearing on behalf of the State respondents have been duly noted.

21. In the previous segments of the instant judgment, we had duly taken note of the relevant provisions of the Rules of 2017. In the said Rules of 2017, more particularly in Rule 5, it has been categorically mentioned as to what are the requisite qualifications necessary for the purpose for direct recruitment and for promotion. The qualifications

necessary have been specified in Schedule-II of the Rules of 2017. This Court had quoted Sl. No.8 in respect to "Higher Secondary Cadre" stipulated in Schedule-II which categorically mandates as to what are the essential qualifications required for the purpose of recruitment either by direct recruitment or recruitment from the lower candidates. From the said Sl. No.8, it would be seen that the qualification of Bachelor of Education (B.Ed)/B.A. B.Ed/B.Sc. B.Ed from any National Council of Teacher Education recognised institution is one of the essential eligibility conditions, meaning thereby that without the said qualification, a candidate is not eligible.

22. This Court has also taken note of Rule 32 of the Rules of 2017 which empowers the Governor to relax the application of a particular Rule in respect to any person if there is an undue hardship likely to be caused by application of any of the Rules and that too for good and sufficient reason which shall be without prejudice to the interests of any other member of the service. A reading of the said Rule further makes it clear that relaxation has to be in respect of any person and has to be in consequence of the power conferred under Rule 32 of the Rules of 2017. We are of the opinion that any other interpretation given would be in conflict with the Rules of 2017.

23. Under such circumstances, neither the Office Memorandum dated 18.02.2010 nor any other Office Memorandum prior to the Rules of 2017 could have permitted the relaxation of the educational qualifications after the coming into effect the Rules of 2017 unless and until the Rules of 2017 permits. In fact, it would be seen from a perusal of the educational

qualification that relaxation has already been granted by 5% for SC/ST/differently abled candidates.

24. We find it pertinent at this stage to take note of the judgment of the Supreme Court in the case of ***State of Gujarat & Others vs. Arvindkumar T. Tiwari & Another***, reported in **(2012) 9 SCC 545** wherein the Supreme Court dealt with the distinction between eligibility conditions and qualifications. The Supreme Court also dealt with as to whether the Court can direct relaxation of the eligibility condition and observed that such directions if made would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution. Paragraph Nos.9 to 11 are quoted herein below:

“9. The eligibility for the post may at times be misunderstood to mean qualification. In fact, eligibility connotes the minimum criteria for selection, that may be laid down by the executive authority/legislature by way of any statute or rules, while the term qualification, may connote any additional norms laid down by the authorities. However, before a candidate is considered for a post or even for admission to the institution, he must fulfil the eligibility criteria.

10. The appointing authority is competent to fix a higher score for selection, than the one required to be attained for mere eligibility, but by way of its natural corollary, it cannot be taken to mean that eligibility/norms fixed by the statute or rules can be relaxed for this purpose to the extent that, the same may be lower than the ones fixed by the statute. 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.

11. The courts and tribunal do not have the power to issue direction to make appointment by way of granting relaxation of eligibility or in contravention thereof. In [State of M.P. & Anr. v. Dharam Bir](#), (1998) 6 SCC 165, this Court while dealing with a similar issue rejected the plea of humanitarian grounds and held as under:

“31...The courts as also the tribunal have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under [Article 309](#) of the Constitution.”

25. The above proposition of law settled by the Supreme Court, if applied to the present case, would show that the reliefs so claimed by the Appellants cannot be granted. In that view of the matter, we are of the unhesitant opinion that the relaxation given by the Nagaland Public Service Commission in the Advertisement was not only contrary to the requisition made by the State Government but was also contrary to the Rules of 2017. Further, the recommendation made in favour of the Appellants, who admittedly did not possess the B.Ed degree was contrary to the Rules of 2017. Consequently, the decision of the State Government to reject the recommendation vide the impugned letters dated 11.08.2022

and 19.10.2022 do not call for any interference.

26. Consequently, we find no merit in the instant appeal for which the instant appeal stands dismissed. However, in the peculiar facts of the case, we are not inclined to impose any costs.

JUDGE

JUDGE

Comparing Assistant