



2024:UHC:8388-DB

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE ACTING CHIEF JUSTICE MR. MANOJ KUMAR TIWARI
AND
HON'BLE MR. VIVEK BHARTI SHARMA, J.

WRIT PETITION (S/ B) No.217 of 2023

Jeebanand Joshi ..Petitioner

Versus

State of Uttarakhand and others ..Respondents

With

WRIT PETITION (S/ B) No.262 of 2023

Radha Krishna ..Petitioner

Versus

State of Uttarakhand and others ..Respondents

With

WRIT PETITION (S/ B) No.296 of 2023

Arjun Singh & others ..Petitioners

Versus

State of Uttarakhand and others ..Respondents

With

WRIT PETITION (S/ S) No.652 of 2023

Satish Kumar & others ..Petitioners

Versus

State of Uttarakhand and others ..Respondents

With

WRIT PETITION (S/ S) No.653 of 2023

Kamal Singh Panwar & others ..Petitioners

Versus

State of Uttarakhand and others ..Respondents

With

WRIT PETITION (S/ S) No.654 of 2023

Rajeshwar Prasad Uniyal & others ..Petitioners

Versus

State of Uttarakhand and others ..Respondents

With

WRIT PETITION (S/ S) No.655 of 2023

Juber Khan ..Petitioner

Versus



2024:UHC:8388-DB

State of Uttarakhand and another ..Respondents

With

WRIT PETITION (S/ S) No.663 of 2023

Kavita Joshi ..Petitioner

Versus

State of Uttarakhand and others ..Respondents

With

WRIT PETITION (S/ S) No.670 of 2023

Gautam Jaiswal ..Petitioner

Versus

State of Uttarakhand and others ..Respondents

With

WRIT PETITION (S/ S) No.682 of 2023

Devi Lal & others ..Petitioners

Versus

State of Uttarakhand and another ..Respondents

Counsel for the petitioners : Mr. Sanjay Bhatt, Mr. Ganesh Kandpal,
learned counsels,

Counsel for State of Uttarakhand Mr. K.N. Joshi, learned DAG, Mr. S.S.
Chaudhary, learned Brief Holder,
Ms.Puja Banga, learned Brief Holder.

Counsel for Rehabilitation Counsel of India. Mr. Saurav Adhikari, learned counsel.

Counsel for respondent no.5 Mr. Yogesh Kumar Pacholia, learned
counsel.

JUDGMENT : (per Mr. Manoj Kumar Tiwari, A.C.J.)

Petitioners are desirous of appointment as Teacher for teaching children with special needs in Government Primary Schools. Since petitioners do not possess the eligibility conditions for appointment as Special Teacher, therefore, they have filed these writ petitions for declaring them as eligible for appointment.



2. Since common questions of law and fact are involved in these writ petitions, therefore they were heard together and are being decided by a common judgment. However, for the sake of brevity, facts of Writ Petition (S/B) No.217 of 2023 alone are being considered and discussed. Relief sought in the said writ petition are as follows:.

”(i) Issue a writ, order or direction in the nature of Certiorari calling for the records and quashing Clause 2 (Educational Qualification) of the Executive Order dated 25.03.2023 issued by the Secretary, Elementary Education, Govt. of Uttarakhand (Annexure No.7) to the writ petition) to the extent it provides that the candidate should have compulsorily qualified the Teacher Eligibility Test-I, however, the fact is that in the State of Uttarakhand, the agency nominated by the State for conducting the TET-I Examination has not conducted the same for last more than 6 years by including the qualification of B.Ed. (Special Education) for the post of Assistant Teacher, Govt. Primary School and/or

(ii) Issue a writ, order or direction in the nature of Certiorari quashing Clause 2 (Procedure for Selection) of the Executive Order dated 25.03.2023 issued by the Secretary, Elementary Education, Govt. of Uttarakhand (Annexure No.7 to the writ petition) to the extent it provides that appointment the Assistant Teacher, Govt. Primary School (Special Education) will be based on the merit of the Quality Points inasmuch the appointment of Assistant Teacher, Govt. Primary School as provided in Service Rules of 2012 as amended from time to time is based on the merit of year of passing of the Training Examination.

(iii) Issue a writ, order or direction in the nature of Mandamus directing the respondents to hold the Petitioners as eligible for the post of Assistant Teacher, Govt. Primary School. (Special Education) based on the educational and training. qualification of the Petitioners inasmuch as the Agency nominated by the State Government for conducting Teacher Eligibility Test-I has not conducted Teacher Eligibility Test-I for last more than 6 years for the students having the qualification of . /B.Ed. (Special Education).

(iv) Issue a writ order or direction in the nature of mandamus directing the respondents to prepare the select list of the candidates on the basis of the



passing of the ./B.Ed. (Special Education Course) on year wise basis

(v) Issue a writ order or direction in the nature of mandamus directing the respondents to provide the weightage of the experience for every year of services rendered by the petitioner in respondent department.”

3. Petitioner in Writ Petition (S/B) No.217 of 2023 possesses B.Ed. qualification. Hon’ble Supreme Court in the case of “Devesh Sharma Vs. Union of India & others” reported in 2023 SCC Online SC 985 and “Navin Kumar & others Vs. Union of India & others” reported in 2024 SCC Online SC 2360, has held that B.Ed. qualification is not sufficient for appointment as Teacher in a Primary School. From the relief clause of Writ Petition (S/B) No.217 of 2023, it is apparent that petitioner has not qualified Teacher Eligibility Test-I, which is mandatory for anyone seeking appointment as Teacher in a Primary School, in view of notification dated 23.08.2010 issued by N.C.T.E., in exercise of its powers under Section 23 of Right of Children to Free and Compulsory Education Act, 2009.

4. Law is well settled that anyone, who possess all academic qualifications, as required by the Statutory Rules, and meets other conditions of eligibility alone can be appointed against a post under the State Government. Admittedly, petitioners do not meet eligibility conditions prescribed by the statutory provisions, therefore, there cannot be any direction in favour of petitioners to treat them eligible for appointment. All other issues have been considered and discussed in a judgment of even date rendered in Writ Petition (S/B) No.316 of 2023 “Kiran Vs. State of



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Uttarakhand & others”, therefore, these writ petitions are also decided in terms of the said judgment.

MANOJ KUMAR TIWARI, A.C.J.

VIVEK BHARTI SHARMA, J.

Dt: 12th November, 2024
NR/

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