



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.316 of 2023

Kiran ..Petitioner

Versus

State of Uttarakhand and others ..Respondents

With

WRIT PETITION (S/ B) No.175 of 2023

Gopal Singh Gauniya & others ..Petitioners

Versus

State of Uttarakhand and others ..Respondents

Counsel for the petitioners : Mr. Vinay Kumar, learned counsel,

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.

Counsel for intervener Mr. Dushyant Mainali, learned counsel.

Counsel for CBSE Mr. Shashank Upadhaya, learned counsel.

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

Since common question of facts and law are involved in these writ petitions, therefore, these petitions are being heard and decided together. However, for the sake of brevity and convenience, facts of WPSB No.316 of 2023 are being considered and discussed.



2. By means of writ petition being WPSB No.316 of 2023, petitioners have sought the following reliefs:-

“It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

(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. 18. 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.

(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.1.8.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-1 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 any suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

3. The petitioners in the WPSB No.316 of 2023 possess B.Ed (Special Education) qualification, besides Bachelors Degree, but none of them has qualified Teachers Eligibility Test-1 (in short "TET-1"), which is now a necessary qualification for appointment as Teacher in any recognized Primary School.

4. According to the petitioners, TET-1 was never conducted by the agency nominated by State Government, for candidates having B.Ed (Special Education) qualification, and due to this reason, petitioners did not get the opportunity to appear in TET-1, therefore, on account of lapse on the part of State authorities, petitioners cannot be made to suffer and they cannot be held ineligible for appointment as Teacher in Government Primary Schools.

5. It is further contended on behalf of the petitioners that in the year 2017, Uttarakhand School Education Board, conducted TET-1 examination, however, petitioners and other persons with B.Ed (Special Education) qualification were not permitted to appear in the examination. Therefore, insistence on TET-1 as essential qualification for appointment as Primary School Teacher, according to the petitioners is unjust.

6. Petitioners have challenged executive instructions issued by Government of Uttarakhand on 25.03.2023. These instructions were issued in view of



judgment rendered by the Hon'ble Apex Court in the case of "Rajneesh Kumar Pandey and others Vs. Union of India & others" reported in 2021 (17) SCC 1. The directions issued in the aforesaid judgment contained in paragraph 72, is extracted below:-

"72. In view of the above, a multipronged approach needs to be adopted by the concerned Authorities with immediate effect, inter alia, as follows:

72.1. The Central Government must forthwith notify the norms and standards of pupil-teacher ratio for special schools and also separate norms for special teachers who alone can impart education and training to CwSN in the general schools; and until such time, as a stopgap arrangement adopt the recommendations made by the State Commissioner, NCT of Delhi in the case of Ms. Reshma Parveen reproduced in paras 65 and 66 above;

72.2. To create commensurate permanent posts as per the just ratio to be specified by the competent authority for the rehabilitation professionals/special teachers who can cater to the needs of CwSN;

72.3. To initiate appointment process to fill-in vacancies for the posts so created for rehabilitation professionals/special teachers for being appointed on regular basis. The same shall be completed within six months from the date of this order or before the commencement of academic year 2022-2023, whichever is earlier;

72.4. To overcome the shortage of resource persons (rehabilitation professionals/special trained teachers), the training schools/institutions must take steps to augment the number whilst ensuring that the norms and standards specified under the governing laws and regulations including that of the Council for grant of recognition and registration are fulfilled;



72.5. Until sufficient number of special teachers becomes available for general schools and special schools, the services of special trained teachers can be availed as itinerant teachers as per the SSS within the school block (cluster schools) to optimize the resource persons and as a stopgap arrangement;

72.6. The other teachers and staff in the general schools be given compulsory training and sensitized to handle the CwSN in the general schools, if admitted;

72.7. The authorities may also explore the possibility of merging unviable special schools with relatively viable special schools in the neighbourhood, so as to entail in consolidation of assets and resources for better delivery to the requirements of CwSN.”

7. The executive instructions issued by Government of Uttarakhand on 25.03.2023, provides that candidates who have qualified TET-1 alone were to be considered for appointment as Assistant Teacher (Special Education) in Government Primary Schools. However, B.Ed (Special Education) was recognized as one of the qualification besides D.Ed (Special Education) or any qualification recognized by R.C.I. for appointment as Teacher in a Government Primary School.

8. Learned State Counsel, however, points out that Hon'ble Apex Court in the case of “Devesh Sharma Vs. Union of India & others” reported in 2023 SCC Online SC 985, has held that B.Ed is not a sufficient qualification for appointment as Teacher in Primary Schools.



9. It is further contention of the State Counsel that B.Ed (Special Education) was never prescribed as sufficient qualification for appointment as Assistant Teacher in Government Primary Schools, and persons with B.Ed (Special Education) degree are qualified to be appointed in Secondary Schools if they meet other eligibility criterion for teaching children with special needs.

10. Learned State Counsel also refers to the recent judgment rendered by Hon'ble Apex Court in the case of "Navin Kumar & others Vs. Union of India & others" reported in 2024 SCC Online SC 2360, where also the earlier view was reiterated that B.Ed is not a qualification sufficient for appointment as Teachers in Government Primary School. Paragraph 12 of the aforesaid judgment is extracted below:-

"12. In fact, we have been shown today an order of NCTE dated 04.09.2023 whereby the judgement in Devesh Sharma (supra) was communicated to Chief Secretaries of all State Governments for further appropriate action. In spite of this, appointments were given to B.Ed. candidates which was illegal and has now rightly been quashed, by the Chhattisgarh High Court."

11. Learned State Counsel further submits that in view of the law declared by Hon'ble Apex Court in the case of "Devesh Sharma Vs. Union of India & others" and reiterated in "Navin Kumar & others Vs. Union of India & others", with B.Ed (Special Education) qualification, petitioners cannot claim appointment as Primary School Teacher. He further



submits that National Council for Teachers Education (in short “NCTE”) in exercise of its power under section 23 of Right of Children to Free and Compulsory Education Act, 2009 has issued notification dated 23.08.2010, which provides that passing of TET is necessary for appointment as Teacher in a Primary School. Thus, he submits that since petitioners have not qualified TET, therefore, they cannot be considered for appointment in Government Primary Schools in view of the notification issued by NCTE dated 23.08.2010 and reiterated by subsequent notification issued by NCTE on 29.07.2011.

12. Learned counsel for the petitioners submits that since the agency, which was assigned the task of holding TET in State of Uttarakhand did not permit B.Ed (Special Education) qualification holders to appear in TET-1, therefore, penalizing the petitioners and other similarly situated candidates for lapse on the part of concerned agency is not proper, therefore, petitioners deserve to be permitted to participate in the ongoing selection process.

13. Learned State Counsel *per contra* submits that in terms of interim order passed by coordinate Bench on 20.07.2023, Uttarakhand School Education Board held TET-1 and all candidates with B.Ed. (Special Education) qualification, including petitioners and interveners had an opportunity to participate. However, only few of the petitioners could qualify in TET-1 and all others were declared unsuccessful. Thus, he submits that petitioners cannot blame the agency holding TET-1 for their inability to qualify the TET-1.



14. Learned State Counsel further submits that even the Service Rules framed in exercise of power under proviso to Article 309 of the Constitution of India provide that passing of TET is one of the essential conditions of eligibility, therefore, anyone who has not passed T.E.T-1 is not eligible for appointment.

15. Learned counsel for the petitioners points out that the interveners also have not qualified TET-1 and they also possess B.Ed (Special Education) qualification, therefore, the interveners will sink or sail with the petitioners and they cannot claim any better right than the petitioners. We are not going into the issue as to whether petitioners or interveners have better claim for appointment.

16. We find force in the submission made by learned State Counsel that passing of TET-1 is one of the essential conditions of eligibility as per notification issued by NCTE, which was issued under Section 23 of Right of Children to Free and Compulsory Education Act, 2009, therefore, anyone who has not qualified TET-1 cannot be considered for appointment in Primary Schools. Even otherwise also, in view of the judgment rendered by Hon'ble Apex Court in the case of "Devesh Sharma Vs. Union of India & others" and "Navin Kumar & others Vs. Union of India & others" (supra) that there cannot be any direction in favour of B.Ed (Special Education) qualification holders, who have not qualified T.E.T-1 to consider their claim for appointment as Primary School Teacher in Government Schools.



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17. In view of the above, the writ petitions fail and the same are dismissed.

MANOJ KUMAR TIWARI, A.C.J.

VI VEK BHARTI SHARMA, J.

Dt: 12th November, 2024
NR/

**NITESH
RAWAT**

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