



2024:UHC:9717-DB

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE SRI MANOJ KUMAR TIWARI, A.C.J.
HON'BLE SRI JUSTICE PANKAJ PUROHIT

19TH DECEMBER, 2024

Writ Petition (S/ B) No. 671 OF 2024

Mohit Kumar & others ..Petitioners

Versus

State of Uttarakhand & others. ..Respondents

With

Writ Petition (S/ B) No.364 of 2024
Writ Petition (S/ B) No.440 of 2024
Writ Petition (S/ B) No.454 of 2024
Writ Petition (S/ B) No.460 of 2024
Writ Petition (S/ B) No.472 of 2024
Writ Petition (S/ B) No.628 of 2024
Writ Petition (S/ B) No.670 of 2024

Counsel for the petitioners :

Mr. Abhijay Negi, Mrs. Snigdha Tiwari
and Mr. Manoj Kumar, Advocates for
the petitioners.

Counsel for the respondents nos. 1 & 2:

Mr. P.C. Bisht, Additional C.S.C. for the
State of Uttarakhand.

Counsel for the NCTE:

Mr. Yogesh Kumar Pacholia, Advocate
for the N.C.T.E.

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

Petitioners were appointed as Teacher in different private unaided schools, based on their B.Ed. qualification. National Council for Teachers Education (NCTE), in exercise of powers under Section 23 of Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as 'RTE Act'), issued a notification dated 23.08.2010 and, by virtue of the said notification, B.Ed. qualification holders were rendered ineligible for teaching primary classes (1 to 5).



2. Thus, feeling aggrieved, petitioners have approached this Court seeking following reliefs:

“i. Issue a writ, order, or direction in the nature of certiorari to quash rule 9 of the 6th May 2024 service rules amending Rule 9 of the 2012 service rules, (Annexure No. 6 (colly.)) to the extent that the present petitioners such as those persons holding bachelors in education qualification along with bridge course are being unfairly discriminated and excluded from the ongoing drive to recruit assistant teachers despite the course having the mandate of NCTE approval as being contrary to NCTE notifications dated 23rd August, 2010 (Annexure No.10) and 17th October, 2017 (Annexure No.11) as the petitioners case is not affected by the striking down of the notification dated 28th June, 2018 (Annexure No.12), as the present set of petitioners did not take any advantage of that notification as struck down by Hon'ble Apex Court in Devesh Sharma's case.

ii. Issue a writ, order, or direction in the nature of mandamus to hold that as per the section 2(n) of the RTE Act, 2009 r/w prevailing NCTE gazette notification dated 23rd August 2010 (Annexure No. 10) and 17th October 2017 (Annexure No. 11) a teacher who has once completed the minimum qualifications is eligible to apply for any recruitment of teachers in public or private institutions as they conform to the minimum eligibility criteria laid down by NCTE and as provided for in the RTE Act, 2009.

iii. Issue a writ, order, or direction in the nature of mandamus to read the amended rules, to include the petitioners, in the ongoing recruitment drive, pursuant to the service rules as amended on 6th May 2024. (Annexure 7(colly))

iv. Issue a writ, order or direction in the nature of mandamus directing the respondent state to grant age relaxation to the petitioners who are exceeding the age limitation, for no fault of theirs, as earlier rounds of recruitments could not reach a logical conclusion and ousting them due to age limitation would be a wrong practice in law, also in the light of the similar age relaxation granted by the respondent state government. (Annexure No. 13).

v. Issue writ, order or direction in the nature of mandamus commanding the respondent state of Uttarakhand to take to its logical conclusion the earlier promulgated advertisement of 451 posts of assistant teachers (Annexure No. 14).”

3. With a view to protect the employment of teachers serving in private educational institutions, who were not having the qualification mentioned in the NCTE notification dated 23.08.2010, Central Government issued notification dated 17.10.2017, in exercise of powers under Section 38 of RTE Act. The said notification provided that



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every teacher appointed or in position as on 31.03.2015, who does not possess minimum qualification necessary for appointment as teacher, shall acquire such minimum qualifications within a period of four years from the date of commencement of Right of Children to Free and Compulsory Education (Amendment) Act, 2017. The Central Government, thereafter, issued Notification dated 28.06.2018, which reads as under:-

**“NATIONAL COUNCIL FOR TEACHER EDUCATION
NOTIFICATION**

New Delhi, the 28th June, 2018

“F. No. NCTE-Regl 012/16/2018.—In exercise of the powers conferred by sub-section (1) of Section 23 of Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009) and in pursuance of notification number S.O. 750(E), dated the 31st March, 2010 issued by the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India, the National Council for Teacher Education (NCTE) hereby makes the following further amendments to the notification number F.N. 61-03/ 20/ 2010/NCTE/(N&S), dated the 23rd August, 2010, published in the Gazette of India, Extraordinary, Part III, Section 4, dated the 25th August, 2010, hereinafter referred to as the said notification namely:—

(1) In the said notification, in para 1 in sub-para (i), in clause (a) after the words and brackets “Graduation and two year Diploma in Elementary Education (by whatever name known), the following shall be inserted, namely:-

OR

“Graduation with at least 50 % marks and Bachelor of Education (B.Ed.)”

2. In the said notification in para 3, for sub-para(a), the following sub-para shall be substituted namely:- “(a) who has acquired the qualification of Bachelor of Education from any NCTE recognized institution shall be considered for appointment as a teacher in classes I to V provided the person so appointed as a teacher shall mandatorily undergo a six month Bridge Course in Elementary Education recognized by the NCTE, within two years of such appointment as primary teacher”.

SANJAY AWASTHI, Member Secy.

[ADVT.-III/4/Exty./121/18-19]

Note : The Principal Notification was published in the Gazette of India, Extraordinary, Part III, Section 4, dated the 25th August, 2010 vide number 64-03/20/2010/NCTE(N&S), dated the 23rd August, 2010 and amended vide number 61-1/2011/NCTE(N&S), dated the 29th July, 2011.”



4. A perusal of the aforesaid notification dated 28.06.2018 reveals that candidates with B.Ed. qualification from NCTE recognised institutions were made eligible for appointment as teacher in Primary Schools, provided after appointment, such person mandatorily undergoes a six months bridge course in elementary education recognised by the NCTE, within two years of appointment as primary teacher.

5. The aforesaid notification dated 28.06.2018 issued by NCTE was struck down by Rajasthan High Court in a writ petition. Judgment rendered by Rajasthan High Court was upheld by Hon'ble Supreme Court in the case of Devesh Sharma v. Union of India, 2023 SCC OnLine SC 985. Hon'ble Supreme Court in the said case held that B.Ed. is a different qualification, which does not equip a teacher to teach at primary level, and only Diploma in Elementary qualification trains a person to teach children at primary level and this fact is implicitly recognised in the notification dated 28.06.2018, which requires a person, who is appointed as a teacher, with B.Ed. qualification to mandatorily undergo a six month Bridge Course in Elementary Education. Paragraph nos. 62 to 65 of the said judgment are extracted below:-

“62. We have already examined this aspect in great detail. B.Ed. is not a qualification for teaching at Primary level of classes, much less a better or higher qualification, in context of Primary classes. This finding is self-evident in the very admission of NCTE which mandates that all B.Ed. qualified teachers who are appointed to teach Primary level classes must mandatorily undergo a pedagogical course for elementary classes within two years of their appointment.

63. In Society for Unaided Private Schools of Rajasthan v. Union of India (supra) this Court while upholding the validity of the RTE Act, held that primary education, which is now a part of fundamental right under Part III of the Constitution, has to be a meaningful education, and not just a formality. When Diploma in elementary education (D.El.Ed.), was placed as an essential qualification for teachers in Primary school, it was with a purpose, and the purpose was to declare only such teachers as qualified who are trained to impart



education to children at 'primary level'. The pedagogy for a child who has just entered the school, is an important consideration. A child has come to face a "teacher", so to speak, for the first time in a class room. It is the beginning of a journey for the child student and therefore world over great care is taken in laying down proper foundations in these formative years. Well qualified and trained teacher in elementary school is an extremely vital aspect. A teacher must be trained to teach students at "primary level", and this is precisely what the training of Diploma in elementary education (D.El.Ed.) does; it trains a person to teach children at primary level. B.Ed. is not a 'higher qualification', or a better qualification, as is being canvassed in its favour, while comparing it with 'Diploma in elementary education'. B.Ed. is a different qualification; a different training. Even assuming it is a higher qualification, it would still not be a suitable qualification for primary level of classes. Unlike Diploma in elementary education (D.El.Ed.), B.Ed. does not equip a teacher to teach at primary level. This fact is implicitly recognised in the Notification as well (notification dated 28.06.2018), which still requires a person, who is appointed as a teacher with B.Ed. qualification to 'mandatorily undergo a six-month Bridge Course in Elementary Education'. This defeats the very logic of including B.Ed. as a qualification, as the very notification which pushes for the inclusion of B.Ed., also recognises its inherent pedagogical weakness in its relation to primary classes. It is to cover this defect, that all such candidates, must undergo a mandatory six months Bridge Course in elementary education! The irony here is that all this is being done when the State of Rajasthan already has more than the required number of Diploma qualified candidates available. This is besides the fact that there is presently no such "bridge course" available; at least there was none till the disposal of the petition by the Rajasthan High Court.

64. Under these circumstances, we are unable to comprehend as to what was the pressing need to include B.Ed. candidates, who are admittedly not fully trained to take up Primary Classes! Consequently, the decision of the NCTE to include B.Ed. as a qualification for teachers in a primary school seems arbitrary, unreasonable and in fact has no nexus with the object sought to be achieved by the Act i.e. Right to Education Act, which is to give to children not only free and compulsory but also 'quality' education.

65. In our considered opinion therefore NCTE was not justified in including B.Ed. as a qualification for appointment to the post of primary school teacher (Level-1), a qualification it had so far consciously kept out of the eligibility requirement. The Rajasthan High Court by way of the Impugned Judgment had rightly struck down the notification dated 28.06.2018, on the following grounds:—

“(i) The impugned notification dated 28.06.2018 is unlawful because:—

- (a) it is under the direction of the Central Government, which power the Central Government under Subsection (1) of Section 23 of the RTE Act did not have; and



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- (b) it is not in exercise of power of the Central Government under Sub-section (2) of Section 23 of RTE Act relaxing the eligibility criteria prescribed by the NCTE, nor there has been any exercise for ascertaining existence of the conditions precedent for exercising such power.*
- (ii) The petitioners have locus standi to challenge the notification dated 28.06.2018. Merely because an additional qualification is recognized as one of the eligibility criteria, the petitioners cannot be prevented from challenging it.*
- (iii) Accepting a candidate with B.Ed. degree as eligible for appointment and thereafter subjecting him to complete the bridge course within two years of appointment is in the nature of relaxing the existing eligibility criteria, which the Central Government could have done only within Sub-section (2) of Section 23 and subject to existence of circumstances necessary for exercise of such power.*
- (iv) The State Government could not have ignored the notification of NCTE dated 28.06.2018 while issuing advertisement for REET. However, when we have declared that this notification is illegal and are in the process of setting aside, the issue becomes one of academic value.”*

6. Thus, after the judgment rendered by Hon'ble Supreme Court in the case of Devesh Sharma (supra), B.Ed. is not sufficient qualification for appointment as Primary School Teacher and completing six months bridge course will not improve the case of a candidate having B. Ed. Qualification. Perusal of the said judgment further reveals that notification issued by NCTE on 18.06.2018 was set aside by Rajasthan High Court and the judgment rendered by Rajasthan High Court was upheld by Hon'ble Supreme Court.

7. Learned counsel for petitioners relied upon the order dated 08.04.2024 passed by Hon'ble Supreme Court in Review Petitions filed in the case of Devesh Sharma (supra), however, perusal of para nos. 8, 9 & 10 of the said order reveals that protection was given only to such B.Ed. qualification holders, who were appointed as teacher pursuant to a notice or advertisement in which B.Ed. was stipulated to be a valid qualification and who were appointed without any qualification or condition imposed by



any Court of law to the effect that it will be subject to final outcome of a pending writ petition and it was provided that they shall not be disturbed on account of the judgment delivered on 11.08.2023, however, it was clarified in para no. 8 of the order passed in review petition that mere selection of such candidates or their participation in the process will not entitle them for a benefit under the order passed on review petition. In para no. 9 of the order, it was provided that B.Ed. qualification holders, who have already been appointed and whose appointment has been protected will have to undergo bridge course so that they are equipped with necessary skill to teach students of primary classes.

8. Learned counsel for the petitioners has placed heavy reliance on para nos. 9 and 10 of the order dated 08.04.2024 passed on Review Petition filed in the case of Devesh Sharma (supra), however, Hon'ble Supreme Court has provided for bridge course only for such candidates who were appointed as teacher in Government Primary Schools on the strength of their B.Ed. qualification after due selection. The protection given by Hon'ble Supreme Court is not available to petitioners, as they are aspiring for appointment as teacher in a Government Primary School and there is no threat to their employment as teacher in the private schools, where they are serving.

9. Mr. Yogesh Kumar Pacholia, learned counsel appearing for NCTE, on instructions, also submits that the order passed on Review Petition in the case of Devesh Sharma (supra), protects only those B.Ed. qualification holders, who were selected and appointed prior to the date of judgment in the case of Devesh Sharma (supra) i.e. 11.08.2023.

10. From the reliefs sought by petitioners, in the writ petition, it is revealed that petitioners are not eligible for appointment as per the recruitment rules applicable to



teachers of Government Primary Schools in State of Uttarakhand.

11. Since successful completion of two years D.El.Ed. course is one of the essential qualification as per rules for appointment as teacher in Government Primary Schools, therefore, the qualification possessed by the petitioners cannot be treated as equivalent to what is required under the Rules. Hon'ble Supreme Court in the case of Devesh Sharma (supra) has held that B.Ed. and D.El.Ed. are different qualifications which are meant for different purpose, therefore, on the basis of B.Ed. qualification, petitioners cannot be appointed as teacher in a Government primary school. Completion of six months bridge course by the petitioners will not improve their case, as inherent difference in the nature of B.Ed. and D.El.Ed. qualification would still remain. The bridge course provided for in para no. 9 of the order passed on Review Petition in the case of Devesh Sharma (supra) is only for the benefit of such B.Ed. qualification holders, who were already appointed prior to the judgment rendered in the said case, while, petitioners are yet to be appointed as teacher in Government Primary Schools, therefore, reliance by them on the observation made in para no. 9 of the order passed on Review Petition in the case of Devesh Sharma (supra) is misplaced.

12. The challenge thrown by petitioners to the recruitment rules is also without any force. Law is well settled that employer has an inherent right to determine the qualifications needed for appointment to a particular post, no one can insist that he be declared eligible based on qualification he possesses.

13. Since, NCTE as regulatory body, has prescribed certain qualifications as essential, therefore, the State Government has framed the recruitment rules for teachers in Government primary schools in conformity with the



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norms laid down by NCTE. The recruitment rules framed by State under proviso to Article 309 of the Constitution are statutory in nature and can be challenged on limited grounds. Petitioners have not been able to make out any case for interference with the recruitment rules. The writ petition is thus thoroughly misconceived, which is liable to be dismissed.

14. Accordingly, writ petition fails and is dismissed.

MANOJ KUMAR TIWARI, A.C.J

PANKAJ PUROHIT, J.

Dt: 19.12.2024

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