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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 91 of 2013**

Ashish Kumar Tamboli, son of Dinesh Kumar Tamboli, aged about 28 years, R/o Near Saropi Pond, Infront of Hanuman Mandir, Simga, P.S. Simga, District Baloda-Bazar (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through: The Secretary – Panchayat & Rural Development Department, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
2. Joint Director, Panchayat & Rural Development Department, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)

---- Respondents

For Petitioner	: Shri Atanu Ghosh, Advocate
For State/Respondents	: Shri Prafull Bharat, Additional Advocate General

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri P. Sam Koshy, Judge

Order on Board**Per, Thottathil B. Radhakrishnan, Chief Justice****20/06/2017**

1. The Petitioner challenges the Chhattisgarh Teacher (Panchayat) Cadre (Recruitment and Conditions of Service) Rules, 2012; for short 'Rules'; to the extent it prescribes graduation in History or Geography as part of the minimum qualification for appointment as Teacher (Panchayat) in Social Science. The pointed challenge is against the prescription of Geography or History for graduation, as compulsory for a person to be appointed as a Panchayat Teacher in Social Science.
2. The learned counsel for the Petitioner argued that in terms of the provisions of the Right of Children to Free and Compulsory Education Act, 2009; for

short 'RF&CE Act'; the competent authority had prescribed the Chhattisgarh Teacher Eligibility Test (*for short 'TET'*) and the Petitioner has been successful in that test. He argued that the prescription as to such test having been made by the competent authority under the RF&CE Act, there cannot be any contrary prescription as to qualification through any State law or decision. Making reference to Entry 25 in List III of the Seventh Schedule of the Constitution, it is argued that any such prescription would impinge the primacy of the Union legislation, namely the RF&CE Act and the rules and regulations thereunder. The prescription by the State of Chhattisgarh providing Geography or History as a compulsory subject for a Social Science teacher is vitiated by lack of legislative competence, it is argued. It is also argued that such prescription is in contradiction with the provisions for TET and that such prescription results in hostile discrimination of those Teachers who have passed TET according to the prescription made in terms of the provisions of the RF&CE Act by the National Council for Teacher Education; hereinafter referred to as 'NCTE'.

3. The learned Additional Advocate General argued that the impugned statutory provisions do not call for any judicial review intervention inasmuch as it stands as an independent piece of legislation made to empower and authorise the competent authority to appointing teacher in the Panchayat schools.
4. The fact of the matter remains that the impugned provision is part of the Rules, which is a piece of sub-ordinate legislation made by the duly authorised authority, invoking the rule-making power under Section 95 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993; for short 'Adhiniyam'. The Rules deal with, among other things, matters of governance and relate to those subjects which would fall for subordinate legislation in terms of Section 95 of the Adhiniyam. The rule making procedure prescribed in

Section 95 of that Act having been followed, it can be seen that there is no procedural flaw in making such rule. Therefore, that sub-ordinate legislation is within the delegated legislative power and has been duly made.

5. Article 21A of the Constitution of India provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. This fundamental right was introduced as per the Constitution (Eighty-Sixth Amendment) Act, 2002, w.e.f. 01.04.2010. Universal elementary education should play a pivotal role in strengthening the social fabric of democracy through provision of equal opportunities to all. The Directive Principles of State Policy enumerated in Part IV of the Constitution envisages effective provisions being made by the State to secure, among other things, the right to education. This prescription in Article 41, taken alongwith the interplay of the overwhelming expressions of the constitutional goals spread in Part IV of the Constitution, points to the unsurmountable need to provide timely and quality education to the children to aid every child bloom and evolve to be a citizen adhering to the Fundamental Duties and core values, leading to holistic evolution of the individual, alongwith empowerment to gain material well being. It was noted that the quality of learning achievement is not always entirely satisfactory even in the case of children who complete elementary education. Providing quality elementary education is the sheet anchor to ensure the evolution of the budding population by activating values of equality, justice and democracy. The purpose of creating a just and humane society is among the intentions of such elementary education. This can be achieved only if the education provided to the children is of satisfactory quality. The fundamental right of a child in terms of Article 21A is not confined only to free and compulsory education but extends to have quality education. Undoubtedly, this requires qualified and competent

teachers. To ensure due obedience and compliance of that constitutional provision, it is imperative that the school, which is the institution through which education is imparted, must have qualified teachers, apart from the needed infrastructure and other requirements. For support, see: *State of Tamil Nadu v. K. Shyam Sunder* {(2011) 8 SCC 737} and, *ECPF v. Delhi Administration* {(2012) 4 Scale 243 : (2012) 12 SCC 287}. It is in the backdrop of Article 21A of the Constitution and the unsurmountable need to provide quality elementary education, also bearing in mind the other salutary goals to be achieved by this Nation, that RF&CE Act was brought into force thereby effectuating Article 21A of the Constitution. That Act seeks to ensure, among other things, that inclusive elementary education of satisfactory and equitable quality is provided to every child. Such education is envisaged to be made available through a formal school which satisfies certain norms and standards.

6. Section 2(n) of the RF&CE Act defines 'school' for the purpose of that Act as including a school established, owned or controlled by the appropriate Government or a local authority. "Appropriate Government" is defined in Section 2(a) of the RF&CE Act which provides, *inter alia*, that the appropriate Government in relation to a State is the State Government. Section 23 of the RF&CE Act provides, among other things, that to be eligible for appointment as a Teacher, a person should possess such minimum qualification as laid down by an academic authority authorised by the Central Government. The NCTE, in exercise of the powers conferred under sub-section (1) of Section 23 of the RF&CE Act and in pursuance of the notification No. F.No.61-03/20/2010/NCTE/(N&S) dated 23.08.2010; for short 'NCTE Notification', issued by the Department of School Education & Literacy, Ministry of Human Resource Development, Government of India, laid down the minimum qualifications for a person to be eligible for

appointment as a Teacher in a school referred to in Section 2(n) of the RF&CE Act *w.e.f* the date of that notification which is 23.08.2010. That NCTE Notification, provides, *inter-alia*, that the minimum qualification for Teachers at Classes VI to VIII shall be graduation, either B.A, B.Sc. etc. which are prescribed therein **AND** Pass in the Teacher's Eligibility Test; for short 'TET', to be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE for that purpose. Thus, it is beyond doubt that the possession of qualification of pass in TET is in addition to possession of degree and that, mere possession of TET qualification is insufficient for a person to be a Teacher in a school to which the minimum qualification as per the NCTE Notification applies.

7. Chhattisgarh Teacher Eligibility Test Guidelines, 2011 (for short 'TET Guidelines') have been issued by the appropriate authority for the State of Chhattisgarh. TET Guidelines and TET are intended to regulate minimum standards of eligibility to be a teacher and to standardise that for obtaining a national minimum requirement in the eligibility of persons to be appointed as teachers in schools. This is to ensure a minimum national standard of the quality of education to the children, which is among the cardinal objects sought to be achieved by TET Guidelines and conducting of TET to further the progress of implementation of the RF&CE Act. Thus, passing of TET prescribed as per TET guidelines is one among the twin essential qualifications for a person to be eligible for appointment as a teacher. It has to be ensured that a person who has not passed TET is not appointed. Such a prescription in terms of the NCTE notification and the TET Guidelines does not deprive the State from making a law, either as part of primary legislation or as part of sub-ordinate legislation as may be duly authorised; thereby prescribing a qualification for appointment, without diluting the NCTE norms and guidelines.

8. The prescription of graduation as a minimum qualification for employment as a Panchayat Teacher is not in conflict with the prescriptions as to passing of NCTE Notification or TET guidelines. In fact, such prescription of minimum qualification is in conformity with the NCTE Notification. Therefore, such prescription in the Rules made by the State is not in conflict, but is in conformity, with the NCTE Notification and TET Guidelines issued under and with reference to RF&CE Act. Hence, such prescription is not in conflict with the provisions of the RF&CE Act. There is nothing in the RF&CE Act, NCTE Notification or the TET Guidelines, which can be read to constitutionally exclude the power of the State Government to prescribe the relevant qualification relating to appointment of Teachers, maintaining the minimum benchmarks laid down by the authorities duly authorised to do so, under the RF&CE Act.

9. Learned counsel for the Petitioner is right in pointing out that education is a matter enumerated at Entry 25 in Chapter III of Seventh Schedule. That Entry takes within its sweep all matters which would fall within the basket of the term 'education' subject to provisions of Entries 63, 64, 65 and 66 of List-I. The RF&CE Act and the constitution of NCTE as well as the NCTE Notification and the TET guidelines could be understood as falling within that Entry. However, of abundant importance is the fact that Part - IX of the Constitution, as it now stands, containing Articles 243 to 243O, inserted as per the Constitution (Seventy-third Amendment) Act with effect from 24.04.1993, provides for the Panchayats as institutions of self-government for the rural areas. Article 243B provides for constitution of Panchayats. Article 243G authorizes the Legislature of a State to make laws, subject to provisions of the Constitution, to endow on the Panchayats such powers and authority as may be necessary to enable them to function as institutions of self-government. Those laws may contain, among other things, the

devolution of powers and responsibilities with respect to implementation of schemes for economic development and social justice as may be entrusted to them, including those in relation to the matters listed in the Eleventh Schedule. The matters listed in that Schedule includes "education, including primary and secondary schools" at Entry 17, "women and child development" at Entry 25 and different aspects of empowerment of children which lie spread, among different other entries in that Schedule. It is also worthwhile to note that technical training and vocational education is enlisted at Entry 18 of the Eleventh Schedule. Thus, it is within the competence of the legislature of the State to make law for, among other things, matters relating to education, including primary and secondary schools as well as technical training and vocational education, through Panchayats which are endowed with the powers and responsibilities to effectuate those constitutional goals. Therefore, when a law is made by the State Legislature to prescribe and effectuate the powers, authorities and responsibilities of the Panchayats, it is a piece of law which is made to aid the effective implementation of the system of local self governance as envisaged and provided for by Part IX of the Constitution.

10. It was after insertion of Part IX of the Constitution of India relating to Panchayats, as it now stand with effect from 24.04.1993, that M.P. Panchayat Raj Adhiniyam, 1993; for short 'M.P. Adhiniyam', was enacted to consolidate and amend the law relating to establishment of Panchayats with a view to ensure effective involvement of the Panchayat Raj institutions in the local administration and development activities. As per Section 53(1) of the M.P. Adhiniyam, the Panchayat has the power and authority to carry out various functions including those enumerated in Schedule IV thereof. The different matters enlisted in that Schedule includes 'education including primary and secondary schools' at Entry No. 17, 'technical training and

vocational education' at Entry No. 18, and 'women and child development' falls at Entry No. 25. Following the coming into force of Madhya Pradesh Reorganization Act, 2000; for short 'Reorganization Act', the Chhattisgarh State described in Section 3 of that Act came into being *wef* 01.11.2000. By operation of Sections 79, 80 and 85 of the Reorganization Act, among other things, M.P. Adhiniyam came to be referred as the 'Chhattisgarh Panchayat Raj Adhiniyam'. The Rules, subject matter of this writ petition, were made with reference to Section 53(1), Section 70(1) and Section 95(1) thereof. As already noticed, Section 53(1) authorises carrying out the various aspects including those enumerated in Schedule I of the Adhiniyam. Sub-section (1) of Section 70 provides the authority of the Panchayat to appoint officers and servants as it considers necessary for efficient discharge of its duties. This is subject to prescription in sub-section (2) of Section 70 which provides that qualifications, method of recruitment, salaries, leave, allowances and other conditions of service including disciplinary matters of such officers and servants shall be such, as may be prescribed. The power to make such prescription is embedded in Section 95 of the Adhiniyam. It confers on the State Government the power to make rules to provide for all or any of the matters which, under the provisions of that Act, are required to be prescribed, or to be provided for by the Rules. The subject Rules which relate to recruitment and conditions of service of Teachers of Panchayat schools are made by the Government of Chhattisgarh in exercise of such delegated legislative power. The Rules are, thus, made as duly authorised.

11. The Rules are made, issue specific, to govern the recruitment and conditions of service of Teachers in the schools under the control of the Jila Panchayat or the Janpad Panchayat. Schedule I to those Rules shows that there are three categories of Teachers, namely Lecturer (Panchayat), Teacher (Panchayat) and Assistant Teacher (Panchayat). The appointing

authority and the method of recruitment to those categories have also been laid down. The prescription as to qualifications are elaborated in the Annexures to those Rules. A survey of such provision as to the prescribed qualifications clearly show that the qualifications have been prescribed with reference to the subject groups which are relevant to be taught by a person appointed as a Teacher for particular subject. This is so as regards category of Lecturer (Panchayat) as well as Teacher (Panchayat). It is among the subject groups that History and Geography alongwith Economics and Political Science are prescribed as the subject group for Social Science of which Geography or History is compulsory. The different materials that are on record show that the Teacher in Social Science has to handle subjects, fundamentally, in History, Geography and matters which would fall within term 'Civics'. Examining the prescriptions for the Teacher Eligibility Test in terms of the TET Guidelines, it can be seen that insofar as Social Science is concerned, the spread of the subjects from which questions may be put in that examination would relate to the aforesaid three subjects, which are collectively known in the field of education as Social Sciences or Arts subjects. Therefore, when the Government made a choice that a Teacher should be one who had at least History or Geography as a compulsory subject at the graduation level, such prescription cannot be treated as one taken by the Government arbitrarily or for reasons which are not referable to the situational requirement for employment of teachers for Social Science in Panchayat schools.

12. To be recalled here and now is the settled law that to choose and prescribe the requisite subjects to be taught in a particular domain of education and determining the requisite scholarship and academic ability to teach at that particular level are matters to be left to the wisdom of the experts in the relevant field. Courts will loath to interfere in such matters unless the action

relating to the making of such prescriptions deserves to be visited on any jurisdictional issue relating to authority or where such action is ridden in arbitrariness. In extreme cases of palpable perversity in such an administrative decision in the realm of academics, the Courts may be prompted to examine relatable and relevant questions as to resultant arbitrariness. Not even a shadow of any such situation can be seen in the case in hand. On the contrary, we find abundant substance and wisdom, even from a common man's possible point of view, in the selection of subjects and their combinations, prescribed as requisite minimum qualification for the post of Teachers, to which the Rules apply.

13. Therefore, there is no conflict between the prescriptions in the Rules made by the State and the provisions in the TET Guidelines or the NCTE Notification. Not only that, the requirement to pass TET is by itself an essential requirement. That being so, the prescription that a person has to possess graduation in a particular discipline and the requirement to pass the TET are complementary to each other in the contextual requirements and are required to operate conjunctively to entitle a person to be considered for appointment to the post of Panchayat Teacher in the State of Chhattisgarh.
14. For the aforesaid reasons, we repel the challenge levied against the impugned prescription in the Rules. The writ petition therefore fails.
15. In the result, the writ petition is dismissed. No costs.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(P. Sam Koshy)
Judge