

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 17.05.2017

1. CWP No. 4101 of 2014

Shamsher Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

2. CWP No. 4478 of 2014

Jaswinder Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

3. CWP No. 14519 of 2014

Gurtej Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Mohit Gupta, Advocate,
for the petitioners.

Mr. Gurinder Pal Singh, Addl. A.G., Punjab.

None for respondent No.4-PSDTET Pass Union in
CWP No. 4101 of 2014.

JAISHREE THAKUR, J.

1. By this common order, this Court proposes to decide above referred three writ petitions as the facts and the question of law involved in all these petitions are the same. For brevity, facts are being extracted from

CWP No. 4101 of 2014.

2. The petitioners herein seek to quash the decision of respondent No.2 by which they have not been allowed to apply for the posts as advertised by Rural Development and Panchayat Department, Punjab despite the fact that they have qualified the PSTET held by State of Punjab which is an essential qualification to be appointed to the post of ETT Teachers.

3. In brief, the facts are that respondent Government implemented the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as “RTE Act, 2009”). The Government of Punjab in accordance with the provisions of Sub Section (1) of Section 23 of the RTE Act 2009 laid down the minimum qualification for a person to be eligible for appointment as a Teacher for Classes I to VIII. One of the conditions specified therein was that a candidate should pass the PSTET. Keeping in view the shortage of candidates as per the qualifications prescribed, i.e. having 10+2 + ETT or its equivalent degrees or diploma with PSTET-I, the State of Punjab made an application to NCTE for allowing candidates having B.A. / B.Sc. for appointment on the post of Teachers from class I to V and the candidates who have done B.A. or B.Ed. plus clearance of PSTET paper-I. This was allowed with an undertaking that selected candidate would undergo six months special programme in elementary education after appointment as per the NCTE guidelines. On the strength of the permission given, for the year 2011 the relaxation was given by the respondents and the candidates who have qualification of B.A. with 50% marks and B.Ed. were appointed.

4. That the Government issued an advertisement in 2012 for appointment of 4901 ETT Teachers in Primary Schools. The petitioners who had the qualification of B.A./ B.Ed. applied but their application forms were not accepted on account of the fact that they did not have the necessary eligibility of qualification. Aggrieved, the instant writ petition has been filed.

5. Learned counsel appearing on behalf of the petitioners contends that the petitioners are fully eligible to be appointed on the post of Primary Teacher as they have done B.A. + B.Ed. and have cleared Paper-I of PSTET and are ready to undergo a special training of six months as mandated by NCTE. It is contended that similarly situated candidates who have applied in the year 2011 were given appointment on the basis of having cleared Paper-I of PSTET and gave an undertaking to undergo Special Course of six months and, therefore, in the year 2012 they too should be given the same benefit .

6. Per contra, Mr. Gurinder pal Singh learned Additional Advocate General appearing on behalf of the respondents submits that as per the advertisement issued for filling up posts of Elementary Teachers, a minimum basic qualification has been prescribed by the National Council for Teacher Education (for short 'NCTE') vide notification dated 29.07.2011. The qualification for classes I to V and Classes VI to VIII have been specified. A relaxation was given where candidates with graduation having 50% marks and B.Ed. qualification or with at least 45% marks and 1-year Bachelor in Education (B.Ed.) would be eligible for appointment as

Teacher for classes I to V, provided he/she undergoes, after appointment, six months special programme in Elementary Education. This relaxation was valid only uptill 01.01.2012 and after this cut of date i.e. 01.01.2012, no B.Ed. candidate would be eligible for appointment as Teacher for Classes I to V.

7. I have heard learned counsel for the parties and have perused the record of the case.

8. The claim of the petitioners is liable to be rejected at the very outset. The petitioners are seeking appointment on the strength of a note which is reflected in Annexure P-1 *“for this year only, a candidate with BA/B.Sc. with at least 50% marks and B.Ed. qualification shall also be eligible for test for classes I to V, provided he/she undergoes, after appointment, an NCTE recognized 6-months special program in Elementary Education.”* and on having cleared paper-I the Punjab State Teachers Eligibility Test. By notification dated 29.07.2011, NCTE laid down educational qualifications of a candidate who would be eligible to teach classes I to V is as under :-

“1. Classes I-V

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Elementary Education (by whatever name known)

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2-year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure), Regulations, 2002.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor of Elementary Education (B.El.Ed.).

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Education (Special Education).

OR

Graduation and two year Diploma in Elementary Education (by whatever name known)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be Conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.”

9. As per the NCTE notification dated 29.07.2011, the minimum qualifications have been prescribed which does not include qualification of B.Ed. to teach classes I to V. The rules herein are not under challenge which prescribed the minimum qualification for teaching primary students as well as middle and secondary students. Rules of eligibility for recruitment of primary or upper primary teachers prescribe amongst other holding a certificate in elementary education. This is relevant to the imparting of education to a particular category of students whom the teacher is required to teach. In several cases the Supreme Court, has held that a candidate who holds 'a higher qualification', such as a B.Ed. will not be eligible to teach primary school students. A teacher who has to teach primary students must possess the ability to teach students of that category, age and maturity, and a candidate who does not possess the qualification cannot fall within the zone of consideration nor can such a candidate be considered on ground that she

or he holds another qualifications, such as the B.Ed.

10. In ***P.M. Latha v. State of Kerala, (2003) 3 SCC 541*** a similar issue arose before the Apex Court. The advertisement issued invited application to fill up post of primary teachers with the qualification of Teacher Training Certificate. Candidates with a B.Ed degree also applied and sought appointment on the basis of a higher degree. The writ Court held that if the qualification was of TTC, then a person with qualification of B.Ed. would not be eligible. The Division Bench, however, allowed the B.Ed. selected candidates to continue in service. This was challenged by the candidates holding the TTC. The Hon'ble judges while allowing the appeal held that Equity can not override the written and settled law. It was held as:-

“10. We find absolutely no force in the argument advanced by the respondents that B.Ed. qualification is a higher qualification than TTC and therefore, the B.Ed. candidates should be held to be eligible to compete for the post. On behalf of the appellants, it is pointed out before us that Trained Teacher's Certificate is given to teachers specially trained to teach small children in primary classes whereas for B.Ed. degree, the training imparted is to teach students of classes above primary. B.Ed. degree-holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or B.Ed. qualification, is a matter of recruitment policy. We find sufficient logic and justification in the State prescribing qualification for the post of primary teachers as only TTC and not B.Ed. Whether B.Ed qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we

cannot consider B.Ed. candidates, for the present vacancies advertised, as eligible.”

11. In ***Dilip Kumar Ghosh & Ors. Vs. Chairman & Ors. (2005) 5 SCC 567***, the Apex Court was seized of a matter where, B.Ed degree holders who had applied for the post of primary school teachers were aggrieved by the denial of marks against the training qualification on the ground that they did not hold the Junior Basic Training/Primary Teachers Training Certificate. The issue before the Supreme Court was, whether the appellants who had BA/B.Ed/PhD qualifications could be equated with candidates who are holders of Junior Basic Training or Primary Teachers' Training Certificates for the purpose of appointment to the post of primary school teachers. The Apex court held as:-

*"10. The rules, as noticed above, were framed primarily for recruitment of teachers for primary school and the Rules were designed to give an incentive to the teachers who are specifically trained to teach in primary schools. The rationale behind the framing of this Rule is that the JBT/PTTC certificate trained teachers should be appointed so that they can impart proper education to the primary school students in terms of the aims and object with a trained hand. The Rules purposely laid an emphasis that all the candidates for teachers in primary schools who possessed JBT/PTTC should be appointed for the development of the child. The primary education is up to 4th standard. There is a middle education and then secondary and higher secondary education. **For teaching in the primary school, therefore, one must know the child psychology and development of a child at a tender age. As already noticed, the candidates like the appellants who are trained in BEd degree are not necessarily to be equipped to***

teach the students of primary class. They are not trained and equipped to understand the psychology of a child of tender age." (emphasis supplied)

While formulating the "Special in Service Training Programme in Elementary Teaching", the Expert Committee in its report noticed "*The past few years have witnessed unprecedented expansion in the Secondary Teacher Education sector, which is meant for preparing teachers for the secondary education. Therefore, enough graduates with professional degree in education are available. But these graduates, that is, B.Ed degree holders, are not eligible for recruitment as primary school teachers (even if they are interested to work with younger children), although such teachers, by all means are better qualified in comparison to the professionally unqualified teachers.*" Once an expert body too comes to a conclusion that B.Ed degree holders are not eligible, this court is not in a position to interfere. The argument raised that the petitioners who are B.A / B.Ed degree holders and qualified to teach would, thus, not be sustainable in the light of the opinion of the experts and the judgments referred to above.

12. It is also contended that the petitioners are similarly situated to those who applied under the advertisement of 2011 who were given a relaxation and argued that they would have a legitimate expectation that they too would be eligible for appointment. The argument is misplaced on account of the fact that the petitioners were aware that the relaxation was made available only till 01.01.2012 and not thereafter. Any relaxation given, as a onetime measure on account of special circumstance, cannot become a

ground to circumvent the Rules or the eligibility conditions. Once eligibility is specified in a Statue and the advertisement is issued in consonance thereof, the question of legitimate expectation would not arise.

13. Therefore, in view of the above, this court does not find any ground to interfere in writ jurisdiction and the writs are dismissed being devoid of any merit.

17.05.2017

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.