

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11741 of 2017

1. Rakesh Kumar Son of Mahesh Ray, R/o Village- Rariyahi, P.O.- Kumiya, P.S.- Tajpur, Distt- Samastipur.
2. Pawan Kumar, Son of Vishnudev Prasad, R/o Village- Mahmudabad, P.O.- Sakshora, P.S.- Bind, Distt- Nalanda.
3. Raman Kumar Jha, Son of Subodh Jha, R/o VillP.O.- Lagma, P.S.- Sonyarsa, Distt- Saharsa.
4. Rakesh Kuar Gautam, Son of Lalbihri Yada, R/o Vill- Ganjpar, P.O.- Rajgir, P.S.- Rajgir, Distt- Nawada.
5. Babalu Prasad, Son of Ramesh Prasad, R/o Vill- Banswar, P.O.- Raghunathpur, P.S.- Brahmpur, Distt- Buxar.
6. Pawan Kumar Singh, Son of Shivrindan Prasad Singh, R/o- Kalindi Nagar, P.O.- Bhimdas Tola, P.S.- Gopalpur, Distt- Bhagalpur.
7. Jai Prakash Padit, Son of Rambalak Pnadit, R/o- AtP.O.- Bariballia, P.S.- Ballia, Distt- Begusarai.
8. Niwash Kumar Verma, Son of Sidheshwar Prasad, R/o Vill- Gosaibigha, P.O.- Bhanail, P.S.- Akbarpur, Distt- Nawada.
9. Nitu Kumari, Son of Ganesh Prasad Gupta, R/o Vill- Saidpur, P.O.P.S.- Gopalpur, Distt- Bhagalpur.
10. Gyanda Kumari, Son of Ram Prakash, R/o AtP.O.- Jharkaha, P.S.- Sankarpur, Distt- Madhepura.
11. Saroj Kumar Rai, Son of Mahendra Pal, R/o AtPost- Bhanpur, P.S.- Dinara, Distt- Rohtas.
12. Manoj Kumar Gupta, Son of Shiv Prasan Sah, R/o AtPost- Bhanpur, P.S.- Dinara, Distt- Rohtas.
13. Sanjay Kumar, Son of Radha Kishun Singh, R/o Vill- Bhatpurwan, P.O.- Bhanpur, P.S.- Dinara, Distt- Rohtas.
14. Ajay Kumar, Son of Lal Ji Singh, R/o Vill- Belama, P.O.- Dharmasala, P.S.- Tekari, Distt- Gaya.
15. Anuj Kumar, Son of Karu Prasad Singh, R/o Vill- Karmi, PostP.S.- Rafiganj, Distt- Aurangabad.
16. Jetendar Kumar, Son of Banarsaw, R/o Vill- Maniachattra, P.O.- Teje, P.S.- Chandraip, Distt- Jamui.
17. Sudma Kumar Pandey, Son of Arind Pandey, R/o Vill- Bairva, P.O.- Bairya, P.S.- Mali, Distt- Aurangabad.



18. Md. Rizwan, Son of Md. Sarfuddin, R/o Vill- Bandi, P.O.- Maniyara, P.S.- Nimchak Bathani, Distt- Gaya.
19. Vidya Sagar, Son of Ramji Yadav, R/o Vill- Karmamasud, P.O.P.S.- Rafiganj, Distt- Auranagabad.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Secondary Education, Govt. of Bihar, Patna.
4. The Director Research and Training Physical Education, Govt. of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rajeev Kumar Singh, Adv.
For the Respondent/s : Smt. Binita Singh, SC-28

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date : 17-08-2022

The present writ petition has been filed for directing the respondents to appoint the petitioners on the post of Physical Education Teachers, who are stated to have qualified pursuant to the due process of selection undertaken by the Education Department, Government of Bihar.



2. The brief facts of the case according to the petitioners are that the Education Department, Government of Bihar, had advertised for the post of Physical Education Teacher on 27.4.2016 and the qualification required was prescribed as Bachelor of Physical Education. The petitioners, in light of the said advertisement and having the requisite qualification, had applied for being appointed on the post of Physical Education Teacher by filing application forms before the last date of submission of the same in the concerned offices of the District Education Officers in the State of Bihar, as per the advertisement. Subsequently, the name of the petitioners was depicted in the final merit list published by the Patna Nagar Nigam, Patna, titled as "Secondary Teacher's Final Merit List (Year 2016), subject-Physical Education", whereafter consent letters were taken from the petitioners by the concerned department for the purposes of appointment in various districts. However, to the utter surprise of the petitioners, the Director, Secondary Education



Department, Government of Bihar, Patna, issued a letter dated 19.07.2017, wherein it has been stated that for the purposes of appointment on the post of Physical Education Teacher, the qualification of Bachelor in Physical Education will not be the only requirement but the candidates should also possess the qualification of B.P. Ed., as such, those candidates who are not having the qualification of B.P. Ed. will not be appointed on the post of Physical Education Teacher. The said letter dated 19.07.2017 was sent to the Municipal Commissioners, Chief Executive Officers, Executive Officers, Nagar Parishads/ Nagar Panchayats, as also to all the District Education Officers of the State of Bihar. The Ld. counsel for the petitioners has also referred to certain instances whereby and whereunder candidates possessing only the qualification of Bachelor of Physical Education have been selected and appointed as Physical Education Teachers. The learned counsel for the petitioners has referred to Rule 8(v) of the Bihar Zila Parishad Secondary and Higher Secondary Teacher



(Employment & Service Conditions) (Amendment), Rules, 2016 (hereinafter referred to as the Rules, 2016) to submit that the same clearly stipulates that an untrained teacher is required to obtain necessary training within three years of appointment, hence, even if the stand of the State Government is accepted to the effect that B.P. Ed. is also an essential qualification, apart from possessing the Bachelors Degree in Physical Education, for the purposes of appointment as a Physical Education Teacher, still the petitioners cannot be precluded from being appointed inasmuch as they have the option to obtain the B.P. Ed. Degree within a period of three years from the date of appointment.

3. The learned counsel for the petitioners has submitted that the advertisement was published as per the Bihar Municipal Corporation Secondary and Higher Secondary Teacher (Employment and Service Conditions) (Amendment), Rules, 2016 and the Bihar District Board Secondary and Higher Secondary Teacher (Amendment and Service



Conditions) (Amendment), Rules, 2016 as also in accordance with the Regulations of the year 2006, all of which prescribe the necessary qualification of a Physical Education Teacher to be only Bachelor of Physical Education with minimum 50% marks, obtained from a recognized institution and not B.P. Ed. It is further submitted that the aforesaid letter dated 19.07.2017, issued by the Director, Secondary Education Department, Government of Bihar, Patna, has the effect of changing the rules of the game after the game is over inasmuch as the merit list has already been published and consent has also been taken from the petitioners for appointment as Physical Education Teacher, hence, the selection process was over prior to issuance of the said letter dated 19.07.2017. In this regard, the learned counsel for the petitioners has referred to a judgment rendered by the Hon'ble Apex Court in the case of **K. Manjusree vs. State of Andhra Pradesh & Another**, reported in **(2008) 3 SCC 512**. It is further submitted that the rules of the game i.e. the criteria for selection cannot be



altered by the authorities concerned midway or after the process of selection has commenced. In this regard, the learned counsel for the petitioners has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Maharashtra State Road Transport Corporation & Others vs. Rajendra Bhimrao Mandve & Others***, reported in ***(2001) 10 SCC 51***. Lastly, it is submitted that the Education Department, Government of Bihar, Patna, has issued a notification dated 25.7.2017 whereby and whereunder the process of counselling has been initiated for the purposes of appointment on the post of Physical Education Teachers.

4. Per contra, the learned counsel for the Respondents-State has submitted that the National Council for Teacher Education (hereinafter referred to as the "NCTE") is the paramount body for ensuring maintenance of high standard of teachers training education, for achieving planned and coordinated development of the teacher education system throughout the country and for regulating



and properly maintaining Norms and Standards in the teacher education system and it has primacy over the State Government as also over the University concerned. The NCTE has been constituted under the NCTE Act 1993, which is a special statute as also a Central law enacted under the powers derived from Entry-66, List-I of the 7th Schedule to the Constitution of India and therefore, has precedence and overriding effect over the other laws made by the State Government. It is also stated that a clarification was sought for by the Education Department, Government of Bihar, vide letter dated 14.2.2017, with regard to the requisite eligibility criteria for being appointed as a Physical Education Teacher at the secondary level, to which the Under Secretary, NCTE, vide letter dated 10.3.2017, has clarified that besides the degree of graduation with physical education as an elective subject, professional degree of B.P. Ed. is also an essential qualification for appointment as a Teacher in Physical Education, as per the NCTE notification dated 12.11.2014. It is also submitted



that since the State Government has to abide by the norms laid down by the NCTE, as has been held in the case of ***Maa Vaishno Devi Mahila Mahavidyalaya vs. State of UP & Others***, reported in **(2013) 2 SCC 617**, the Education Department has rightly directed its officials to follow the eligibility criteria prescribed by NCTE for making appointments of Physical Education Teachers. As regards the contention of the petitioners that since they had applied under the Rules, 2006, hence, subsequent change in the eligibility criteria cannot be imposed against them, it has been submitted by the learned counsel for the State that the petitioners have got no right to question the validity of eligibility criteria. In this regard, the learned counsel for the Respondents-State has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***P. Susheela & Others vs. University Grants Commission & Others***, reported in **(2015) 8 SCC 129**. It is also submitted that the Hon'ble Apex Court has held in a catena of judgments that suitability or eligibility



of a candidate for appointment to a post is within the domain of the appointing authority and the only thing which can be scrutinized by the Hon'ble Court is as to whether the appointment is contrary to the statutory provisions / rules or not. In this regard, the learned counsel for the Respondents-State has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Central Electricity Supply Utility of Odisha vs. Dhobei Sahoo & Others***, reported in ***(2014) 1 SCC 161***.

5. The Ld. counsel for the Respondents-State has further submitted that neither the Director, Secondary Education, has fixed any eligibility criteria nor he can do so, as has been alleged by the petitioners, by referring to the letter dated 19.07.2017, issued by the Director, Secondary Education Department, Govt. of Bihar, Patna, rather it is the NCTE, which is the competent authority to fix the eligibility criteria for the purposes of appointing teachers and only after receipt of the aforesaid letter dated 10.03.2017 from the NCTE, the Director, Secondary Education



Department had simply directed the recruitment units to follow the guidelines / norms laid down by the NCTE, which is the paramount body to fix the norms and the Government is required to follow the same. As regards the allegation of the petitioners that some candidates possessing only the Degree of Bachelor of Physical Education have been appointed in the year 2015-16, it is stated that such cases are stray incidents and such appointments were made much before the receipt of the letter of NCTE dated 10.03.2017. It is categorically stated that not even a single instance has been brought to the notice of the answering authorities regarding any candidate having been appointed, after receipt of the aforesaid instruction from NCTE, possessing only the Degree of Bachelor of Physical Education. It is stated that if any error or illegality has taken place, the same cannot be perpetuated. In this context, it has also been stated that it is a well-settled law that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong



decisions made in other cases. In this regard, the Ld. counsel for the Respondents-State has relied upon a judgment rendered by the Hon'ble Apex Court in the case of **Chaman Lal vs. State of Punjab**, reported in **(2014) 15 SCC 715**, as also the one rendered by the Hon'ble Apex Court in the case of **Kulwinder Pal Singh & Another vs. State of Punjab & Others**, reported in **(2016) 6 SCC 532**. Thus, it is submitted that it is a well-settled law that none can claim negative equality.

6. At this juncture, the learned counsel for the Respondents-State has also referred to the notification dated 12.11.2014, issued by the NCTE & published in the Gazette of India on 16.12.2014 whereby and whereunder the NCTE in exercise of powers conferred under Clause (dd) of Sub-section (2) of Section 32 read with Section 12A of the NCTE Act, 1993 and in supersession of National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools), Regulations, 2001, has framed new Regulations i.e. The National Council for Teacher



Education (Determination of Minimum Qualifications for Persons to be recruited as Education Teachers and Physical Education Teachers for Pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges), Regulations, 2014 (hereinafter referred to as the Regulations, 2014), Regulation 4 whereof is reproduced herein below:-

“4. Qualification for Recruitment-

(a) The qualifications for recruitment of teachers in any recognized school imparting Pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges imparting senior secondary education shall be as given in the First and Second Schedule(s) annexed to these Regulations.

(b) For promotion of teachers the relevant minimum qualifications as specified in the First and Second Schedule(s) are applicable for consideration from one level to the next level.”

The relevant portion of the First and Second



Schedule to the said Regulations, 2014 is also
being reproduced herein below:-

First Schedule

<u>LEVEL</u>	<u>MINIMUM ACADEMIC AND PROFESSIONAL QUALIFICATIONS</u>
4. Secondary/High School (For Classes IXX)	(a) Graduate/Post Graduate from recognized University with at least 50% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution. Or (b) Graduate/Post Graduate from recognized University with at least 45% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution {in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations,



	2002 notified on 13.11.2002 and National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.2007) <u>Or</u> (c) 4years degree of B.A. Ed./B.Sc. Ed. from any National Council for Teacher Education recognized institution.
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Second Schedule

<u>LEVEL</u>	<u>MINIMUM ACADEMIC AND PROFESSIONAL QUALIFICATIONS</u>
2. Secondary High School (For Classes IX-X)	Bachelor's degree with Physical Education as an elective subject with 50% marks <u>Or</u> Bachelor's degree with Physical Education as an elective subject with 45% marks and participation in National or State or Inter-University competitions in sports or games or athletics recognized by Association of Indian University or Indian Olympic Association <u>Or</u> Bachelor's degree with 45% marks and having participated in National Or State or Inter-University sports or games or



	athletics Or For deputed in-service candidates (i.e. trained Physical Education Teachers/ Coaches) ... Graduation with 45% marks and at least 3 years of teaching experience as per National Council for Teacher Education (Recognition Norms & Procedure) Regulations, 2009 Or Graduate in Physical Education with 40% marks Or Graduate with Physical Education as an elective subject with 40% marks. Or Graduate who participated school, Inter-Collegiate in sports /games or passed NCC 'C' Certificate in accordance with the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.2007} Or Graduate in Physical Education i.e. B.P. Ed. Course (or its equivalent) of 3 years duration
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	Or Graduate having represented State/University in sports/games/athletics Or Graduate who has secured 1st, 2nd or 3rd position in Inter-Collegiate sports/games tournaments/possessing NCC 'C' Certificate or passed basic course in Adventure Sports Or Graduate with one year training programme in Sports Science, Sports Management, Sports Coaching Yoga, Olympic Education, Sports Journalism etc. {in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002. And (b) Bachelor of Physical Education (B.P. Ed.) of at least one year duration (or its
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	equivalent) from any National Council for Teacher Education recognized institution.
3. Senior Secondary/ Intermediate For Classes XI-XII	Bachelor of Physical Education (B.P. Ed.) or Bachelor of Physical Education (BPE) or Bachelor of Science (B.Sc) in Health and Physical Education and Degree in Sports with at least 55% marks as per National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2009. Or At least 50% marks in the B.P. Ed. degree /B.P. Ed. (Integrated) 4 years professional degree in accordance with the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.207} Or B.P. Ed. with at least 55% marks or B.P.E. Course (or its equivalent) of 3 years duration with at least 50% marks (in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and



	standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002. And (c) M.P.Ed. of at least 2 years duration from any National Council for Teacher Education recognized institution.
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7. It is thus submitted by the learned counsel for the Respondents-State that the NCTE notification dt. 12.11.2014/16.11.2014 prescribes the qualification for appointment of a Physical Education teacher at the secondary level, as mentioned hereinabove, and the same clearly stipulates that in addition to a degree of graduation with physical education as an elective subject, professional degree of B.P. Ed. is also an essential qualification. Therefore, possessing the degree of bachelor in physical education only is not sufficient for being appointed as a Physical Education teacher, if the candidate does not possess professional degree of B.P. Ed..



8. I have heard the learned counsel for the parties and gone through the materials on record. The primary issue to be decided in the present case is as to what is the requisite qualification required to be possessed by the candidates for being appointed as Physical Education Teachers, with reference to the advertisement dated 27.04.2016. As far as the advertisement in question is concerned, which can be found at Annexue-2, page nos. 15 to 16 of the writ petition, it is clearly stated therein that the 5th phase of appointment of teachers is being undertaken as per the provisions contained in Bihar Municipal Corporation Secondary and Higher Secondary Teacher (Employment & Service Conditions) (Amendment), Rules, 2016 and as per Rule 6 (IX) (क) of the Bihar District Board Secondary and Higher Secondary Teacher (Employment & Service Conditions) (Amendment), Rules, 2016. Now, it would be pertinent to deal with the provisions contained in the Rules, 2016. For the said purpose, it would be apt to quote Rules 4(iv)(क)(ख), Rule 6(ix)



(क) and Rule 8(v) of the Bihar Zila Parishad Secondary and Higher Secondary Teacher (Employment and Service Conditions) (Amendment), Rules, 2016 herein below:-

“4. नियुक्ति हेतु—

(iv) शारीरिक शिक्षा के लिए—

(क) [किसी मान्यता प्राप्त विश्वविधालय के [न्यूनतम 50 प्रतिशत अंकों] के साथ स्नातक डिग्री। अनुसूचित जाति / अनुसूचित जन जाति / अत्यन्त पिछडा.। वर्ग / पिछडा.। वर्ग एवं विकलांग के लिए न्यूनतम निर्धारित अंक में 5 प्रतिशत की छूट दी जाएगी।

(ख) राष्ट्रीय अध्यापक शिक्षा परिषद् अधिनियम लागू होने के पूर्व राज्य सरकार के शिक्षा विभाग द्वारा किसी मान्यता प्राप्त विश्वविधालय द्वारा दी गयी शारीरिक शिक्षा में डिग्री या समकक्ष अर्हता का प्रमाण पत्र अथवा अधिनियम लागू होने के बाद राष्ट्रीय अध्यापक शिक्षा परिषद् द्वारा मान्यता प्राप्त प्रशिक्षण संस्था से शिक्षा में स्नातक डिग्री या समकक्ष अर्हता का प्रमाण पत्र।

6- नियोजन की प्रक्रिया—

(ix) (क) प्रकाशित विज्ञप्ति मे रिक्त पदों की संख्या के अनुरूप चयनित अभ्यर्थी की नियोजन पत्र निर्गत किया



जाएगा। अभ्यर्थी को समय पर नियोजन पत्र मिल सके, इसके लिए शिक्षा विभाग द्वारा आवश्यक दिशा-निर्देश निर्गत किया जायेगा।

8- सेवा संबंधी शर्तें-

(v) अप्रशिक्षित शिक्षकों को नियोजन के तीन वर्षों के भीतर आवश्यक प्रशिक्षण प्राप्त करना होगा। पूर्व से नियोजित अप्रशिक्षित शिक्षकों को भी इस संशोधन नियमावली के अधिसूचित होने की तिथि से तीन वर्षों के भीतर आवश्यक प्रशिक्षण प्राप्त करना अनिवार्य होगा। प्रशिक्षण अवधि में सवैतनिक अवकाश इस शर्त के साथ देय होगा कि वे प्रशिक्षण के उपरान्त कम से कम पाँच वर्षों तक शिक्षण का कार्य करेंगे। विनिश्चित अवधि के पूर्व सेवा छोड़ने की स्थिति में, प्रशिक्षण अवधि में प्राप्त वेतनादि की राशि सरकार के खजाने में जमा करनी होगी। संबंधित शिक्षक को इस आशय का बॉण्ड देना आवश्यक होगा। वसूलनीय राशि लोक मॉग के रूप में वसूलनीय होगी।”

9. It is thus apparent from Rule 4(iv)(क)(ख) of the Rules, 2006, as amended from time to time and lastly, by the Bihar Municipal Corporation Secondary and Higher Secondary Teacher (Employment & Service Conditions)(Amendment),



Rules, 2016 that the essential qualification required for appointment as a Teacher in Physical Education is Bachelor's Degree from a recognized university with minimum 50% marks as also Bachelor's Degree or equivalent qualification in Physical Education from training institution recognized by the NCTE i.e. B.P. Ed.. Thus, this Court finds that it is wrong on the part of the petitioners to contend that the advertisement did not prescribe that one of the essential qualification required to be possessed by a candidate is professional degree of B.P. Ed. as well, hence in order to be eligible for appointment as a Teacher in Physical Education, a candidate should possess both Bachelor's Degree in Physical Education as well as professional degree of B.P. Ed.. It is altogether a different issue that vide Rule 8(v) of the aforesaid Rules, 2016, untrained teachers are required to obtain the necessary training i.e. obtain the degree of B.P. Ed. within a period of three years of their appointment, however, the same is not only in conflict with Rules 4 (iv) of the aforesaid



Rules, 2016 but is also in conflict with the NCTE Regulations, 2014, which categorically prescribes essential qualification for appointment as a teacher in Physical Education to be degree of graduation with physical education as an elective subject and a professional degree of B.P. Ed., hence has to be read down to that extent.

10. This Court further finds that so far as coordination and determination of standards in institutions for higher education or research and scientific and technical institutions are concerned, the subject is exclusively covered by Entry-66 of List-I of Schedule VII to the Constitution of India, nonetheless, the parliament as well as the State Legislature have a concurrent power to make laws with respect to any of the matters pertaining to Education, including technical education, medical education and universities, however, the power of the State Legislature to make such laws is subject to the provisions of entries 63, 64, 65 and 66 of List I of Schedule VII to the Constitution of India, with regard to which, the Parliament is vested with the exclusive power to make laws. Thus the field is



primarily covered by the Union List and thus, the State can exercise any legislative power under List III Entry 25 but such law cannot be repugnant to the Central law, hence wherever the State law is irreconcilable with the Central law, the State law must give way in favour of the Central law to the extent of repugnancy. This will show the supremacy of the Central law in relation to professional education, including the teacher training program. Therefore, it is clear that wherever the field is covered by the parliamentary law in terms of List I and List III, the law made by the State Legislature would, to the extent of repugnancy, be void.

11. Accordingly, the Parliament has enacted the NCTE Act, 1993 and in exercise of powers conferred under Clause (dd) of Sub-section (2) of Section 32 read with Section 12A of the NCTE Act, 1993, the NCTE has framed the new Regulations i.e. the NCTE (Determination of Minimum Qualifications for Persons to be recruited as Education Teachers and Physical Education



Teachers for Pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges), Regulations, 2014, prescribing the minimum academic and professional qualification required for recruitment of teachers in any recognized school imparting pre-primary, primary, upper primary, secondary, senior secondary or intermediate schools or colleges imparting senior secondary education, which cannot be departed from by the State Government. This Court is thus of the view that Rule 8(V) of the Bihar Zila Parishad Secondary and Higher Secondary Teacher (Employment and Service Conditions), Rules, 2006, as amended up to date by the amendment, 2016, granting three years time to the newly appointed untrained teachers to obtain the training degree is inconsistent being contrary to the provisions of the Regulations, 2014 enacted by the NCTE, hence is unenforceable and consequently null and void. Thus, the minimum academic and professional qualifications prescribed in the Regulations, 2014 of the NCTE is



required to be possessed by a candidate for the purposes of appointment as a Physical Education Teacher & in fact, the essential qualifications stipulated in Rule 4(iv)(क)(ख)) of the aforesaid Bihar Zila Parishad Secondary and Higher Secondary Teacher (Employment & Service Conditions), Rules, 2006, as amended up to date by the amendment Rules, 2016 is also in consonance with the minimum academic and professional qualifications prescribed in the NCTE Regulations, 2014 for the purposes of appointment of a Physical Education Teacher, thus, nothing is left to speculation. In this regard, it would be apt to refer to a judgment rendered by the Hon'ble Apex court in the case of ***Maa Vaishno Devi Mahila Mahavidyalaya (supra)***, paragraphs no. 36, 45, 46, 51, 58, 59, 60, 64, 66 and 67 whereof are reproduced herein below:-

“**36.** For regulation and proper maintenance of norms and standards in the teacher education system and for all matters connected therewith, it was considered to establish a Central National Council for



Teacher Education, for which purpose the Indian Parliament enacted the National Council for Teacher Education Act, 1993 (for short “the Act”). NCTE was to be established in terms of Section 3 of the Act and was to consist of the persons specified therein. For the purpose of the present case, we are required to refer to certain provisions of the Act. The first relevant provision which can be referred to is Section 12 of the Act which states the functions that are to be performed by NCTE. Section 13 places an obligation upon NCTE to conduct inspection of the institute in the prescribed manner. Other very significant provision is Section 14 that deals with the recognition of the institutions offering course or training in teacher education. One of the important powers of NCTE is the power of delegated legislation as contained in Section 32 of the Act. We shall deal with these provisions along with some other relevant provisions in some detail.

45. Vide Notification dated 13-11-2002, “the NCTE (Form of Application for Recognition, the Time-limit of Submission of Application, Determination of Norms and Standards for Recognition of Teacher Education Programmes and Permission to Start New Course or Training) Regulations, 2002” were notified to



deal with the prescribed procedure for making applications for recognition as well as how it is to be dealt with and grant and refusal of recognition. Under Regulation 8, it was specified that the norms and standards for various teacher education courses should be separately provided for separate courses. Resultantly, under Appendix 3 to Appendix 14, norms & standards in relation to various courses, which were to be complied with by the applicant, were specified. The object was to bring greater transparency & specialisation into the entire process of grant of recognition to the institutions. For example, norms and standards for secondary teacher education programme were provided under Appendix 7. Similarly, other courses were provided under different standards. Appendix 1-A prescribed the form of an application for grant of recognition of teacher education institutions/ permission to start a new course or increase in intake. This application contained all information that was necessary for the Regional Committee to entertain an application & know the requisite details, as contemplated under Section 14(3)(a).

46. Further, to facilitate the operation of the Regulations and for removal of functional difficulties, after consultation with different



quarters, NCTE framed regulations under Section 32 of the Act which were called the “National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2005”. Under these Regulations, different time-limits were provided within which the applications were to be dealt with and responded to by different stakeholders involved in the process of grant/refusal of recognition. Under these Regulations, the applications which were complete in all respects had to be processed by the office of the Regional Committee concerned within 30 days of the receipt of such application. A written communication along with a copy of the application form submitted by the institution of the State/Union Territory concerned shall be sent to the State Government/UT Administration concerned. On receipt of the application, the State Government/UT Administration concerned was required to furnish its recommendations to the office of the Regional Committee concerned within 60 days from the receipt. If the recommendation was negative, the State Government was required to provide detailed reasons/grounds thereof in terms of Regulation 7(3) of the Regulations. Then, the expert team was to be appointed which was



to visit the institution. Video tapes of the visiting team were to be placed before the Regional Committee along with its recommendations and the Regional Committee was to decide grant of recommendation or permission to the institution only after all the conditions prescribed under the Act, Rules, Regulations and the norms and standards laid down were satisfied. The institution concerned was required to be informed of the decision for grant/refusal of recognition or permission. It could impose such conditions as NCTE may deem fit and proper.

51. This is the scheme of grant and/or refusal of the recognition to an institution dealing with various courses of teacher training programme.

58. This view of the Supreme Court was reiterated with approval by a larger Bench of the Supreme Court in *State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya* [(2006) 9 SCC 1] . While discussing in detail the various legal issues in relation to grant of affiliation/ recognition to the institution and permission to start a new college, this Court held as under:

“53. The Court then considered the argu-



ment put forward on behalf of the State that while it would be open for the Council to lay down *minimum standards and requirements*, it did not preclude the State from prescribing *higher standards and requirements*.

54. Negating the contention, the Court *quoted* with approval the following observations of B.N. Rau, J. in *G.P. Stewart v. Brojendra Kishore Roy Chaudhury* [AIR 1939 Cal 628 : (1938-39) 43 CWN 913]:

‘It is sometimes said that two laws cannot be said to be properly repugnant unless there is a direct conflict between them, as when one says “do” and the other “don’t”, there is no true repugnancy, according to this view, if it is possible to obey both the laws. For reasons which we shall set forth presently, we think that this is too narrow a test: there may well be cases of repugnancy where both laws say “don’t” but in different ways. For example, one law may say “no person shall sell liquor by retail, that is, in quantities of less than five gallons at a time” and another law may say, “no person shall sell liquor by retail, that is, in quantities of less than ten gallons at a



time". Here, it is obviously possible to obey both laws, by obeying the more stringent of the two, namely, the second one; yet it is equally obvious that the two laws are repugnant, for to the extent to which a citizen is compelled to obey one of them, the other, though not actually disobeyed, is *nullified*.'

(emphasis supplied)

64. Even otherwise, in our opinion, the High Court was fully justified in negating the argument of the State Government that permission could be refused by the State Government on 'policy consideration'. As already observed earlier, policy consideration was negated by this Court in *Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamikal Medical Educational & Charitable Trust v. State of T.N.* [(1996) 3 SCC 15 : 1996 DGLS (Soft) 327] as also in *Jaya Gokul Educational Trust* [(2000) 5 SCC 231].

74. It is thus clear that the Central Government has considered the subject of secondary education and higher education at



the *national level*. The Act of 1993 also requires Parliament to consider teacher education system 'throughout the country'. NCTE, therefore, in our opinion, is expected to deal with applications for establishing new BEd colleges or allowing increase in intake capacity, keeping in view the 1993 Act and planned and coordinated development of teacher education system in the country. It is neither open to the State Government nor to a university to consider the local conditions or apply 'State policy' to refuse such permission. In fact, as held by this Court in cases referred to hereinabove, the State Government has no power to reject the prayer of an institution or to overrule the decision of NCTE. The action of the State Government, therefore, was contrary to law and has rightly been set aside by the High Court."

(emphasis in original)

59. The above enunciated principles clearly show that the Council is the authority constituted under the Central Act with the responsibility of maintaining education of standards and judging upon the infrastructure and facilities available for imparting such professional education. Its opinion is of



utmost importance and shall take precedence over the views of the State as well as that of the university. The Department of the State concerned and the affiliating university have a role to play but it is limited in its application. They cannot lay down any guideline or policy which would be in conflict with the Central statute or the standards laid down by the Central body. The State can frame its policy for admission to such professional courses but such policy again has to be in conformity with the directives issued by the Central body. In the present cases, there is not much conflict on this issue, but it needs to be clarified that while the State grants its approval, and the university its affiliation, for increased intake of seats or commencement of a new course/college, its directions should not offend and be repugnant to what has been laid down in the conditions for approval granted by the Central authority or Council. What is most important is that all these authorities have to work ad idem as they all have a common object to achieve i.e. of imparting of education properly and ensuring maintenance of proper standards of education, examination and infrastructure for betterment of the educational system. Only if all these authorities work in a coordinated



manner & with cooperation, will they be able to achieve the very object for which all these entities exist.

60. The NCTE Act has been enacted by Parliament with reference to Schedule VII List I Entry 66 of the Constitution. There is no such specific power vested in the State Legislature under Schedule VII List II. Schedule VII List III Entry 25 is the other entry that provides the field for legislation both to the State and the Centre, in relation to education, including technical education, medical education and universities; vocational and technical training of labour. The field is primarily covered by the Union List and thus, the State can exercise any legislative power under List III Entry 25 but such law cannot be repugnant to the Central law. Wherever the State law is irreconcilable with the Central law, the State law must give way in favour of the Central law to the extent of repugnancy. This will show the supremacy of the Central law in relation to professional education, including the teacher training programmes. In *Medical Council of India v. State of Karnataka* [(1998) 6 SCC 131] the Court had the occasion to discuss this conflict as follows:

“27. The State Acts, namely, the Karnataka



Universities Act and the Karnataka Capitation Fee Act must give way to the Central Act, namely, the Indian Medical Council Act, 1956. The Karnataka Capitation Fee Act was enacted for the sole purpose of regulation in collection of capitation fee by colleges and for that, the State Government is empowered to fix the maximum number of students that can be admitted but that number cannot be over and above that fixed by the Medical Council as per the Regulations. Chapter IX of the Karnataka Universities Act, which contains provision for affiliation of colleges and recognition of institutions, applies to all types of colleges and not necessarily to professional colleges like medical colleges. Sub-section (10) of Section 53, falling in Chapter IX of this Act, provides for maximum number of students to be admitted to courses for studies in a college and that number shall not exceed the intake fixed by the university or the Government. But this provision has again to be read subject to the intake fixed by the Medical Council under its Regulations. *It is the Medical Council which is primarily responsible for fixing standards of medical education and overseeing that these standards are maintained. It is the Medical*



Council which is the principal body to lay down conditions for recognition of medical colleges which would include the fixing of intake for admission to a medical college. We have already seen in the beginning of this judgment various provisions of the Medical Council Act. It is, therefore, the Medical Council which in effect grants recognition and also withdraws the same. Regulations under Section 33 of the Medical Council Act, which were made in 1977, prescribe the accommodation in the college and its associated teaching hospitals and teaching and technical staff and equipment in various departments in the college and in the hospitals. These Regulations are in considerable detail. Teacher-student ratio prescribed is 1 to 10, exclusive of the Professor or Head of the Department. Regulations further prescribe, apart from other things, that the number of teaching beds in the attached hospitals will have to be in the ratio of 7 beds per student admitted. Regulations of the Medical Council, which were approved by the Central Government in 1971, provide for the qualification requirements for appointments of persons to the posts of teachers and visiting physicians/surgeons of medical colleges and attached



hospitals.

29. A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study. The Medical Council, in all fairness, does not wish to invalidate the admissions made in excess of that fixed by it and does not wish to take any action of withdrawing recognition of the medical colleges violating the regulation. Henceforth, however, these medical colleges must restrict the number of admissions fixed by the Medical Council. After the insertion of Sections 10-A, 10-B and 10-C in the Medical Council Act, the Medical Council has framed Regulations with the previ-



ous approval of the Central Govt. which were published in the Gazette of India dated 29-9-1993 (though the Notification is dated 20.9.1993). *Any medical college or institution which wishes to increase the admission capacity in MBBS/higher courses (including diploma/degree/ higher specialities), has to apply to the Central Govt. for permission along with the permission of the State Govt. and that of the university with which it is affiliated and in conformity with the Regulations framed by the Medical Council. Only the medical college or institution which is recognised by the Medical Council can so apply."*

(emphasis supplied)

64. In *Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya* [(2006) 9 SCC 1] this Court, while dealing with the provisions of the Act with which we are concerned in the present case, held that the field of teachers' education and matters connected therewith stood fully and completely occupied by the Act and hence the State Legislature could not encroach upon that field.

66. From the above consistent view of this Court it is clear that wherever the field is covered by the parliamentary law in terms of



List I and List III, the law made by the State Legislature would, to the extent of repugnancy, be void. Of course, there has to be a direct conflict between the laws. The direct conflict is not necessarily to be restricted to the obedience of one resulting in disobedience of the other but even where the result of one would be in conflict with the other. It is difficult to state any one principle that would uniformly be applicable to all cases of repugnancy. It will have to be seen in the facts of each case while keeping in mind the laws which are in conflict with each other. Where the field is occupied by the Centre, subject to the exceptions stated in Article 254, the State law would be void.

67. In the present case, we are concerned with the provisions of the NCTE Act which is a Central legislation referable to Schedule VII List I Entry 66. Thus, no law enacted by the State, which is in conflict with the Central law, can be permitted to be operative.”

12. At this juncture, it would also be apt to refer to a judgment rendered by the Hon’ble Apex Court in the case of **Ranu Hazarika v. State of Assam & Ors.**, reported in **(2011) 4 SCC 798**, paragraphs no. 2 to 7, 9, 12, 19 and 22 whereof



are reproduced herein below:-

“2. The material facts leading up to the filing of the writ petitions before the High Court may be stated as follows: the National Council for Teacher Education (for short “NCTE”) was set up in the year 1973 by a government resolution as a National Expert Body to advise the Central and State Governments on all matters pertaining to teacher education. Since the role assigned to NCTE was purely advisory in nature, it had very little impact on the standards of teacher training institutions in the country and on their unplanned growth. Therefore, in order to empower NCTE to make qualitative improvements in the system of teacher training, in the year 1993, the Act was enacted by Parliament giving statutory recognition to NCTE. It is manifest from the Preamble to the Act that it had been enacted with a view to achieving planned and coordinated development; and proper maintenance of norms and standards in the teacher education system, etc. throughout the country.

3. Section 12 of the Act enumerates the functions of NCTE. Primarily, it provides that it shall be the duty of NCTE to take all such steps as it may think fit to ensure that there is



planned and coordinated development of teacher education and proper standards in that behalf, determined by it, are maintained. For achieving the object for which the Act was enacted, several functions enlisted in the section have been assigned to NCTE, which includes laying down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognised institutions.

4. Section 32 of the Act confers on NCTE power to make Regulations. Sub-clause (d)(i) of sub-section (2) of Section 32 provides that NCTE may lay down minimum qualifications for a person to be employed as a teacher under clause (d) of Section 12. Under Section 33 of the Act, the Regulations made by NCTE are required to be laid before each House of Parliament & it is only upon due approval of such Regulations or upon modifications as may be made by Parliament that the Regulations take effect.

5. In exercise of powers conferred on NCTE under Section 32(2)(d)(i) of the Act, it framed a set of Regulations viz. the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001. In the Schedule to the said



Regulations, the minimum academic and professional qualifications for recruitment of teachers at different levels have been stipulated.

6. In so far as the elementary/primary schools are concerned, the qualifications prescribed by the Schedule are as follows:

“(i) Senior Secondary School Certificate.

(ii) Diploma of certificate in basic teachers training of a duration of not less than two years, or Bachelor of Elementary Education (B.E. Ed).”

The said Regulations further contemplated that the existing recruitment rules would be modified within a period of three years so as to bring such rules in conformity with the qualifications prescribed in the Schedule to the Regulations.

7. In the State of Assam, in March 1999, a pre-service teacher's training course of two years' duration leading to award of diploma had been introduced and the admission to the said course was regulated by an advertisement published in the newspapers on 14-4-1999. In the said advertisement, it was mentioned that the pre-service training course leading to an award of diploma in



education, for which applications were invited, had been designed to secure improvement of the professional skill of the persons to be recruited as teachers in elementary schools against the vacancies that will occur in the near future.

9. It seems that on the insistence of NCTE, the State of Assam amended the Assam Elementary Education (Provincialisation) Rules, 1977 with effect from 10-11-2005. By the said amendment instead of making the requirement of a diploma in teachers training mandatory, as stipulated in the Regulations framed by NCTE, it was provided that preference to trained candidates will be given. Schedule I to the amended Rules stipulated that such preference will be in the form of 10 additional marks to trained teachers in the selection process for the recruitment of teachers. Having carried out the said amendment, an employment notice dated 2-12-2005 was issued in the newspapers inviting applications for filling up 5372 posts of Assistant Teachers. The prescribed minimum educational qualification was higher secondary, with preference to trained candidates.

12. As stated above, by the impugned



judgment, the High Court has struck down the Amendment Rules, 2005, observing thus:

“15. In the present group of cases, as already noticed, the State has neither filed an affidavit nor has the State taken any particular stand before the Court. No compelling reasons dictated by public interest have been disclosed by the State to enable the Court to understand that the provisions of the Amendment Rules, though in departure from the Regulations framed by the Council, is dictated by acceptable reasons in public interest. Though in the course of the hearing the learned Standing Counsel of the Department has pointed out that in the State of Assam teachers in lower primary schools are required to undergo a basic training course after their appointment and till completion of the said course such teachers are not put on the regular scale of pay, the said facts cannot constitute adherence or even substantial compliance with the provisions of the Regulations inasmuch as the Regulations prescribe completion of the teachers training course as a positive condition of eligibility which is conspicuously absent in the Amendment Rules. The failure of the State to show any compelling or supervening circumstances justifying the



said departure from the Regulations has, therefore, to be understood by the Court to be due to the absence of any such reasons. In such a situation, the requirement of adherence to the statutory Regulations framed by the Council cannot be left to be determined at the discretion of the authorities of the State Government of Assam. That apart, the Regulations framed (sic) by the Council have the effect of enhancing the quality of education at the primary level and in the absence of any compelling reason to justify a departure therefrom, the Court would lean in favour of an interpretation that would advance the cause of quality education in the State.

16. Consequently and in the light of the foregoing discussions the provisions of the Assam Elementary Education (Provincialisation) (Amendment) Rules, 2005 insofar as giving of preference to trained teachers is concerned is held to be invalid being contrary to the provisions of the National Council for Teacher Education Act, 1993 and the Regulations framed thereunder. As a corollary thereto, it will now be incumbent on the part of the State Government to revive the training institutes for imparting pre-service teachers training of two years' dura-



tion leading to award of diploma.”

19. Having bestowed our anxious consideration to the matter, we are of the opinion that the decision of the High Court, permitting the State Government to continue with the recruitment process, initiated on the basis of the Amendment Rules, 2005 which have been declared by it to be illegal is clearly indefensible. Having clearly held that

“the requirement of adherence to the statutory Regulations framed by NCTE cannot be left to be determined at the discretion of the authorities of the State Government and that there was no compelling reason with the State to justify a departure from the statutory Regulations, any action under illegal rules would be null and void”,

the High Court could not have permitted the State Government to perpetuate an illegality.

22. For the foregoing reasons, the appeals are allowed; the leave granted by the High Court to the State to complete the selection process in terms of employment notice dated 2-12-2005 is set aside and the said notice (dated 2-12-2005) is also quashed.”

13. This Court also finds it gainful to refer to a



judgment rendered by the Hon'ble Apex Court in the case of ***State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya***, reported in (2006) 9 SCC 1, paragraphs no. 25, 26, 29, 45, 47, 55, 62, 63 and 74 whereof are reproduced herein below:-

“**25.** Schedule VII to the Constitution comprises of three Lists: (i) Union List, (ii) State List and (iii) Concurrent List. While exclusive power to enact laws lies with Parliament under List I, the power to enact laws under List II is with the State Legislatures. In respect of subjects falling under List III, it is open to Parliament as well as the State Legislatures to enact laws subject to the provisions of Article 254.

26. Entries 63 to 66 of List I of Schedule VII relate to higher education. Entry 66 which is relevant reads thus:

“66. Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.”

29. The National Council for Teacher Education Act, 1993 has been enacted by



Parliament and deals with teacher's education. It came into force with effect from 1-7-1995. The preamble of the Act is relevant and reads thus:

“An Act to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and coordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith.”

45. We may, however, state that NCTE and contesting respondents are right in relying upon a decision of this Court in *Adhiyaman* [(1995) 4 SCC 104] referred to earlier. In *Adhiyaman* [(1995) 4 SCC 104] this Court was called upon to consider the constitutional validity of some of the provisions of the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Rules made thereunder as also the Madras University Act, 1923 and the Rules made thereunder. It was contended that certain provisions of the State Acts were inconsistent with the provisions of the Central Act (All India Council for Technical Education Act, 1987) and hence were inoperative. This



Court upheld the contention of the petitioners and ruled that the State Legislature could not enforce an Act if it is inconsistent with the Central Act and to the extent of such inconsistency, the Central Act would operate and the State Acts would be inoperative.

47. The Court considered the relevant provisions of the Constitution read with Lists I, II and III of Schedule VII and held that the subject of technical education rested with Parliament as it was covered by Entry 66 of List I of Schedule VII and it was not covered by List II or List III. Accordingly, it was held that if an Act of the State Legislature was inconsistent with the provisions of an Act of Parliament, to the extent of such inconsistency, it would be inoperative.

55. Reference was also made to a decision of this Court in *Jaya Gokul Educational Trust* [(2000) 5 SCC 231 : JT (2000) 5 SC 118] . Relying on *Adhiyaman* [(1995) 4 SCC 104 : JT (1995) 3 SC 136] and reiterating the principle laid down therein, the Court there held that once the field was occupied by an Act of Parliament, the State Legislature could not have made a statute inconsistent with the provisions of the Central legislation. The Court, therefore, held that even if there was a



State law which required something to be done for the approval of the State Govt. for establishing a technical institution, such law, if it is inconsistent or repugnant with the Central law, it would be “void” to the extent of repugnancy to the Act of Parliament.

62. From the above decisions, in our judgment, the law appears to be very well settled. So far as coordination and determination of standards in institutions for higher education or research, scientific and technical institutions are concerned, the subject is exclusively covered by Entry 66 of List I of Schedule VII to the Constitution and the State has no power to encroach upon the legislative power of Parliament. It is only when the subject is covered by Entry 25 of List III of Schedule VII to the Constitution that there is a concurrent power of Parliament as well as the State Legislatures and appropriate Act can be made by the State Legislature subject to limitations and restrictions under the Constitution.

63. In the instant case, admittedly, Parliament has enacted the 1993 Act, which is in force. The preamble of the Act provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving



planned and coordinated development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher-education system and for matters connected therewith. With a view to achieving that object, the National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is *fully* and *completely* occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament *alone* could have exercised the power by making appropriate law. In the circumstances, it is not open to the State Government to refuse permission relying on a State Act or on “policy consideration”.

74. It is thus clear that the Central Government has considered the subject of secondary education and higher education at the national *level*. The Act of 1993 also requires Parliament to consider teacher-education system “throughout the country”. NCTE, therefore, in our opinion, is expected to deal with applications for establishing new BEd colleges or allowing increase in intake capacity, keeping in view the 1993 Act and



planned and coordinated development of teacher-education system in the country. It is neither open to the State Government nor to a university to consider the local conditions or apply "State policy" to refuse such permission. In fact, as held by this Court in cases referred to hereinabove, the State Govt. has no power to reject the prayer of an institution or to overrule the decision of NCTE. The action of the State Government, therefore, was contrary to law and has rightly been set aside by the High Court."

14. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court is of the view that the essential qualifications required for the purposes of appointment of Teacher in Physical Education is Graduate Degree with Physical Education as an elective subject as also professional Degree of B.P. Ed., hence, giving any direction for appointing the petitioners on the post of Physical Education Teachers, who do not possess the Degree of B.P. Ed., would be anathema not only to the Constitutional scheme but also to the minimum academic & professional qualifications prescribed



in the NCTE Regulations, 2014 as also in Rule 4(iv) (क)(ख) of the Rules, 2006, as amended up to date by the amendment, 2016. Thus, this Court does not find any merit in the present petition, hence, the same stands dismissed, sans any merit.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	17.9.2021
Uploading Date	17.8.2022
Transmission Date	NA

