

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C). Nos.13681 of 2022, 29418 of 2021 and 19515 of 2022

In W.P.(C) No.13681 of 2022

Siva Prasad Panda *Petitioner*

-versus-

State of Odisha and Ors. *Opp. Parties*

Advocates appeared in the case:

For Petitioner : *Mr. Sameer Kumar Das, Adv.*

-versus-

For Opp. Parties : *Mr. Saswat Das, AGA*
(for O.P.1)
Mr. Arnav Behera, Adv.
(for O.P.2/ OPSC)
Mr. P.K. Parjhi, ASGI
(for O.P.3/NCTE)
Mr. N. Samal, Adv.
(for O.P.,7)
Mr. S. Mohanty, Adv.
(for O.Ps.5, 6 & 8)

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-24.08.2022

DATE OF JUDGMENT:-20.09.2022

Dr. S.K. Panigrahi, J.

1. The Petitioner in W.P.(C) No.13681 of 2022 seeks for quashing of the selection of the Opposite Party No. 5 to 8 therein and the Petitioner in W.P.(C) No.19515 of 2022 seeks for quashing

of the selection of the Opposite Party No. 5 to 13 therein and others as Assistant Professor in Teacher Education (Geography) as it is in violation of the NCTE Regulation and Guideline for appointment of Asst. Professor in the UG and PG classes of Teacher Training Colleges. Further, the Petitioners in both the aforesaid Writ Petitions pray for a direction to the Opposite Parties to appoint them as Asst. Professors in Teacher Education (Geography) as they have the eligibility as per the Rules and had also secured highest mark in the career assessment. The Petitioners in W.P.(C) No.29418 of 2021 seeks for quashing the advertisement No.09 of 2021-22 issued by the Opposite Party No.2/ OPSC. Therefore, this Court felt it appropriate to decide W.P.(C) No.13681 of 2022 first and whatever outcome of the said Writ Petition, the same will be covered to other two writ petitions mentioned above.

I. FACTUAL MATRIX OF THE CASE:

2. Shorn of unnecessary details, the factual matrix of the case, in brief is that an advertisement was issued by the OPSC on 27.07.2021 to fill up the post of Asst. Professor (Teacher Education) Stage-1 in different disciplines in Government Teachers' Training Institutes under the Department of Higher Education of Odisha. Such Advertisement No.09 of 2021-22 was issued by the OPSC pursuant to the Government instruction and also the Odisha Education Service (College

Branch) Recruitment Rules, 2020. The petitioner after completion of his M.A. (Geography) in the year 2005 from Utkal University joined B.Ed. course under Sambalpur University and passed it in the year 2006. Thereafter, the petitioner was selected for admission to the M.Ed. course under Utkal University and completed M.Ed. in 2008. He has obtained M. Phil in Geography from Utkal University in 2009 followed with NET in 2009 and PhD in Geography in the year 2018. Since the petitioner had the eligibility to be appointed as Asst. Professor, Teacher Education (Geography), has applied in the prescribed form pursuant to the Advertisement.

3. The NCTE being the Apex Body in teachers' education and training, has prescribed the required qualification for appointment as Teacher/Asst. Professor in all these two year B.Ed./M.Ed. course in colleges. The relevant extract provided in the 2014 Regulation in its Appendix-4 is quoted as hereunder:

"5.2 Qualifications

The faculty shall possess the following qualification:

A. Principal/HoD

(i) Post graduate degree in Arts/Science/Social Science/Humanities/Commerce 55% marks; and with minimum

(ii) M.Ed. with minimum 55% marks; and

(iii) Ph.D. in Education or in any pedagogic subject offered in the institution; and

(iv) Eight years of teaching experience in a secondary Teacher Education Institution.

Desirable: Diploma/Degree in Educational, Administration or Educational Leadership.

B. Perspectives in Education or Foundation Courses

(i) Postgraduate degree in Social Science with minimum 55% marks; and

(ii) M.Ed. degree from a recognised university with minimum 55%marks.

OR

(i) Postgraduate (MA) degree in Education with minimum 55% marks; and

(ii) B.Ed./B.El.Ed. degree with minimum 55%marks.

C. Curriculum and Pedagogic Courses

(i)Postgraduate Sciences/Mathematic/Social degree in Sciences/Languages with minimum 55%; and

(ii) M.Ed. degree with minimum 55% marks.

Desirable: PhD degree in Education with subject specialisations.

[Note: In case of B and C put together, for two faculty positions, a postgraduate degree in Sociology/Psychology/Philosophy with 55% marks, and B.Ed./B.El.Ed. with 55% marks and three years of teaching experience in a secondary school shall be considered]."

4. Following the NCTE Regulation, the State Government has brought in the Odisha Education Service (College Branch) Rules, 2020 vide Government Notification dtd: 18.02.2021 under Annexure-1. Rule-6 specifically provides that the qualification for appointment of Asst. Professor should be in

consonance with NCTE Regulation 2014, which reads as follows:

"6. Eligibility criteria for Direct Recruitment-

In order to be eligible for direct recruitment, a candidate must,

(i) be a citizen of India.

(ii) not be above 45 years of age as on the last date of receiving application fixed by the Commission:

Provided that relaxation in the upper age limit in respect of different categories of candidates referred to in rule 4 shall be made in accordance with relevant Acts, Rules, Resolutions, Notifications or Orders issued by the Government from time to time.

(iii) be able to read, write and speak in Odia.

(iv) have passed Upper Primary examination, or its equivalent, with Odia as a subject.

(v) Possess a Master's Degree, or dual Master's Degrees for the post of Assistant Professor (Teacher Education) if the guidelines of National Council for Teacher Education so demands, with at least 55% of marks or its equivalent grade, in the concerned/relevant/allied subject from an Indian University or an equivalent degree from a foreign university."

5. Following the aforesaid guideline/regulation of the NCTE and the Rules-2020, the State Government has sent the requisition to the OPSC to fill up the post of Asst. Professors in Govt. Training Colleges. Accordingly, the OPSC has issued the Advertisement No.09 of 2021-22. Clause-4 of the

Advertisement deals with the educational qualification required for the purpose which reads as thus:

"4. EDUCATIONAL QUALIFICATION: A candidate must:

(A) Possess a Master's Degree or dual Master's Degrees for the post of Assistant Professor (Teacher Education), if the guidelines of National Council for Teacher Education so demands, with at least 55% of marks or its equivalent grade in the concerned/relevant/allied subject from an Indian University or an equivalent Degree from a Foreign University. Provided that for the candidates belonging to Scheduled Caste, Scheduled Tribe, SEBC & Persons with Disabilities categories, the requirement of securing at least 55% marks shall be to 50% marks or its equivalent grade.

(B) Have cleared National Eligibility Test (NET) meant for Assistant Professor (Stage-1) or must have acquired a Ph.D. Degree in the concerned/relevant/allied subject from an Indian University or a Foreign University OR NET in Education OR in Ph.D. in Education.

(C) The details of the essential qualifications for recruitment to the posts of Assistant Professor (Teacher Education)-Stage-I are mentioned at Annexure-A to this advertisement."

6. With the clarity of the required qualification for the purpose of appointment of Asst. Professor, the petitioner found himself suitable for the post of Asst. Professor Teacher Educator (Geography) pursuant to the impugned Advertisement. At the relevant time the petitioner had no

personal knowledge regarding functioning of any integrated B.Ed training courses in different colleges under the State Government and, therefore, he had no occasion to know the qualification provided in Annexure-A to the Advertisement. Since because such qualification is only meant for the Asst. Professor to be appointed in an institution imparting 4 years integrated BA & B.Ed. course. However, the petitioner was sure of the fact that there were only 16 teacher education colleges wherein 2 years B.Ed. course were in functional stage with 5 institutions having the 2 years M.Ed. course. With this notion, the petitioner had applied and did not question the essential qualification so prescribed under Annexure-A of the said impugned Advertisement. However, when the results was published, the Opposite Party Nos.5 to 8 who have no dual master degree i.e. M.A. in (Geography) and M.Ed. have been selected. On being aggrieved of the same, the petitioner has filed this writ petition.

II. PETITIONER'S SUBMISSIONS:

7. Learned counsel for the Petitioner(s) earnestly made the following submissions in support of their contentions:
8. The educational qualification so required as per rules is that one must have dual Master's Degree. This dual master degree is a mandatory requirement under NCTE Regulation, 2014, which is meant for the training colleges wherein two years

B.Ed. course and 2 years M.Ed. course are taught. However, M.A. in the concerned subject with B.Ed. training is only required for the institutions wherein 4 years integrated course are imparted. Accordingly, the NCTE has brought in amended to its Regulation of 2014 vide its notification dated 29.03.2019. But in the amendment of Regulation, 2019, only Appendix-16 and 17 have been substituted, but Appendix-4 of the 2014 Regulation which deals with the qualification required for the Asst. Professor to be appointed for these two years B.Ed. and 2 years M.Ed. course have not undergone any amendment or change. In other words, NCTE, knowing fully well regarding the factual position of continuance of 2 years B.Ed, and 2 years M.Ed. course, allowed these two set of regulations with separate eligibility qualification; i.e. NCTE Regulation, 2014 and NCTE Regulation, 2019. More so, the 2014 Regulation is meant for the colleges having two years B.Ed. courses and 2 years M.Ed. courses. The 2019 Regulation is meant for the Institutions imparting 4 years integrated course, which has not yet been borne in the State of Odisha in any Government Colleges. However, so far the personal knowledge of the petitioner is concern only in Ravenshaw University the 4 years integrated B.Ed. course in self-financing mode is functioning. These statements of the petitioner is well proved from the Government letter no.

19324 dated 11.05.2022 wherein the State Government has clarified that it has only 16 teachers' education colleges with two years B.Ed. including 5 institutions having 2 years M.Ed. course.

9. There was no illegality or irregularity committed by the petitioner in participating in the process of selection, because the entire selection was confining to appointment of Asst. Professor in Govt. Training Colleges concerning the NCTE Regulation, 2014. However, surprisingly while final result was published after the interview, the petitioner has found the Opposite Party No.5 to 8 who have no dual master degree i.e. M.A. in (Geography) and M.Ed. have been selected. Such selection is contrary to the prescribed qualifications as prescribed by NCTE Regulation, 2014 and in the 2020 Rules. In a harmonious reading of all these provisions together, one thing is clear and unambiguous that the NCTE Regulation is the paramount consideration for appointment of Teachers in those two years training colleges. Since it requires dual master degree, no person with M.A., B.Ed. Degree can be selected or appointed. Hence the selection of the Opposite Party No.5 to 8 in those 16 institutions/ includes 5 M.Ed. colleges, is per-se illegal and hence unsustainable in law.
10. Moreover, out of these 16 colleges where two years' B.Ed. course and 2 years' M.Ed. course are imparted, it is not

understood as to how could a B.Ed. pass candidate can teach in M.Ed. classes which is a Master Degree. While not admitting but for the argument sake, even for those two years B.Ed. course this M.A., B.Ed. Teachers are not even eligible to teach the B.Ed. course. It is a fact that under normal service jurisprudence no same qualification person shall be allowed to teach in the same classes. The possession of higher qualification is mandatory. Therefore, the selection and appointment of the Opposite Party Nos.5 to 8 as Asst. Professor in Government training colleges is bad in law and contrary to the canons of service jurisprudence.

11. The post of Asst. Professor in these training colleges comes in the common cadre of Asst. Professor. Therefore, they are subjected to transfer from one such institution to another. In the fact situation, these Opposite Party Nos.5 to 8 cannot be posted to any colleges imparting M.Ed. course. In that view of the matter, their selection as Asst. Professor to a Government Teachers' Training Colleges is per-se illegal.

III. SUBMISSIONS BY OPPOSITE PARTY NO.2:

12. *Per contra*, learned counsel for the Opp. Party No.2 made the following submissions with vigour:
13. The Petitioner, who was well aware of the requisite educational qualifications prescribed under the Advertisement, but participated in the selection process with

open eyes, and failed to get selected for the post vide the Selection process. The factum of the Petitioner's participation in the selection process is admitted in paragraph 9 of the writ petition. Having participated in the selection process, instead of challenging the Advertisement at the threshold, the Petitioner is now estopped from challenging the said qualifications after being unable to secure a position in the select list of recommended candidates.

14. In this context, the Supreme Court, in the case of *Dhananjay Malik v. State of Uttaranchal*¹, has held as under:

"7. It is not disputed that the respondent-writ petitioners herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as BPE or graduate with diploma in Physical Education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules."

15. In the present case, as already pointed out, the writ petitioners herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were

¹(2008) 4 SCC 171.

not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done.

16. On the basis of the requisitions received from the Higher Education Department of the State Government, the Opposite Party No. 2 issued the Advertisement No. 09 of 2021-22 for recruitment to the post of Assistant Professor in Teachers' Education Colleges. The educational qualifications for each of the disciplines is provided under Annexure-A to the Advertisement. The educational qualifications for the post of Assistant Professor in Teachers' Education as aforesaid, has been prescribed under the National Council for Teacher Education (Recognition, Norms and Procedure) Amendment Regulations, 2019 (hereinafter referred to as "NCTE Regulations, 2019") which is the regulatory body of teachers' education and training.
17. NCTE Regulations, 2019 lays down the provisions for the Integrated Teacher Education Programme (TEP). The Qualifications prescribed under Regulation 5.2 B are reproduced hereunder for kind convenience of this Hon'ble Court:

"5.2 Qualifications:

Xxx

XXX

B. Assistant Professor- in Liberal Discipline and Pedagogy:

i. Post-Graduate degree in Science (Physics or Chemistry or Botany or Zoology or Life Sciences or Bio-Science) or Mathematics or Social Sciences (History or Geography or Political Science or Economics) or Languages (English or Modern Indian Languages or Classical Languages) with minimum fifty-five per cent marks.

ii. B.Ed. degree with minimum fifty five percent marks or equivalent grade. National Eligibility Test or State Level Eligibility Test or Doctor of Philosophy in Education or in the concerned subject as prescribed by the University Grants Commission for these categories of posts." (emphasis supplied)

18. The educational qualifications prescribed in the Advertisement No. 09 of 2021-22 issued by the Opposite Party No. 2 on the instructions of the Higher Education Department, are in conformity with the educational qualifications prescribed under the NCTE Regulations, 2019 for the Integrated Teacher Education Programme (ITEP).
19. Additionally, the State Government in the Higher Education Department has taken a policy decision vide file No. 19324 dated 11.05.2022 to introduce Integrated Teacher Education Programme (ITEP) at 14 Colleges in the State of Odisha and the qualification prescribed is quite in sync with the NCTE guidelines.

IV. SUBMISSIONS BY OPPOSITE PARTIES 5, 6 AND 8

20. In the present case, as already pointed out that the writ petitioner herein participated in the selection process without any demur; he is estopped from complaining that the selection process was not in accordance with the Rules. If he thought that the advertisement and selection process was not in accordance with the Rules he could have challenged the advertisement and selection process without participating in the selection process.
21. The Opp. Party No. 5, 6 & 8 have applied as per mandated qualification M.A. + B.Ed. with NET or Ph. D., attended certificate verification and finally turn out to be successful in the interview. As per the advertisement, the performance in interview is the only criteria for selection. Without any fault of these 4 Opp. Parties they have been debarred to get the appointment letter and joining order.
22. The petitioner falsely mentioned that as per his personal knowledge only Ravenshaw University has 4 years integrated B.Ed. course in self finance mode, but it is the fact that there are 12 integrated B.Ed. Colleges are running for several years.
23. The Opp. Party No. 8/ Manoj Kumar Lenka has dual master degree i.e. M.A. (Geography) & M.A. (Education) + B.Ed. with NET. There is no requirement of dual master degree in the advertisement at Annexure - 2, the Opp. Party No. 5, 6 & 8

have submitted their qualification as prescribed in the advertisement. The advertisement is meant for 12 subject areas of which 11 areas meant for liberal disciplines (Science & Social Science) and Geography one of them with M.A./ M.Sc. + B.Ed. having NET or Ph.D. qualification and another 01 for area for educational studies with M.Ed. or M.A. (Education) and B.Ed. having NET or Ph.D. qualification. By the time Govt. has already appointed 17 Asst. Professors in Political Science, 19 in Mathematics, 24 in Botany and 7 in Geography having the qualification M.A/ M.Sc. + B.Ed. out of 11 liberal discipline those have selected through the same procedure. However, without any fault of the Opp. Party No. 5, 6 & 8 their appointment is now kept in abeyance by the order of this Court.

V. COURT'S REASONING & ANALYSIS

24. Education as a field of legislation is included in List 3 (concurrent list) of the 7th Schedule to the Constitution of India. As per Article 246 of the Constitution, both the Parliament and the Legislature of a State may make laws with respect to 'Education'. The effect of Article 254 is that if a State enacted law is repugnant to a Central legislation, the State law, to the extent of repugnancy shall be void.
25. Clause 4 of the impugned advertisement requires a candidate to have an additional qualification along with the basic

qualifications mentioned in the NCTE Regulations, 2014 and 2019. A State law may supplement a Central law (*Ram Chandra Mawa Lal, Varanasi v. State of Uttar Pradesh*². The Federal Court in *Shyamakant Lal v. Rambhajan Singh*³, declared that the real test of repugnancy is whether or not the two legislations can stand together. If they can, there is no repugnancy.

26. In this context, reference can be made to the decision of the Supreme Court in the case of *Kanaka GruhaNirmanSahakara Sangha v. Narayanamma*⁴, where it was held that a Central law is not intended to cover the whole field, a state legislation can supplement the Central law without contradicting the latter. The NCTE prescribed minimum qualification and the requirement of having an additional training course/qualification can both stand together. The State Rules merely legislate in an uncovered field.
27. Notwithstanding, it was also argued that the impugned notification/advertisement is merely an administrative instruction which, in absence of legislative rules of recruitment, shall be superseded by NCTE Regulations, which are statutory in nature. This court is unable to accept this contention. This court, in this context, has referred to the

²1984 Supp SCC 28 (Paras - 40B, 45-52)

³AIR 1939 FC 74 (Para - 83)

⁴(2003) 1 SCC 228 (Paras - 10-12)

judgment of the Supreme Court in *B. N. Nagarajan vs State of Mysore*⁵:

*"It would be convenient to deal with this argument at this stage. Mr. Nambiar contends that the words "shall be as set forth in the rules of recruitment of such service specially made in that behalf" clearly show that till the rules are made in that behalf no recruitment can be made to any service. We are unable to accept this contention. First it is not obligatory under proviso to art. 309 to make rules of recruitment, etc., before a service can be constituted or a post created or filled. This is not to say that it is not desirable that ordinarily rules should be made on all matters which are susceptible of being embodied in rules. Secondly, the State Government has executive power, in relation to all matters with respect to which the Legislature of the State has power to make laws. It follows from this that the State Government will have executive power in respect of List II, Entry 41, State Public Services. It was settled by this Court in *Ram JawayaKapur v. The State of Punjab*(1) that it is not necessary that there must be a law already in existence before the executive is enabled to function and that the powers of the executive are limited merely to the carrying out of these laws. We see nothing in the terms of art. 309 of the Constitution which abridges the power of the executive to act under art. 162 of the Constitution without a law. It is hardly necessary to mention that if there is a statutory rule or an act on the matter, the executive must abide by that act or rule and it cannot in*

⁵(1966) 3 SCR 682

exercise of the executive power under art. 162 of the Constitution ignore or act contrary to that rule or act.”(Emphasis added)

28. It is not in dispute that NCTE is a statutory body which has been empowered to ensure, inter alia, that the teachers appointed in the schools, primary, upper primary and secondary, across country, have a minimum level of qualification. The NCTE Regulations, 2014, prescribing minimum qualifications for candidates aspiring to be teachers of Govt. Secondary Schools, is a piece of Central delegated legislation. No doubt, the State Legislature could not have made any legislation or any delegated legislation inconsistent with or in derogation of the NCTE Notification. Neither the S&M.E. nor the Director of Secondary Education, Odisha has done so. The requirement in clause 4 of the impugned advertisement is in addition to the requirement prescribed by the NCTE Regulations, 2014 and supplements the requirements contained in the NCTE Regulations. There is no repugnancy between the said legislations.
29. It is important to note that the NCTE Notification prescribes, *‘minimum qualifications’* of teachers. It is not intended to be exhaustive. It is merely a guideline which provides that candidates not possessing the minimum qualification prescribed by it, will not be eligible for appointment as Secondary Teachers. In my considered view, this would not

prevent the State Legislatures from prescribing additional or specific criteria which a candidate must meet for being eligible for appointment as Secondary Teacher. This, in my view, is an entirely reasonable requirement. After all, unless a candidate is reasonably proficient in speaking, reading and writing in the language which he has chosen as the medium of instruction, he would be unable to communicate with the students successfully or to effectively discharge his/her role and duties as a teacher. In my considered view, there is no conflict between the NCTE Notification and the Recruitment Notification/Advertisement. Both the NCTE Notification and the Recruitment Rules framed by the Board can stand together. Hence, the said provision in the impugned notification/advertisement cannot be said to be repugnant to the NCTE Notification.

30. The Learned Counsel for the Petitioners submits that a candidate is not estopped from challenging the selection process if the selection process has misconstrued statutory rules as the selection process allegedly has done in the matter at hand. Ld. Counsels for the Opposite Parties have, on the other side, vehemently argued that the present Writ Petitions are not maintainable given participation of the petitioner that the Petitioner have admittedly participated in the selection

process and understood all terms and conditions laid down in the impugned advertisement.

31. In this regard, it is trite in law that a candidate who has participated in the selection process, upon being unsuccessful, cannot turn around and challenge the advertisement. This position of law has been time and again reiterated by the Hon'ble Supreme Court in *Madan Lal v. State of J.K.*⁶, *Ranjan Kumar v. State of Bihar*⁷, *Anupal Singh v. State of U.P.*⁸, *Vijay Seyal v. State of Punjab*⁹ and *Dr. G. Sarana v. University of Lucknow*¹⁰. In *Dhananjay Malik v. State of Uttaranchal*¹¹. It has been held by the Hon'ble Supreme Court that having participated in the selection process without any *demur*, the writ petitioners are estopped from complaining that the selection process was not in accordance with the Rules. If they thought that the advertisement and selection process were not in accordance with the Rules, they should have challenged the advertisement and selection process, at the threshold itself, without participating in the selection process.

6 (1995) 3 SCC 486

7 (2014) 16 SCC 187

8 (2020) 2 SCC 1731

9 (2003) 9 SCC 401

10 (1976) 3 SCC 585

11 (2008) 4 SCC 171

32. As it flows therefrom, needless to say that the persons who participated in the selection process after having accepted the terms and conditions of the selection, cannot challenge the said process subsequently and this issue, therefore, is answered in favour of the Opposite parties.
33. In light of the aforesaid discussion and having regard to the present position of law, this Court has no hesitation in coming to the conclusion that the petitioner cannot be granted any relief by way of a writ and the present Writ Petition is liable to be dismissed.
34. Accordingly, all the aforesaid Writ Petitions are dismissed.

 (Dr. S.K. Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 20th September , 2022/B. Jhankar*