

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

124+125

CWP No.15802 of 2023
Date of Decision : 25.7.2023

Monika and others

..... Petitioners

versus

State of Haryana and another

..... Respondents

2. CWP No.15829 of 2023

Jyoti and others

..... Petitioners

versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Lalit Rishi, Advocate and
Mr. Tejpal Singh Dhull, Advocate, for the petitioners

Ms. Shruti Jain Goyal, Senior DAG, Haryana

Mr. Kanwal Goyal, Advocate and
Mr. Govind Tanwar, Advocate, for respondent no.2/HPSC

TRIBHUVAN DAHIYA J. (ORAL):

This order shall dispose of the above numbered two petitions as similar questions of law and facts are involved therein. Facts are being taken from CWP No. 15802 of 2023.

2. This petition has been filed seeking a writ of *certiorari* quashing the condition in advertisement no. 27 of 2023, dated 24.6.2023 (Annexure P-10), that requires certificate of Haryana Teacher Eligibility Test (HTET) as one of the qualification for applying for the post of Post

Graduate Teacher (PGT)-Fine Arts, since it is illegal and against the

Regulations, dated 12.11.2014, issued by the National Council for Teacher Education (hereinafter referred to as 'the NCTE') (Annexure P-3).

3. The facts of the case in brief are, respondent no.2 invited online applications from eligible candidates for the posts of PGT in the subject of Fine Arts, vide advertisement no.27 of 2023 dated 24.6.2023. Closing date for submission of applications was 18.7.2023. The essential qualification for the posts was notified in the advertisement as per requirement of the Haryana State Education School Cadre (Group-B) Service Rules, 2012 (hereinafter referred to as 'the Rules of 2012'), which is as under:

6. ESSENTIAL QUALIFICATION:

The essential qualification is as per Haryana State Education School Cadre (Group-B) Service Rules, 2012, dated 11.4.2012 as amended from time to time.

PGT Fine Arts:

- (i) M.A. Fine Arts with at least 50% marks and B.Ed. From recognized university;
- (ii) Matric with Hindi/Sanskrit or 10+2/B.A./M.A. with Hindi as one of the subjects.
- (iii) Certificate of having qualified Haryana Teacher Eligibility Test (HTET)
- (iv) Consistent good academic record.

3.1. The petitioners, who have not qualified either HTET or State Teacher Eligibility Test (STET), have impugned the aforementioned essential qualification requiring the candidates to have qualified the test to be eligible for the advertised posts, by filing the instant petition dated 20.7.2023.

4. Learned counsel for the petitioners contend that there is no

justification or rationale in prescribing HTET/STET certificate as one of the essential qualification for the posts advertised. The NCTE, which is a Central body for maintenance of norms and standards in the teacher education system and matters connected therewith, has itself not prescribed such qualification as essential, vide Regulations-the NCTE, (Determination of Minimum Qualifications for persons to be recruited as Education Teachers and Physical Education Teachers in Pre-primary, Primary, Upper-primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014 (hereinafter referred to as 'the Regulations of 2014'). Therefore, the HTET could not have been prescribed as essential by the respondents. The qualification prescribed by these Regulations for recruitment as school teacher/PGT, is as under:

5. Senior Secondary/Intermediate (for Classes XI-XII)

(a) Post Graduate with at least 50% marks (or its equivalent) from recognized University and Bachelor of Education (B.Ed.) from National Council for Teachers Education recognized institution.

(b) Post Graduate with at least 45% marks (or its equivalent) from recognized University and Bachelor of Education (B.Ed.) from National Council for Teachers Education recognized institution (in accordance with the National Council of Teachers 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 13.11.2022 and National Council of Teachers Education (Recognized Norms and Procedure) Regulations, 2007 notified on 10.12.2007.

or

(c) Post Graduate with at least 50% marks (or its equivalent) from recognized University and B.A. Ed./B.Sc.Ed. from any NCTE recognized institution.

4.1. A reference has also been made by learned counsel for the petitioners to the guidelines dated 11.2.2011 (Annexure P-1) issued by the NCTE, to contend that Teacher Eligibility Test (TET) has been prescribed as an essential qualification only for a person to be eligible for appointment as a Teacher in Class I to VIII only; whereas, the instant advertisement is for recruiting PGTs for higher classes. Further, reference has been made to interim order dated 27.11.2019, passed in a miscellaneous application filed in CWP No. 26449 of 2019 titled *Rani and others v. State of Haryana and others* (Annexure P-7), wherein the applicants/petitioners were permitted to participate in the selection process by submitting their applications; the main petition was filed impugning the service Rule prescribing HTET/STET as an essential qualification for the posts. Still further, a reference has been made to other interim order passed by this Court dated 25.2.2020 in CWP No. 5041 of 2020 titled *Dheeraj and others v. State of Haryana and others*, permitting the petitioners to participate in the selection process on provisional basis; the petition was filed to challenge the similar condition imposed in the advertisement dated 26.8.2019 to qualify HTET/STET for being eligible for the post of PGTs. On that basis, it has been submitted that the petitioners may also be allowed to participate in the selection process subject to final outcome of the petition.

5. Learned counsel for the respondents, appearing on advance notice, contend that the closing date for submission of applications, 18.7.2023, has already passed, and the same cannot be extended. In case the petitioners are allowed to submit their application forms at this stage, it will open floodgates to applicants which will not only derail the

selection process, but will be a clear violation of the conditions of advertisement itself. It is further submitted by the learned counsel that requirement of passing the HTET/STET is based on the statutory service Rules which prescribe it as one of the essential qualifications for the advertised posts. It has been submitted that despite the challenge having been laid to the statutory service Rule prescribing HTET/STET as an essential qualification in *Rani* case (*supra*), no stay on its operation has been granted by the Division Bench. Therefore, the respondents remain bound to follow the Rule and recruit candidates only on that basis. The interim order, dated 25.2.2020, passed in *Dheeraj* case (*supra*) was only to provisionally permit the petitioners to participate in the selection process. Other such orders by this Court in different petitions have been so passed prior to the cut-off date only. In *Dheeraj* case (*supra*) also, the last date for submission of application forms was extended upto 2.3.2020.

6. Learned counsel for the parties have been heard and case files have been perused.

7. Undisputedly, the impugned condition in the advertisement requiring the applicants to qualify HTET to be eligible for the posts in question, is based on the statutory service Rules of 2012. The Rule prescribing HTET as essential qualification, is not under challenge in the instant petition. Therefore, in case the advertisement requires HTET as one of the essential qualifications, there is nothing illegal or irregular about it; rather, it is in compliance of the Rules, which bind the respondents and obligates them to select the candidates who are duly qualified to be so appointed.

8. The challenge to HTET as an essential qualification on the

ground of its being contrary to the minimum qualifications prescribed by the NCTE, vide Regulations of 2014, for the posts of PGT-Fine Arts Senior Secondary/Intermediate (for Classes XI and XII), is also not maintainable. The NCTE is a statutory body created under an Act of Parliament, the National Council of Teacher Education Act, 1993 (hereinafter referred to as 'the Act of 1993'). It is mandated to coordinate development of teacher education throughout the country, maintain norms and standards for the purpose, and prescribe minimum qualifications for appointment of teachers, by issuing Regulations as per Sections 12 and 12-A of the NCTE Act, which are as under:

Section 12. Functions of the Council.

It shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and coordinated development of teacher education and for the determination and maintenance of standards for teacher education and for the purposes of performing its functions under this Act, the Council may--

- (a) undertake surveys and studies relating to various aspects of teacher education and publish the result thereof;
- (b) make recommendations to the Central and State Government, Universities, University Grants Commission and recognised institutions in the matter of preparation of suitable plans and programmes in the field of teacher education;
- (c) co-ordinate and monitor teacher education and its development in the country;
- (d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in recognised institutions;
- (e) lay down norms for any specified category of courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum;
- (f) lay down guidelines for compliance by recognised institutions, for starting new courses or training, and for providing physical and instructional facilities, staffing pattern and staff qualification;

- (g) lay down standards in respect of examinations leading to teacher education qualifications, criteria for admission to such examinations and schemes of courses or training;
- (h) lay down guidelines regarding tuition fees and other fees chargeable by recognised institutions;
- (i) promote and conduct innovation and research in various areas of teacher education and disseminate the results thereof;
- (j) examine and review periodically the implementation of the norms, guidelines and standards laid down by the Council, and to suitably advise the recognised institutions;
- (k) evolve suitable performance appraisal system, norms and mechanisms for enforcing accountability on recognised institutions;
- (l) formulate schemes for various levels of teacher education and identify recognised institutions and set up new institutions for teacher development programmes;
- (m) take all necessary steps to prevent commercialisation of teacher education; and
- (n) perform such other functions as may be entrusted to it by the Central Government.

Section 12A. Power of Council to determine minimum standards of education of school teachers -

For the purpose of maintaining standards of education in schools, the Council may, by regulations, determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college, by whatever name called, established, run, aided or recognised by the Central Government or a State Government or a local or other authority:

Provided that nothing in this section shall adversely affect the continuance of any person recruited in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate schools or colleges, under any rule, regulation or order made by the Central Government, a State Government, a local or other authority, immediately before the commencement of the National Council for Teacher Education (Amendment) Act, 2011 (18 of 2011) solely on the ground of non-fulfillment of such qualifications as may be specified by the Council:

Provided further that the minimum qualifications of a teacher referred to in the first proviso shall be acquired within the period specified in this Act or under the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009).

9. As apparent from these provisions, apart from laying down norms for ensuring planned and coordinated development of teacher education and determining its standards, the NCTE under Sections 12 (d) and 12A of the Act of 1993 is empowered to lay down minimum qualifications for employment of teachers in schools/recognised institutions from Pre-primary to Intermediate and College levels. In line with the power conferred, the Regulations of 2014 only prescribe 'minimum qualifications' for recruitment of teacher at different levels, including Senior Secondary and Intermediate levels; also, there is an explicit stipulation to that effect in these Regulations. These, accordingly, lay down a benchmark for maintenance of standards in teacher education system in the form of minimum qualifications for recruitment of teachers in schools/institutions throughout the country. The Regulations do not bar laying down of better or higher qualification for recruitment of teachers, as deemed appropriate by the appointing/recruiting agency, in an effort to ensure better quality of teachers, or for any other related purpose. Provided, the same is not contrary to the norms and standards laid down by the NCTE. Therefore, merely because the qualification of passing an eligibility test has not been prescribed by the Regulations or it has been prescribed by the NCTE guidelines, dated 11.01.2011, only for appointment of teachers up to Class VIII, cannot in itself be a ground to declare the same illegal.

10. In the instant case, the respondents have prescribed HTET

certificate as an essential qualification, alongwith the qualification prescribed by the Regulations of 2014. This amounts to prescribing an enhanced qualification in addition to the one laid down in the Regulations. The obvious purpose is to engage teachers with better capabilities to provide quality instruction to the students. The additional qualification prescribed is neither unreasonable or arbitrary, nor is it contrary to or in derogation of the prescribed norms and standards in any manner. Therefore, the respondents are within their rights to prescribe HTET certificate as an essential qualification.

11. The issue is no longer *res integra*, as it has been held by the Supreme Court in *Visveswariah Technological University and another v. Krishnendu Halder and others*, (2011) 4 SCC 606, that the norms and standards laid down by the Central regulatory bodies for education, do not bar laying down of enhanced norms by the State bodies. The All India Council of Technical Education (hereinafter referred to as 'the AICTE') is a regulatory body for technical education in the country, established like the NCTE under a Central Act, the All India Council of Technical Education Act, 1987. The issue before the Court in the aforementioned case was whether a university can prescribe minimum eligibility for admission to B.E./B.Tech. Courses which is higher than the eligibility fixed by the AICTE in exercise of its powers to lay down norms and standards for ensuring coordinated and integrated development of technical and management education. The relevant paragraph of the judgment is as under:

14 (i) While prescribing the eligibility criteria for admission to institutions of higher education, the State/University cannot adversely affect the standards laid down by the central body/AICTE.

The term “adversely affect the standards” refers to lowering of the norms laid down by the central body/AICTE. Prescribing higher standards for admission by laying down qualifications in addition to or higher than those prescribed by AICTE, consistent with the object of promoting higher standards and excellence in higher education, will not be considered as adversely affecting the standards laid down by the central body/AICTE.

12. There is another aspect which renders the petition not maintainable, viz, its having been filed beyond the cut-of-date. It is trite law that closing date/cut-off-date for submission of applications pursuant to an advertisement cannot be extended, much less for persons who are not eligible to be appointed as per the advertisement. It could not be pointed out by learned counsel for the petitioners that there is anything illegal or arbitrary about providing 18.7.2023 as the last date for submission of applications; nor is it that due to any technical malfunction or related issue, the candidates were prevented from submitting their applications before the closing date. In such situation, the last date for receiving applications/forms cannot be altered by the Court in exercise of jurisdiction under Article 226 of the Constitution. Besides, in case the closing date is extended only for the petitioners, who have approached this Court taking the plea that the service Rule prescribing HTET certificate as an essential qualification is under challenge in another petition before this Court, though, admittedly, there is no stay on its operation, it will be discriminatory against the applicants who could not apply for the posts finding themselves ineligible on account of the advertised conditions of eligibility. There is no reason why the petitioners should be allowed to steal a march over them only because they have

chosen to come to this Court, that too on a specious plea.

13. Further, merely because this Court vide interim order dated 27.9.2019, passed in *Rani* case (*supra*), permitted the petitioners therein to participate in the selection process, is no reason why the petitioners should also be so permitted, especially when the statutory service Rule prescribing the impugned qualification is not under challenge in the instant petition. Besides, no right accrues to the petitioners on the basis of an interim order passed by the Court in a pending litigation which is neither a final adjudication of rights of the parties therein, nor does it lay down a binding precedent.

14. In view of the above discussions, there is no ground to entertain the petitions, and the same are, accordingly, dismissed.

15. Photocopy of this order be placed on the file of the connected case.

(TRIBHUVAN DAHIYA)
JUDGE

25.7.2023
Ashwani

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No