IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 9010 of 2023 a/w CWP No.10315 of 2023, CWP No.264 of 2024, CWP No.416 of 2024 and CWP No.1678 of 2024
Reserved on: 04.12.2024
Decided on: 30.12.2024

CWP No.9010 of 2023

Hemant Sharma ... Petitioner

Versus

State of H.P. & others ... Respondents

CWP No.10315 of 2023

Manju ... Petitioner

Versus

State of Himachal Pradesh & others ... Respondents

CWP No.264 of 2024

Santosh Kumar & others ... Petitioners

Versus

State of Himachal Pradesh & others ... Respondents

CWP No.416 of 2024

Sudershan Kumar & others ... Petitioners

Versus

State of Himachal Pradesh & others ... Respondents

CWP No.1678 of 2024

Rajender Kumar & others ... Petitioners

Versus

State of Himachal Pradesh & others ... Respondents

Coram
Hon'ble Mr. Justice Ajay Mohan Goel, Judge.
Whether approved for reporting?[1]Yes

CWP No.9010 of 2023

For the petitioner(s) : Mr. Ashok Kumar, Senior Advocate, with Ms. Anubhuti Sharma, Advocate, in CWP No.9010 of 2023.
Mr. Bhim Raj Sharma, Advocate, in CWP No.10315 of 2023.

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[1] *Whether reporters of the local papers may be allowed to see the judgment?*

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		Dr. Lalit Kumar Sharma, Advocate, in CWP No.264 of 2024. Mr. Neeraj Sharma, Senior Advocate, with Mr. Ankit Dhiman, Advocate, in CWP No.416 of 2024. Mr. Avinash Jaryal, Advocate, in CWP No.1678 of 2024.
For the respondent(s)	:	Mr. Anup Rattan, Advocate General, with Mr. Sumit Sharma, Deputy Advocate General, for the respondents-State, in all the petitions. Mr. Surinder Kumar Sharma, Advocate, for the interveners, in CWP No.9010 of 2023 Mr. B. Nandan Vashishta, Advocate, for respondent No.3, in CWP No.416 of 2024.

Ajay Mohan Goel, Judge

As common issues of law and facts are involved in all these petitions, the same were heard together and are being disposed of vide common judgment.

2. For the purposes of facts, this Court is referring to CWP 9010 of 2023, titled as Hemant Sharma Versus State of Himachal Pradesh and others.

3. Brief facts necessary for the adjudication of this petition are that the petitioners, who are possessing the qualifications for being appointed against the post of Shastri in the Education Department, to the Government of Himachal Pradesh as per the Recruitment Rules framed under the proviso to Article 309 of the Constitution of India, have challenged Notification, dated

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29.07.2011 (Anneuxre P-3), issued by the National Council of Teacher Education (hereinafter to be referred as “the NCTE’) and Circular dated 11.10.2023 (Annexture P-5), in terms whereof, the Directorate of Elementary Education, Himachal Pradesh has issued instructions regarding filling up the vacant post of Shastri in the Department of Elementary Education, Himachal Pradesh, on contract basis.

4. The contention of the petitioners is that there exist Recruitment and Promotion Rules for filling up the posts of Shastri, copy whereof is on record. In terms of the Recruitment Rules, as they stand amended from time to time, the essential qualifications for being appointed as a Shastri teacher are Shastri with at least 50% marks from a University/Institution duly recognized by the State of Himachal Pradesh and the candidate should have also passed TET (Shastri) in an examination conducted by Subordinate Service Selection Board, Hamirpur.

5. According to the petitioners, the respondent-State has now in terms of the impugned Circular initiated fresh process for filling up of 494 posts of Shastri Teacher, for which the counselling was scheduled to be conducted on 17th and 18th November, 2023, by derogating the provisions of the Recruitment and Promotion Rules and introducing qualifications, which are not prescribed in the

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Recruitment Rules.

6. Learned Senior Counsel, appearing for the petitioners has drawn the attention of the Court to Clause-3 of the impugned Circular and submitted that in terms thereof, the appointment against the post of Shastri is to be made on the basis of existing Recruitment and Promotion Rules, read with the NCTE Norms and Guidelines issued from time to time (Government Instructions, vide letter No.EDN-C-A(3)-1/2016-Vol-I, dated 27.09.2023). According to learned Senior Counsel, the qualifications which stand prescribed in the impugned Circular, render those candidates also eligible to participate in the process who otherwise are not eligible in terms of the Recruitment Rules, as they do not possess the requisite qualifications as per the Recruitment Rules. Learned Senior Counsel, submitted that as the process is in violation of the provisions of the Recruitment Rules, therefore, the Circular is bad in law and the same ought to be quashed. Learned Senior Counsel further submitted that the petitioners are also aggrieved by Notification, dated 29.07.2011 (Annexure P-3). He submitted that even Notification, dated 29.07.2011 (Annexure P-3) is not sustainable in law, for the reason that by virtue thereof, the incumbents who do not possess the educational qualifications prescribed in the Recruitment and Promotion Rules have been made

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eligible for appointment against the post of Shastri, which arbitrarily allows ineligible candidates to participate in the process of recruitment who do not possess the requisite qualification in terms of the Recruitment Rules and further it has already been held by the Hon'ble Division Bench of this Court in *CWP No.1773 of 2020*, titled as *Satish Kumar* Versus *State of Himachal Pradesh and connected matters, 2022 SCC OnLine HP 5741*, decided on *21.09.2022,* that said Notification has not been issued in accordance with law.

7. On the other hand, learned Advocate General has submitted that no doubt the Circular under challenge includes qualifications, which are not included in the Recruitment Rules, however, this was done for the reason that in terms of the law declared by Hon'ble Supreme Court of India in *Civil Appeal No. 3707 of 2020*, titled as *Ram Sharan Maurya and others* Versus *State of U.P. and others*, as also *Civil Appeal No.5068 of 2023,* titled as *Devesh Sharma* Versus *Union of India and others,* Notifications issued by the NCTE from time to time regarding qualifications for appointment of Teachers are to be read in conjunction with the Recruitment and Promotion Rules for the recruitment of Teachers. Accordingly, he submitted that as the qualifications which have been included in the impugned Circular are those which find mention in Notification dated 29.07.2011, issued by the NCTE, therefore, there is no merit

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in the petitions.

8. NCTE, which was impleaded as a party respondent has taken the stand that in exercise of powers conferred under sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter to be referred as RTE Act), the Central Government authorised the NCTE as the "Academic Authority" to lay down the minimum qualification for a person to be eligible for appointment as a Teacher. Thereafter, the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India issued Notification, dated 31.03.2010 under Section 23(1) of the RTE Act and in compliance thereto, the NCTE has laid down the minimum qualifications for a person to be eligible for appointment as a Teacher from Class-1 to Class-8. It is further the stand of the NCTE that the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India, in terms of letters dated 25.04.2011 and 23.05.2011, appended with the reply, directed NCTE to incorporate certain changes by amending Notification dated 23.08.2010. Thereafter, Notification, dated 29.07.2011, has been issued on the directions issued by the Government of India, Ministry of Human Resource Development.

9. I have heard learned Counsel for the parties and have

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also carefully gone through the pleadings as well as documents appended with the same.

10. It is not in dispute that in terms of the impugned Circular, certain qualifications stand prescribed therein, in terms whereof, candidates possessing qualifications not prescribed in the Recruitment and Promotion Rules, are eligible for appointment against the post of Shastri. To put it in other words, in terms of the impugned Circular, the candidates who do not possess the qualifications prescribed in the Recruitment Rules, have also been made eligible to participate in the process for appointment against the post of Shastri, provided they fulfill the eligibility qualification prescribed in the impugned Circular.

11. The moot issue before this Court is as to whether said act of the respondent-State is sustainable in the eyes of law or not.

12. It is relevant to mention here that earlier, process was undertaken by the department to fill up the posts of Shastris as per the Recruitment Rules. Parties approached this Court by way of *CWP No.1773 of 2020*, titled as *Satish Kumar* Versus *State of Himachal Pradesh and others and other connected matters* against the recruitment process, praying for the relief that as they had qualified B.Ed., therefore, a direction be issued to the respondent-Department to fill up the post of Shastri Teacher strictly in accordance with the

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norms, as laid down by the NCTE in it's Notification, dated 29.07.2011, and not on the basis of Notification, issued by the State Government on 29.09.2020, which made only those eligible who fulfilled eligibility criteria as per the Recruitment Rules, as the same was in violation of the Instructions of the NCTE.

13. Hon'ble Division Bench of this Court in terms of judgment, passed in *CWP No.1773 of 2020*, titled as *Satish Kumar* Versus *State of Himachal Pradesh and connected matters,* ***2022 SCC OnLine HP 5741***, decided on *21.09.2022*, was pleased to hold as under:-

> "*54. Now, as regards the judgment passed in* ***Vinod Kumar's case*** *(supra), the validity of the Notification dated 29.07.2011 was again not in question in the manner as stated above and there also the Court while placing reliance on the judgment of the Hon'ble Supreme Court in* ***Ram Sharan Maurya's case*** *(supra) recognized the NCTE to be an "academic authority", who alone could prescribe the qualifications as is evident from paras 14 to 17 of the judgment which read as under:-*
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> > "*14. NCTE vide Notification dated 23.08.2010, in exercise of powers under Sub-Section (1) of Section 23 of the RTE Act prescribed minimum qualifications for a person to be eligible for appointment as teacher, including teachers in Class I to V in*

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*a school referred to in Clause (n) of Section 2 of RTE Act. The qualifications so prescribed came to be amended from time to time and one such amendment was carried vide impugned notification dated 28.6.2018, as noticed above, whereby candidates with B.Ed. h*ave also been made eligible for the post of JBT.

15. The issue as to legality, efficacy and prevalence of notification dated 28.6.2018 issued by NCTE is no more res-integra after the judgment passed by Hon'ble Supreme Court in Ram Sharan Maurya and others vs. State of U.P. and others, AIR 2021 SC 954. Hon'ble Supreme Court while dealing with the powers & jurisdiction of NCTE vis-a-vis Notification dated 28.06.2018 has been pleased to hold as under:

> "*38.4 It is thus clear that for maintaining standards of education in schools, the NCTE is now specifically empowered to determine the qualifications of persons for being recruited as teachers in schools or colleges. In addition to regulating standards in "teacher education system", the NCTE Act now deals with regulation and proper maintenance of norms and standards in respect of qualifications of persons to be*

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recruited as teachers. By Notification dated 31.03.2010, the Central Government, in exercise of powers conferred under Section 23 of the RTE Act authorised the NCTE as an "Academic Authority" to lay down the minimum qualifications for a person to be eligible for appointment as a teacher.

40. The Notification dated 28.06.2018 issued by the NCTE was in exercise of power so conferred upon it by virtue of the Notification dated 31.03.2010. In terms of the Notification dated 28.06.2018, the qualification of 'Bachelor of Education' from any NCTE recognised institution shall now be a valid qualification for appointment as a teacher in classes I to V provided the person so appointed as a teacher mandatorily undergoes six months' Bridge Course in elementary education within two years of such appointment.

41. Going by the Parliamentary intent in empowering NCTE under the provisions of the NCTE Act and specific authorization in favour of NCTE under said Notification dated 31.03.2010, the authority of NCTE is beyond any doubt. Though there is no specific regulation as contemplated under Section 32 read with Sections 12 and 12A of the NCTE

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Act, for the present purposes by virtue of the specific authorization under the Notification dated 31.03.2010, NCTE was entitled to lay down that those holding the qualification of 'Bachelor of Education' as detailed in said Notification are entitled to be appointed as teachers for classes I to V. Such prescription on part of the NCTE would be binding. It is for this reason that G.O. dated 01.12.2018 notifying ATRE-2019 clearly stated that the candidates possessing minimum qualifications specified in Notifications issued by the NCTE including one dated 28.06.2018 were entitled to participate in ATRE-2019.

43. The Notification dated 28.06.2018 being binding on the State Government, the statutory regime put in place by the State has to be read in conformity with said Notification. The eligibility or entitlement being already conferred by Notification dated 28.06.2018, the amendments to 1981 Rules were effected only to make the statutory regime consistent with the directives issued by the NCTE. The right or eligibility was not conferred by amendments effected to 1981 Rules for the first time and therefore the element of retrospectivity present in the concerned amendments has to be read in that perspective. The intent behind those

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amendments was not to create a right for the first time with retrospective effect but was only to effectuate the statutory regime in tune or accord with NCTE directives. Theoretically, even if such statutory regime was not made so consistent, the concerned candidates holding B.Ed. Degrees could still be eligible and could not have been denied candidature for ATRE- 2019.

16. There also is no challenge in second set of petitions to the power vested in NCTE, by Section 12-A of NCTE Act and under Section 23(1) of RTE Act, to prescribe minimum qualification for the teachers. This being so, the Notification issued by the NCTE prescribing qualifications for the teachers of Class I to V has to be read as mandatory prescription of valid law. Education being subject of concurrent list in schedule 7 of the Constitution of India, the prevalence of Central Act shall remain.

17. Thus, it is clear from above noted exposition of law that the attempt of petitioners in second set of petitions to challenge the prescription made by NCTE vide notification dated 28.6.2018 is a futile exercise. These petitioners, in the facts and circumstances of the case, cannot be heard to have acquired any vested right on the basis of advertisement issued by HPSSC, as the said advertisement itself was deficient in prescription of

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essential qualification mandated under law and hence would deem to include such lawful prescription. Even otherwise, the notification issued by NCTE prescribing graduation with B.Ed. as one of the essential qualifications for JBT was prior in time to the advertisement and on this account also petitioners in second set of petitions do not have any right to assail the same."

55. The issue whether the Notification dated 29.07.2011 had been issued after complying with the provisions of the NCTE Act, more particularly, Sections 3, 12, 12A, never came up for consideration before the Hon'ble Supreme Court in ***Ram Sharan Maurya's case*** *(supra) or before this Court in* ***Vinod Kumar's case*** *(supra).*

56. Moreover, the material now placed by the NCTE along with its affidavit as taken note of in the earlier part of the judgment was never placed either before the Hon'ble Supreme Court or before this Court as the need for the same otherwise did not arise. In such circumstances, neither the judgment in ***Ram Sharan Maurya's case*** *(supra) or even for that matter in* ***Vinod Kumar's case*** *(supra) is attracted or applicable in the instant cases.*

57. Since, we have already held the Notification dated 29.07.2011 to be issued by the MHRD without following the procedure and also without application of independent mind, therefore, the further question whether the regulations were required to be

placed before the Parliament has been rendered academic and need not be gone into.

58. Lastly, the question which still remains for consideration is whether the State Government can now turn around and change its stand.

59. As observed earlier, the stand of the State Government as put-forth in its reply was that the State Government was bound by the Notification issued by the Central Government, as is evident from paras 8 and 9 of the preliminary submissions of the reply which read as under:-

> *"8. That in order to fulfill remaining eligibility condition of possessing B.Ed./D.L.Ed./B.L.Ed. Or whatever name so known for considering for appointment as Shastri, the respondent No.1 by adhering to the norms of NCTE, decided to offer appointments to the candidates recommended by the HPSSSB Hamirpur for the post of Shastri under post Code 572 by imposing condition that the selected incumbents had to acquire/fulfill qualification of B.Ed./D.L.Ed./B.L.Ed. It was also intimated to impose similar condition to the batch-wise appointees of Shastri for the year 2016 and 2017.*
>
> *9. That the said condition of acquiring/fulfilling qualification of B.Ed./D.L.Ed./B.L.Ed is being imposed to*

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> *appointees of Shastri in future also so that NCTE norms could not be violated. Moreover, the State is bound to implement NCTE regulations in letter and spirit. Recruitment and Promotion Rules of Shastri wherein the qualification of B.Ed./D.L.Ed./B.L.Ed is required to be introduced as one of the mandatory conditions and said proposal for amendment in R&P Rules is under process at the level of competent authority for its finalization."*

60. Now, the stand of the respondent-State is that since NCTE has not applied its mind and placed the matter before the Council as was required under Sections 12 and 12A of the NCTE Act, therefore, the instructions issued by the NCTE are not binding upon it.

61. It needs to be noticed that the change in stand of the State Government is solely on the basis of the affidavit and the material placed by the NCTE and we really see no reason why in such circumstances the State should not be permitted to change its stand.

62. Even otherwise, it is settled law that a categorical admission cannot be resiled from, but in a given case, it may be explained and clarified. Offering explanation in regard to an admission or explaining away the same, however, would depend upon the nature and character thereof.

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> *63. In the instant case, it has been duly established and otherwise recognized by this Court that it is the NCTE alone that has been notified an "academic authority" for the purpose of sub-section (1) of Section 23 as well as sub-section (1) of Section 29 of the RTE Act and, therefore, in terms of sub-section (1) of Section 23, it is the NCTE alone which has authority to prescribe minimum eligibility qualification for appointment as a teacher. But, then such qualifications have to be laid down by the NCTE by following the procedure as laid down under the NCTE Act, more particularly, Sections 3, 12 and 12A thereof and in case the procedure is not followed, then the instructions cannot be issued by the NCTE so as to bind the State Government.*
>
> *64. In view of the aforesaid discussion and for the reasons stated above, we find no merit in these petitions and the same are accordingly dismissed. The parties are left to bear their own costs. All pending applications stand disposed of.*"

14. Thus, the findings returned by Hon'ble Division Bench are that it was NCTE alone which stands notified as an "Academic Authority" for the purpose of sub-section (1) of Section 23 as well as sub-section (1) of Section 29 of the RTE Act and therefore, in terms of sub-section (1) of Section 23, it is NCTE alone which has the authority to prescribe the minimum educational qualification for appointment of Teachers. Hon'ble Division Bench further held that

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the qualifications, therefore, had to be laid down by NCTE by following the procedure as laid down under the NCTE Act, more particularly in Sections 3, 12 and 12-A thereof and if said procedure was not followed, then Instructions could not be issued by NCTE so as to bind the State Government.

15. Before proceeding further, this Court would like to refer to the relevant provisions of the RTE Act, 2009. Section 23 of the Act provides that the Central Government shall notify an "Academic Authority" for the purpose of Section 21, within one month of the appointed date. In terms of Section 23 of the Act, any person possessing such minimum qualification as laid down by an "Academic Authority" authorised by the Central Government by Notification, shall be eligible for appointment as a Teacher. Further, in terms of Section 29 of the Act, the curriculum and the evaluation procedure for elementary education shall be laid down by an "Academic Authority" to be specified by the Appropriate Government by Notification.

16. It is not in dispute that it is the NCTE which has been declared as the "Academic Authority" by the Government. Thus, the mandate of the RTE Act is that the qualifications for appointment and terms and conditions of service of the Teacher shall be, as laid down by the "Academic Authority" authorised by the Central

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Government. The minimum qualifications are to be laid down by the Academic Authority and not by the Central Government.

17. In this backdrop, if we read Annexure P-3, i.e. Notification, dated 29.07.2011, harmoniously with the reply that has been filed by the NCTE, the same demonstrates that the qualifications in fact were prescribed by the Department of School Education and Literacy, Ministry of Human Resource Development Government of India, which were simply incorporated by the NCTE. Thus, it was not NCTE, which exercised its authority being the "Academic Authority" in terms of Section 23 of the RTE Act and prescribed the minimum qualifications. It simply followed the dictate of the Ministry concerned.

18. There already is a judgment of Hon'ble Division Bench of this Court, which has been referred by me hereinabove, in terms whereof, as Notification dated 29.07.2011, was not issued after complying with the provisions of the Act, therefore, said Notification was not binding upon the State Government. The findings returned by Hon'ble Division Bench have attained finality.

19. In the backdrop of the said adjudication of Hon'ble Division Bench that Notification dated 29.07.2011, is not binding upon the State Government as the same was not issued as per the provisions of the RTE Act/NCTE Act, the issuance of Circular,

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Annexure P-5, in terms of the said Notification and incorporating therein the qualifications prescribed in Notification dated 29.07.2011, is not sustainable in law. Once, there already is a finding returned by Hon'ble Division Bench of this Court that Notification, dated 29.07.2011, is not binding on the State Government and more so as said finding was given in light of the defence so taken by the State in the above referred earlier writ proceedings, the subsequent change in the heart of the Government is otherwise also not understandable. In fact, in terms of the impugned Circular, State has done what the petitioners in the earlier proceedings wanted this Court to direct the State to do, which the Court had refused.

20. Therefore, what could not be achieved by those petitioners through the Court has now been done by the State Government indirectly in terms of impugned Circular, Annexure P-5. However, fact of the matter remains that as the findings of Hon'ble Division Bench qua the enforceability of Notification, dated 29.07.2011, having attained finality, are binding on all stake holders including the State, respondent-State could not have had incorporated the provisions thereof in the impugned Circular.

21. In the light of the findings returned hereinabove, these Writ Petitions are allowed. Circular, Annexure P-5, is quashed and

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set aside by reiterating the findings returned by Hon'ble Division Bench of this Court in CWP No.1773 of 2020 (supra), with regard to the enforceability of Notification dated 29.07.2011 (Annexure P-3).

22. The petitions stand disposed of. Pending miscellaneous application(s), if any also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

December 30, 2024
(Rishi)