



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(128+263)	CM-9857-CWP-2024 ; CM-10080-CWP-2024 in/and CWP-14546-2024 Date of Decision : 11.07.2024
Deepak Kumar and others	...Petitioners
	Versus
State of Punjab and others	...Respondents
(128+263/2)	CM-9872-CWP-2024 CM-9873-CWP-2024 CM-9874-CWP-2024 CM-10054-CWP-2024 CM-9878-CWP-2024 in/and CWP-14547-2024 (O&M)
Mahavir Singh and others	...Petitioners
	Versus
State of Punjab and others	...Respondents
(263/3)	CWP No. 14726 of 2024 (O&M)
Jagjit Singh and others	...Petitioners
	Versus
State of Punjab and others	...Respondents
(128)	CM-9789-CWP-2024 in/and CWP-14474-2024 (O&M)
Raman Kumar and others	...Petitioners
	Versus

CWP-14546-2024 and other connected cases

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2024:PHHC:091108



State of Punjab and others

...Respondents

(128)

CWP No. 14609 of 2024 (O&M)

Shivani Kapil and others

...Petitioners

Versus

State of Punjab and others

...Respondents

(129)

CWP No. 15115 of 2024 (O&M)

Saroj Bala and others

...Petitioners

Versus

State of Punjab and others

...Respondents

(130)

CWP No. 15512 of 2024

Vinay Kumar and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sanjay Kaushal, Sr. Advocate, with
Mr. Arjun Shukla, Advocate,
Mr. Ankit Rana, Advocate and
Mr. Abhishek Singla, Advocate for the petitioners
in CWP-14474-2024.

Mr. Vikas Chatrath, Advocate with
Ms. Tanya Sehgal, Advocate,
Ms. Vanshika Grover, Advocate, and
Ms. Preetleen Kaur, Advocate for the petitioners
in CWP Nos.14547, 14546 and 15115 of 2024.



Mr. Buta Singh Bairagi, Advocate, for the petitioners
in CWP No.14609 of 2024.

Mr. Ranjit Singh Kalra, Advocate, with
Mr. Randeep Singh Smagh, Advocate and
Ms. Mona Yadav, Advocate, for the petitioners
in CWP No.14726 of 2024 and CWP-15512-2024.

Mr. H.S. Saini, Advocate, for the applicant/intervenors
in CM-9789-CWP-2024 in CWP-14474-2024.

Mr. Navdeep Chhabra, Advocate, for the applicants
in CM-9857-CWP-2024 in CWP-14546-2024.

Mr. Chanakya Pandit, Advocate, for the applicants
in CM Nos. 9872-CWP, 9873-CWP and 9874-CWP of 2024 in
CWP-14547 of 2024.

Ms. Anu Chatrath, Addl. Advocate General, Punjab, with
Mr. Gaganeshwar Walia, Addl. Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

CM-9857-CWP-2024 in CWP-14546-2024

Present application has been filed for impleading the
applicants as respondents in the present petition.

Keeping in view the averments made in the application,
which are duly supported by an affidavit, present application is allowed.
The applicants, the details of whom are given in para 5 of the application,
are allowed to be impleaded as respondents in the present petition and the
amended memo of parties attached with the present application is taken
on record.

CM stands allowed.

CWP-14546-2024 and other connected cases

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CM-10080-CWP-2024 in CWP-14546-2024

Application is allowed, as prayed for.

CM-9872-CWP-2024 in CWP-14547-2024

Application is allowed, as prayed for.

CM-9873-CWP-2024 in CWP-14547-2024

Present application has been filed for impleading the applicants as interveners in the present petition.

Keeping in view the averments made in the application, which are duly supported by an affidavit, present application is allowed. The applicants, the details of whom are given in para 2 of the application, are allowed to be impleaded as interveners in the present petition.

CM stands allowed.

CM-10054-CWP-2024 in CWP-14547-2024

Application is allowed, as prayed for.

CM-9878-CWP-2024 in CWP-14474-2024

Application is allowed, as prayed for.

CM-9789-CWP-2024 in CWP-14474-2024

Present application has been filed for impleading the applicants as interveners in the present petition.

Keeping in view the averments made in the application, which are duly supported by an affidavit, present application is allowed. The applicants, the details of whom are given in the application, are allowed to be impleaded as interveners in the present petition and the



amended memo of parties attached with the present application is taken on record.

CM stands allowed.

CWP-14546-2024 (O&M), CWP-14547-2024 (O&M), CWP-14726-2024 (O&M), CWP-14474-2024 (O&M), CWP-14609-2024 (O&M), CWP-15115-2024 (O&M) and CWP-15512-2024 (O&M)

1. By this common order, seven writ petitions, the details of which have been given in the heading, are being decided as all these petitions involve the same question of law on similar facts.

2. For the sake of convenience, facts are being taken from CWP No. 14546 of 2024.

3. In the present petition, the issue raised by the petitioners is qua the eligibility conditions imposed for competing for the posts of Elementary Trained Teacher (hereinafter referred to as 'ETT'), which were advertised by the respondent-State vide Advertisement dated 06.03.2020, a copy of which has been appended as Annexure P-13.

4. By the impugned speaking order dated 05.06.2024 (Annexure P-44), the petitioners who were seeking eligibility qua the advertised posts on the basis of possessing either qualification of Bachelor in Education (B.Ed.), which qualification was recognized by the National Council for Teacher Education (hereinafter referred to as 'NCTE'), as per its Notification dated 28.06.2018, were declared as ineligible for competing against the said post. Through the same impugned speaking order dated 05.06.2024 (Annexure P-44) the



candidates who were possessing 18 months diploma in Elementary Education (hereinafter referred to as ‘18 months diploma’) were also said to be ineligible for consideration against the said advertised posts of ETT Teachers.

5. Following facts are necessary to appreciate the dispute raised in the present bunch of petitions.

6. The post of ETT is governed by the Rules called the Punjab State Elementary Education (Teaching Cadre) Border Area Group-C Service Rules, 2018 (hereinafter referred to as ‘2018 Rules’). The said 2018 Rules prescribe the method as well as the eligibility conditions for making appointment to the post of ETT. As per the said Rules, all posts of ETT are to be filled by direct recruitment. The relevant eligibility conditions prescribed by 2018 Rules are reproduced as under :-

			PUNJAB GOVT. GAZ., JUNE 1, 2018 (JYST II, 1940 SAKA)	
3.	Elementary Trained Teacher	100%	---	(1) Should possess Bachelor’s Degree from a recognized university or institution with atleast 50% marks as per guidelines of the University Grants Commission ; (2) Should possess two years Elementary Teachers’ Training course from a recognized university or institution or two years Diploma in Elementary Education (D. EI. Ed.) or qualifications as per guidelines of the National Council for Teachers’ Education.



7. It may be noticed here that as per the eligibility conditions prescribed by the 2018 Rules, the candidates fulfilling the criteria prescribed by the NCTE for appointment to the post of ETT were also to be made eligible to compete for such posts.

8. The State of Punjab issued an Advertisement on 06.03.2020 (Annexure P-13) inviting applications for filling up 1664 posts of ETT and the last date for submission of the application form was 23.03.2020. Later on, vide Corrigendum dated 23.06.2020 (Annexure P-14), the advertised posts were increased to 2364 and the last date for submission of application form was extended to 09.07.2020. The terms and conditions and the qualification prescribed so as to be eligible for the post of ETT as mentioned in the Advertisement dated 06.03.2020 (Annexure P-13) remained same.

9. In accordance of the selection process mentioned in the Advertisement, the candidates were required to undergo a written examination and after the said written examination, the merit list was to be prepared on the basis of marks obtained in the said examination after adding to the same certain extra marks for higher qualification as mentioned under the Advertisement.

10. Before the selection could be finalized, the selection process was challenged before this Court in a bunch of petitions raising certain grievances in respect of the method adopted for evaluating the merit of a candidate.



11. Adjudicating the said challenge, a Co-ordinate Bench of this Court after considering all the submissions raised on behalf of the candidates as well as the State, through its judgment in CWP No. 3363 of 2021 titled as ***Daljit Kaur and others Vs. State of Punjab and others***, decided on 08.11.2021 (Annexure P-33) held that the Advertisement dated 06.03.2020 itself not issued by the competent authority and the process undertaken in its pursuance was declared to be vitiated on various counts and in view of the same the process undertaken by the department including the Advertisement dated 06.03.2020 was quashed.

12. After setting-aside of the selection process along with the Advertisement by the Co-ordinate Bench, the judgment dated 08.11.2021 of the Co-ordinate Bench was challenged before the Division Bench of this Court in appeal, which appeal was later withdrawn with the liberty to approach the learned Single Judge through a review petition.

13. The review petitions, which were filed thereafter in respect of the judgment in ***Daljit Kaur and others (supra)*** came to be dismissed by the learned Single Judge vide order dated 20.10.2023 (Annexure P-34).

14. Feeling aggrieved against the said decision, again, the Letters Patent Appeals were filed challenging the initial judgment in ***Daljit Kaur and others (supra)*** passed by the learned Single Judge as well as the order passed in review dated 20.10.2023 (Annexure P-34).



15. The Division Bench of this Court decided the said lis between the parties raised in LPA No. 1898 of 2023 titled as ***Raman Kumar and others Vs. State of Punjab and others***, vide judgment dated 19.12.2023, which is reproduced as under :-

“CM-4765-LPA-2023

For the reasons mentioned therein, the delay of 709 days in filing the appeal is condoned.

The application stands disposed of.

LPA-1898-2023

This appeal is directed against the judgement and order dated 08.11.2021 passed by the learned Single Judge allowing the writ petition filed by the petitioners (respondents No. 4 to 21 herein) quashing and setting aside the advertisement dated 06.03.2020 containing the impugned selection criteria alongwith entire selection process including provisional merit list for recruitment to 2364 posts of Elementary Trained Teachers (in short ETT) as also against an order dated 20.10.2023 dismissing RA-CW-331-2021 seeking review of the judgement and order dated 08.11.2021.

Learned counsel appearing for respondents No. 4 to 161, out of whom respondents No. 4 to 21 herein were the writ petitioners in CWP-3363-2021, states that he has instructions to withdraw the writ petition itself and the said writ petitioners do not want to challenge the criteria for appointment to 2364 posts of ETT Teachers.

Learned State counsel, on instructions from Mr. Harpreet Singh, Assistant Director, Education Recruitment Directorate, Punjab, states that the entire selection process is



completed and the final result will be declared after eight weeks in terms of the original advertisement which was the subject matter of the writ petition and the present appeal.

Keeping in view of the above statement made by learned State counsel and Mr. Arjun Shukla, learned counsel appearing for respondents No. 4 to 161, no cause of action survives in the writ petition itself.

The present appeal is allowed and the judgment and order dated 08.11.2021 as well as the order dated 20.10.2023 passed by the learned Single Judge are set aside as both the parties are not disputing the criteria laid down in the advertisement for selection to 2364 posts of ETT Teachers.

(RITU BAHRI)
ACTING CHIEF JUSTICE

(AMAN CHAUDHARY)
JUDGE”

16. Before concluding the said selection process in terms of the order of the Division Bench dated 19.12.2023, the respondent-State filed a clarificatory application before the Division Bench seeking clarification to the effect as to whether, while undertaking the selection process, the subsequent developments which had come into being keeping in view the law laid down by the Hon’ble Supreme Court of India which have impact on the selection process are to be taken into account or not. The said clarificatory application came to be dismissed by the Division Bench on 15.03.2024 (Annexure P-41) by recording a fact that the judgment passed



by the Division Bench dated 19.12.2023 was clear and that no clarification was required qua the same.

17. After dismissal of the application seeking clarifications, the respondent-department deemed fit to seek appropriate advice from the office of the Advocate General as to whether, the position of law which came to be settled by the Hon'ble Supreme Court during the intervening period of selection process, which according to the department is relevant for the purpose of making selection to the post of ETT, can be taken into consideration so as to decide the eligibility of the candidates. After obtaining the appropriate advice from the office of the Advocate General, Punjab, the department passed a speaking order dated 05.06.2024 (Annexure P-44) dealing with the eligibility for being considered for the post of ETT in pursuance to the Advertisement dated 06.03.2020 (Annexure P-13).

18. It may be noticed that in order to get the time extended as mentioned by the Division Bench in its order dated 19.12.2023, an application was filed which was also dismissed by the Division Bench. Certain candidates, who also sought to intervene in the proceedings of LPA No. 1898 of 2023, the same was also dismissed as, the main petition had already been disposed of.

19. As per the speaking order dated 05.06.2024 (Annexure P-44), the department decided that keeping in view the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 5068 of 2023 titled



as ***Devesh Sharma Vs. Union of India and others***, decided on 11.08.2023, wherein, the Notification issued by the NCTE dated 28.06.2018 by which, the candidates having B.Ed. qualification gained eligibility in accordance to the said Notification has been set-aside, hence, the candidate seeking eligibility under Notification dated 28.06.2018 having B.Ed. qualification, will be treated ineligible to compete for the post in question.

20. Further decision was taken by the Department that keeping in view the judgment of Hon'ble Supreme Court of India in Civil Appeal Nos. 7871-7872 of 2023 titled as ***Jaiveer Singh and others Vs. The State of Uttarakhand and others***, decided on 28.11.2023, the candidates who are claiming eligibility to compete for the post in question on the basis of having undergone 18 months diploma in Elementary Education, cannot be allowed to compete for the post in question as 18 months diploma in Elementary Education was held to be not equivalent to two years diploma in Elementary Education as mentioned in the Rules governing the service. While passing the said speaking order, the order passed by the Hon'ble Supreme Court of India in ***Devesh Sharma's case (supra)*** and subsequent clarifications given with regard to the implementation of the said judgment were also taken into account and were made part of the said speaking order.

21. Aggrieved against the decision i.e. the speaking order dated 05.06.2024 (Annexure P-44), the present petitions have been filed by the



petitioners raising a grievance that the decision taken in the speaking order is not only contrary to the undertaking given by the State before the Division Bench in LPA No. 1898 of 2023 but also that the judgment of the Hon'ble Supreme Court in *Devesh Sharma's case (supra)* as well as in *Jaiveer Singh and others' case (supra)* is wrongly being interpreted so as to oust the candidates who possess B.Ed. Qualification or are claiming eligibility on the basis of 18 months diploma in Elementary Education.

22. Upon notice of motion, the respondents have filed a short reply and have pleaded before this Court that while passing the speaking order dated 05.06.2024 having endorsement dated 07.06.2024, a copy of which has been appended as Annexure P-44 only the settled principle of law has been taken into account so as to decide the eligibility of the candidates regarding of post of ETT advertised vide Advertisement dated 06.03.2020.

23. I have heard learned counsel for the parties and have gone through the record with their able assistance.

24. The question of law raised before this Court is as to whether the petitioners who were eligible to compete for the post of ETT at the time of issuance of the Advertisement dated 06.03.2020 (Annexure P-13), can be made ineligible subsequently and if so, whether or not, in the light of facts and circumstances pertaining the present controversy, they have been rightly made ineligible by passing impugned speaking order dated 05.06.2024 having endorsement dated 07.06.2024 (Annexure P-44).



25. The first argument, which has been raised by the learned senior counsel appearing on behalf of the petitioners is that after the posts were advertised in March, 2020, the respondents had already put in motion the selection process and the same could not be taken to the logical end only due to an interim order passed by this Court while considering the claim of the petitioners, who had filed writ petitions challenging the selection process which petitions were decided by the Co-ordinate Bench while passing order in ***Daljit Kaur and others (supra)***.

26. It is further argued by the learned senior counsel for the petitioners that at the time of pendency of first round of litigation before the Co-ordinate Bench in ***Daljit Kaur and others (supra)***, the respondent- department had already stated before the Co-ordinate Bench that the select list had already been finalized and had sought permission to make appointment which plea Hon'ble Court did not allow and quashed the entire selection process along with the advertisement, hence, once the State was given liberty to complete said selection process keeping in view the order passed by the Division Bench dated 19.12.2023 in LPA No. 1898 of 2023, the State cannot decide the issue of eligibility once again and all those, who were being treated eligible upto the date of the said order of the LPA Bench dated 19.12.2023 are to be given consideration for appointment to the post of ETT as advertised on 06.03.2020.

27. Learned senior counsel appearing on behalf of the petitioners contended that keeping in view the undertaking given before the Division



Bench in LPA No. 1898 of 2023 wherein, it was submitted by the State that the selection process was completed, the State is required to make selection and appointment as per the initial advertisement dated 06.03.2020 (Annexure P-13) only and, therefore, once initially the petitioners were declared eligible, they cannot be ousted from the zone of consideration as the respondent-State is bound by the undertaking as recorded in the order dated 19.12.2023 coupled with the fact that the clarification sought qua the said order by the State has already been rejected by the Division Bench.

28. The said argument needs to be appreciated in the background of the facts as well as law which prevails on the issue as to whether, the candidates claiming eligibility on the basis of the qualification of B.Ed. and 18 months diploma are to be treated eligible or not.

29. As per the 2018 Rules governing the service, the candidates having B.Ed. qualification were only being considered eligible on the ground that they were having qualifications as per the guidelines of the NCTE. On the date when the Advertisement came i.e. 06.03.2020, keeping in view the guidelines of the NCTE as amended on 28.06.2018, the qualification of B.Ed. was a valid qualification to be considered for appointment as ETT. It is on this ground that it is contended by learned senior counsel for the petitioners that once, on the day when the Advertisement was issued, the claim of the petitioners was valid to be considered, they cannot be made ineligible subsequently.



30. It is to be noticed that the amendment to the guidelines of the NCTE qua the validity of the Notification dated 28.06.2018 came up for consideration before the Hon'ble Supreme Court of India in ***Devesh Sharma's case (supra)***. The Hon'ble Supreme Court of India after considering the issue raised therein held that the amendment of the NCTE guidelines vide amendment dated 28.06.2018 so as to make candidates having B.Ed. Qualification, eligible, was not valid. The claim of the similarly situated candidates, who were claiming eligibility to participate in selection for the posts of ETT on the basis of having B.Ed. qualification in pursuance to the Advertisement issued by the Government of Rajasthan, was declined. As per the judgment of the Hon'ble Supreme Court of India, the candidates with B.Ed. qualification could not have been made eligible by the NCTE by amending its guidelines vide Notification dated 28.06.2018 and the said Notification dated 28.06.2018 was set-aside. The implication of the said judgment is that the amendment dated 28.06.2018 cannot be treated as part of NCTE guidelines and once, the amendment dated 28.06.2018 is not valid, the candidates having B.Ed. qualification cannot claim eligibility as the same had its basis the Notification dated 28.06.2018 of the NCTE which was struck down by the Hon'ble Supreme Court and, therefore, their claim to be treated as eligible so as to compete for the post of ETT as advertised on 06.03.2020 cannot be accepted in view of the judgment of the Hon'ble Supreme Court of India in ***Devesh Sharma's case (supra)***.



31. It has been conceded by learned senior counsel appearing on behalf of the petitioners that from the date of the judgment in ***Devesh Sharma's case (supra)***, the candidates having B.Ed. qualifications cannot be allowed to be treated as eligible, however, it is contended that as the selection process had already been initiated in the present case through Advertisement dated 06.03.2020 which fact is much prior to the judgment passed by the Hon'ble Supreme Court of India in ***Devesh Sharma's case (supra)*** on 11.08.2023 and keeping in view the observations of the Hon'ble Supreme Court of India, the judgment in ***Devesh Sharma's case (supra)***, said judgment is prospective, hence in the light of the said fact, as a one time measure, the petitioners on the basis of B.Ed. qualification have to be treated eligible and the said judgment cannot be brought into operation by the respondents to declare the petitioners as ineligible.

32. With regard to the said argument, it may be noticed that certain observations have been made by the Hon'ble Supreme Court of India while passing judgment in ***Devesh Sharma's case (supra)***, wherein, it is said to have prospective applicability but the said observations have to be read in view of certain facts and subsequent clarifications given by Hon'ble Supreme Court of India.

33. It may be noticed that before the order dated 11.08.2023 was passed in ***Devesh Sharma's case (supra)***, some of the candidates, who were participated in the selection process in pursuance to the Advertisement dated 06.03.2020 (Annexure P-13), had approached



Hon'ble Supreme Court of India so as to become party in ***Devesh Sharma's case (supra)*** as intervener and the order dated 11.08.2023 was passed by the Hon'ble Supreme Court of India after hearing the counsel of some of the candidates, who were having B.Ed. qualifications and were participating in pursuance to the selection process, which is the subject matter of present petitions and the judgment in *Devesh Sharma's case (supra)*, has been passed after hearing the candidates having B.Ed. qualifications, who were also participating in pursuance to the present selection process and are now claiming eligibility to compete for the post in question as per the Advertisement dated 06.03.2020.

34. It may also be noticed that after the main judgment was delivered in ***Devesh Sharma's case (supra)***, wherein the Notification dated 28.06.2018 amending the NCTE guidelines was quashed, certain applications were moved before the Hon'ble Supreme Court seeking clarification of the judgment dated 11.08.2023 with respect to the scope of the said judgment and the scenario where the same will be applicable. All these clarificatory applications were decided by the Hon'ble Supreme Court of India vide order dated 08.04.2024 (Annexure P-43). The relevant paragraph Nos. 6 to 12 of the order dated 08.04.2024 passed by the Hon'ble Supreme Court of India are as under :-

“6. Two points have been urged taking objection to the plea of the present applicant i.e., the State of Madhya Pradesh. The first one is that this application has been



framed as one for clarification and actually, an independent relief is asked for in this application. We have referred to this aspect of the controversy earlier in this judgment. In our opinion, this kind of applications seeking clarification ought not to be entertained and if a final order is passed, the only recourse for seeking alteration of the order is a petition for review on legally permissible ground. Considering the pleadings in this application seeking clarification, we treat this application as a petition for review. We are addressing this issue also in exercise of our jurisdiction that inheres in a Court of record, having regard to Article 129 of the Constitution of India. A technical plea was raised on behalf of the parties who opposed prospective application of this judgment on the ground that procedure for review as specified in the Supreme Court Rules was not followed and that no opportunity to file affidavits was being given. But having regard to the scope of the present application, we did not consider it necessary to invite further pleadings. Otherwise also, conversion of an application labelled as one for clarification into a review petition at the time of hearing would not be a fatal procedural flaw.

7. In the given facts, we find that the question as to whether the judgment would be prospective or not was not stated by us in the judgment delivered on 11th August, 2023. Ordinarily a judgment acts retrospectively unless it is specifically stated to be otherwise. Moreover, this matter has been heard on several occasions and the points urged by the respective parties have been taken note of by us.

8. As it appears that a large number of candidates with B.Ed. degree had already been appointed on the basis of eligibility



criteria specified by the educational authorities, we do not think it to be equitable to effect their removal. We, accordingly hold that the judgment delivered by this Bench on 11th August, 2023 shall have prospective operation. But prospective operation of this judgment shall be only for those candidates who were appointed without any qualification or conditions imposed by any Court of Law to the effect that their appointment would be subject to final outcome of the case which might have had been instituted by them and such candidates were in regular employment without any disqualification and were appointed in pursuance of a notice of advertisement where B.Ed. was stipulated to be valid qualification. Services of only such candidates shall not be disturbed because of this judgment. We make it clear that this benefit is only for the candidates who were appointed prior to the date our judgment was delivered, on 11th August, 2023. Mere selection of such candidates or their participation in the process will not entitle them for a benefit under our present order.

9. Moreover, the candidates having B.Ed. qualification whose appointments we are protecting in this judgment, will have to undergo a bridge course and we direct the educational authorities to device such course, which would be applicable for each state and union territory, within a period of one year from today. This course shall be only for those appointees who have been engaged with B.Ed. degree only in the subject-posts under conditions stipulated in the earlier part of this order. National Council for Teacher Education shall design such course under overall supervision of the Ministry of Education, Union of India. Upon formulation of such



course, the same shall be publicly notified and a timeframe shall also be given within which the respective candidates shall participate therein. Failure of any candidate to participate and complete the course within the timeframe to be given by the concerned educational authorities will invalidate the appointment of such candidate.

10. We also make it clear that the directions contained in this order shall not be confined to the applicant state only and shall cover all cases which may be pending in different judicial fora in any State or Union territory on the same point of law.

11. The present application stands disposed of in the above terms.

12. Pending application(s), if any, shall also stand disposed of.”

35. A bare perusal of the above clarification by the Hon’ble Supreme Court of India with regard to the applicability of the judgment in ***Devesh Sharma’s case (supra)*** clearly show that only the candidates with the B.Ed. Degree, who had already been appointed on the basis of the eligibility criteria specified by the Notification dated 28.06.2018, were saved from the operation of the judgment in ***Devesh Sharma’s case (supra)***. With regards to situation where the selection was still pending, the judgment in ***Devesh Sharma’s case (supra)*** was made applicable. Once, the judgment in ***Devesh Sharma’s case (supra)*** has been made applicable upon the pending selections, the counsel for the petitioners cannot be allowed to contend that the judgment in ***Devesh Sharma’s case***



(*supra*) can only be made applicable to posts, which are advertised subsequent to 11.08.2023 i.e. the date the said judgment was delivered.

36. The question which now arises is whether the present selection process in pursuance to the Advertisement dated 06.03.2020 (Annexure P-13) is to be considered as having been concluded before the judgment in ***Devesh Sharma's case (supra)*** came into force on 11.08.2023 or the same is to be treated as pending so as to oust the petitioners having B.Ed. Qualification from the zone of consideration by giving effect to the judgment in ***Devesh Sharma's case (supra)*** in terms of the clarification order dated 08.04.2024 (Annexure P-43).

37. From the facts which have been noticed here-in-before, the respondents had initiated the selection process vide Advertisement dated 06.03.2020. Even if it is assumed for the sake of argument that by the time, the litigation was initiated by way of ***Daljit Kaur and others' case (supra)*** in the year 2021, the respondents had conducted a written examination and had prepared a merit list, however, can it be said that the preparation of a merit list amounts to conclusion of the selection process. The question arises as to when, the selection process is to be treated as final. As per the settled principle of law, the selection process only comes to an end once, the selection of the candidates is notified and consequent appointments in pursuance to the Advertisement. The selection process is envisaged in various stages such as inviting applications, holding written examination and interviews then scrutiny of



the documents to verify the eligibility of the candidates and then notifying a final merit list of selected candidates is prepared whereafter candidates are given appointment letter upon which any selection process comes to an end. In the present cases, there is no finality given to the selection process as it is a conceded fact that no final select list was notified before the State was restrained from proceeding with the selection process while dealing with the petition filed by ***Daljit Kaur and others' case (supra)*** and no appointments were made before coming into effect of the judgment in ***Devesh Sharma's case (supra)***.

38. Even otherwise, the said selection process had already been set-aside by the Co-ordinate Bench while passing order dated 08.11.2021 in ***Daljit Kaur and others' case (supra)***. Once, the said selection process had been set-aside and the liberty to conclude the said selection process was only granted subsequently vide judgment dated 19.12.2023 passed by the Division Bench in LPA No. 1898 of 2023, it is clear that by the date of the order in LPA No. 1898 of 2023 i.e. 19.12.2023, the selection process was not complete as even the State had sought time therein to conclude the same. It was mentioned by the State that though selection process is over, the result of the selected candidates was yet to be declared for which time was sought. Once, the list of selected candidates was yet to be published, for which time was granted by the Division Bench on 19.12.2023, it cannot be said that on 11.08.2023 when the judgment was passed by the Hon'ble Supreme Court of India in ***Devesh Sharma's case***



(*supra*), the selection process in terms of the Advertisement dated 06.03.2020 had already attained finality.

39. Even otherwise, even if the finality of the selection process as being claimed is accepted for the sake of arguments, then also, as per the order passed by the Hon'ble Supreme Court of India dated 08.04.2024 clarifying as to upon whom the judgment in ***Devesh Sharma's case (supra)*** will be applicable, it has been held that even the selected candidates will not have any right to claim the appointment on the basis of B.Ed. qualification, as only those candidates who have already been appointed in pursuance to the Notification dated 28.06.2018 of NCTE, the same have to be saved and no one else. The paragraph 8 of the order dated 08.04.2024, which has already been reproduced here-in-before, clarifies the judgment of the Hon'ble Supreme Court of India qua the applicability of the judgment in ***Devesh Sharma's case (supra)***, hence, keeping in view the facts and circumstances of the present cases, it cannot be said that the judgment of the Hon'ble Supreme Court of India in ***Devesh Sharma's case (supra)***, cannot be made applicable upon the petitioners claiming eligibility on the basis of qualification of B.Ed. so as to declare them ineligible qua the Advertisement dated 06.03.2020 (Annexure P-13).

40. Learned counsel for the petitioners at this stage submit that once, criteria for selection is being changed, the Advertisement should have been issued again or a Corrigendum to make everybody eligible



upto the date of Corrigendum should have been issued, hence, non-adopting of the said process by the respondents in the facts and circumstances of the present case is arbitrary and illegal.

41. It may be noticed that in the present case, no terms and conditions of the Advertisement dated 06.03.2020 has been changed by the respondents. The petitioners became eligible under the eligibility conditions wherein, those being covered by the guidelines issued by the NCTE, were made eligible. Even as of now, all the candidates who fulfill the guidelines issued by the NCTE, which can be made operative subject to the settled principle of law, are being considered eligible except for those candidates who gained eligibility on account of Notification dated 28.06.2018 of NCTE, which was set-aside by the Hon'ble Supreme Court of India. The amendment to the guidelines dated 28.06.2018 of NCTE, on account of which petitioners having B.Ed. qualification became eligible, has been set-aside by the Hon'ble Supreme Court of India which means that the amendment of NCTE guidelines vide Notification dated 28.06.2018 is not the part of the guidelines of the NCTE any more, hence, no qualification is being amended by the State as advertised on 06.03.2020 or no Rule is being amended by the State on the account of which it may be required to invite a fresh Advertisement or a Corrigendum to the said effect. The State is only considering the eligibility as per the NCTE guidelines coupled with the judgment of the Hon'ble Supreme Court of India on the said guidelines and all such



guidelines, which are valid are being taken into account to finalize the selection process in terms of the Advertisement dated 06.03.2020, which action of the State cannot be faulted with.

42. The other argument, which has been raised on behalf of the petitioners is that the candidates having 18 months diploma in Elementary Education are being treated ineligible on the basis of the judgment of the Hon'ble Supreme Court of India in ***Jaiveer Singh and others' case (supra)*** and it is contended that all the candidates who are in service have already been protected by the said judgment in light of which, the petitioners who possess 18 months diploma in Elementary Education should also be protected qua the present selection to be treated as eligible to compete for the advertised posts as advertised vide Advertisement dated 06.03.2020 (Annexure P-13).

43. The relevant paratraphs No. 27 to 42 of the judgment in ***Jaivir Singh's case (supra)*** are as under :

“35. As already discussed hereinabove, NCTE recognition order dated 22nd September 2017 was issued so as to give effect to the directives of MHRD dated 8 th September 2017 so as to provide a one-time window to the teachers who were already working and who in terms of the 2017 Amendment Act were required to acquire the minimum qualifications prior to 1st April 2019. The said order, in any case, cannot be held to be a direction to the State of Uttarakhand to act in contravention of its 2012 Service Rules



and the advertisements issued on the basis of such Service Rules.

36. We further find that the finding of the High Court that the 18 months D.El.Ed. Diploma (ODL) course in Elementary Education conducted by NIOS is equal to 2 years Diploma is erroneous. There is no notification to that effect issued by NCTE in supersession of its notifications dated 23rd August 2010 and 29th July 2011, wherein it provided minimum 2 years Diploma as a minimum qualification for appointment of teachers. At the cost of repetition, we clarify that the notifications dated 23rd August 2010 and 29th July 2011 of NCTE, were issued in exercise of its powers conferred under [Section 23\(1\)](#) of the RTE Act whereas recognition order dated 22nd September 2017 order was passed in pursuance of the directions issued by MHRD under [Section 29](#) of the NCTE Act.

37. Assuming for a moment that the 18 months D.El.Ed. Diploma by NIOS through ODL mode is equivalent to the 2 years Diploma in Elementary Education recognized under the notifications of NCTE dated 23rd August 2010 and 29th July 2011, the next question that has to be answered is, can the State be prohibited from prescribing the minimum qualifications which is higher than that. A similar question arose for consideration in the case of [S. Satyapal Reddy and Others v. Govt. of A.P. and Others](#)⁷, wherein this Court observed thus:

“7.The Governor has been given power under proviso to [Article 309](#) of the Constitution, subject to any law made by the State Legislature, to make rules



regulating the recruitment which includes prescription of qualifications for appointment to an office or post under the State. Since the Transport Department under the Act is constituted by the State Government and the officers appointed to those posts belong to the State service, while appointing its own officers, the State Government as a necessary adjunct is entitled to prescribe qualifications for recruitment or conditions of service. But while so prescribing, the State Government may accept the qualifications or prescribe higher qualification but in no case prescribe any qualification less than the qualifications prescribed by the Central Government under sub- section (4) of [Section 213](#) of the Act.....”

[emphasis supplied]

38. We therefore find that the High Court has erred in directing the State Government to consider the candidates (1994) 4 SCC 391/1994 INSC 196 who did not qualify as per the 2012 Service Rules and as per the advertisement based on the Service Rules, particularly when the 2012 Service Rules and the advertisements were not under challenge. The High Court, in our view, could not have issued such a mandamus contrary to such Service Rules.

39. That leaves us with the question as to whether the High Court was justified in holding that the 18 months Diploma conducted by NIOS through ODL mode is said to be equivalent to the 2 years Diploma as required under the notifications of NCTE dated 23rd August 2010 and 29th July 2011.



40. It will be relevant to refer to the observations of this Court in the case of *Devender Bhaskar and Others v. State of Haryana and Others*⁸, which read thus:

“21. In *Mohammad Shujat Ali v. Union of India*, (1975) 3 SCC 76 it was held that the question regarding equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications. It was further held that where the decision of the Government is based on the recommendation of an expert body, then the Court, uninformed of relevant data and unaided by technical insights necessary for the purpose of determining equivalence, would not 2021 SCC OnLine SC 1116/2021 INSC 783 lightly disturb the decision of the Government unless it is based on extraneous or irrelevant considerations or actuated mala fides or is irrational and perverse or manifestly wrong.

22. In *J. Ranga Swamy v. Government of Andhra Pradesh*, (1990) 1 SCC 288 this Court held that it is not for the court to consider the relevance of qualification prescribed for various posts.

23. In *State of Rajasthan v. Lata Arun*, (2002) 6 SCC 252 this Court held that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It was held thus:



“13. From the ratio of the decisions noted above, it is clear that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It is not for courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority.”

24. In [Guru Nanak Dev University v. Sanjay Kumar Katwal](#), (2009) 1 SCC 610 this Court has reiterated that equivalence is a technical academic matter. It cannot be implied or assumed. Any decision of the academic body of the university relating to equivalence should be by a specific order or resolution, duly published. Dealing specifically with whether a distance education course was equivalent to the degree of MA (English) of the appellant university therein, the Court held that no material had been produced before it to show that the distance education course had been recognized as such.

25. In [Zahoor Ahmad Rather v. Sheikh Imtiyaz Ahmad](#) (2019) 2 SCC 404, it was held that the State, as an employer, is entitled to prescribe qualifications as a condition of eligibility, after taking into consideration the nature of the job, the aptitude required for efficient discharge of duties, functionality of various qualifications, course content leading up to the acquisition of various qualifications, etc. Judicial



review can neither expand the ambit of the prescribed qualifications nor decide the equivalence of the prescribed qualifications with any other given qualification.

Equivalence of qualification is a matter for the State, as recruiting authority, to determine.

26. Having regard to the above, in our view, the High Court has erred in holding that the diploma/degree in Art and Craft given by the Kurukshetra University is equivalent to two-year Diploma in Art and Craft examination conducted by the Haryana Industrial Training Department or diploma in Art and Craft conducted by Director, Industrial Training and Vocational Education, Haryana.”

41. In view of what has been held by this Court hereinabove, we find that the High Court erred in holding that 18 months Diploma conducted by NIOS through ODL mode is equivalent to the 2 years regular Diploma, particularly so, when there was no material placed on record to even remotely hold that such a qualification was recommended by the Expert Body NCTE. On the contrary, the communication dated 6th September 2019 of NCTE, the directives of MHRD so also the recognition order dated 22nd September 2017 clearly go on to show that the 18 months Diploma was provided as a one time window to the in-service teachers to acquire the minimum qualifications between the 2017 Amendment Act and the outer limit of 1st April 2019. In our considered view, the High Court has



totally erred in holding that the 2 years Diploma is equivalent to 18 months Diploma.

42. That leaves us with the reliance placed by the learned counsel for NCTE on the judgment of this Court in the case of [Ram Sharan Maurya](#) (supra). There can be no doubt that NCTE, as an expert body, has a right to prescribe the minimum qualifications. In the present case itself, by notifications dated 23rd August 2010 and 29th July 2011, NCTE has done so. As already discussed hereinabove, recognition order dated 22nd September 2017 only provides a window for in-service teachers to complete their course prior to 1st April 2019. As such, [the said judgment](#) does not apply to the present case.”

44. A bare perusal of the above reproduced section of judgment would show that the candidates having 18 months diploma in Elementary Education were held to be eligible for appointment to the post of ETT by the Uttarakhand High Court and the said judgment was assailed before the Hon’ble Supreme Court of India and the said issue was decided while passing the judgment in ***Jaiveer Singh and others’ case (supra)***.

45. It may be noticed that the Hon’ble Supreme Court of India in categorical terms has recorded a finding that the candidates having 18 months diploma in Elementary Education cannot equate themselves with the two years diploma in Elementary Education required for appointment to the post of ETT. The reliance placed by the candidates having 18 months diploma in Elementary Education on a Circular dated 06.11.2019



by the NCTE was not accepted by Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India after noticing the Circular issued by the NCTE dated 06.11.2019 held that the candidates who have already been appointed and are working with the Government on the basis of 18 months diploma in Elementary Education were given a chance to obtain required qualifications prior to 01.04.2019. The Hon'ble Supreme Court of India held that no candidate other than the one who have already been appointed and are working, with the 18 months diploma in Elementary Education, can be allowed to continue in service or to be treated eligible for the post of ETT.

46. The argument of the learned counsel for the petitioners is that as the petitioners are also working with the State, they have been saved by the Hon'ble Supreme Court of India while passing the order in ***Jaiveer Singh and others' case (supra)***. The said argument cannot be accepted. The petitioners are not working on regular basis with the Government of Punjab and are rather seeking eligibility to compete for the post in question as advertised for regular appointment. The argument of the learned counsel for the petitioners concede that the petitioners are working in the Private Schools but submit that they should be treated as in-service candidates so as to grant them the benefit of exemption as granted in the judgment in ***Jaiveer Singh and others' case (supra)***, even though they possess 18 months diploma and not two years diploma, which is required for appointment to the post of ETT. That being the



factual position accepting the said prayer of the petitioners will amount to granting eligibility to candidates having 18 months diploma in Elementary Education and the same will be contrary to the findings recorded by the Hon'ble Supreme Court of India in ***Jaiveer Singh and others' case (supra)*** and hence, the same cannot be accepted. Petitioners while working with Private Institutions cannot be treated as employees of Government of Punjab so as to grant them eligibility as envisaged in ***Jaiveer Singh and others' case (supra)***,

47. Learned counsel for the petitioners submitted that one of the candidates having 18 months diploma in Elementary Education had filed writ petitions before this Court claiming eligibility and keeping in view the NCTE guidelines, the respondents accepted the claim of the petitioners to be eligible, hence, no summer salt can be taken by the State to deny the same benefit, which was already agreed before this Court while hearing CWP No. 19720 of 2020 titled as ***Jalandar Singh and others Vs. State of Punjab***, decided on 17.02.2021.

48. It may be noticed that the judgment in ***Jaiveer Singh and others' case (supra)***, is much after the undertaking given by the State before this Court in ***Jalandar Singh and others' case (supra)***. At the time of undertaking in ***Jalandar Singh and others' case (supra)***, 18 months diploma in Elementary Education was considered a valid qualification, hence, any undertaking given before the judgment of the Hon'ble Supreme Court of India in ***Jaiveer Singh and others' case***



(*supra*) cannot bind the State. The settled law on the issue which has already attained finality, has to be adhered by the State while conducting the selection process, hence, in light of the judgment of the Hon'ble Supreme Court of India in ***Jaiveer Singh and others' case (supra)***, any undertaking given by the State prior to the judgment in ***Jaiveer Singh and others' case (supra)***, cannot give any right to the petitioners to claim eligibility on the basis of 18 months diploma in Elementary Education.

49. At this stage, learned counsel for the petitioners argues that once a consented order has been passed in LPA No. 1898 of 2023, decided on 19.12.2023, the respondents cannot retract from the same, wherein, they undertook to make appointment in terms of the original Advertisement dated 06.03.2020 (Annexure P-13), especially when the clarificatory application filed by the State was also dismissed. Learned counsel submits that the only remedy before the State was to approach the Hon'ble Supreme Court of India but the respondent-department chose to ignore their undertaking as recorded in the order dated 19.12.2023 and despite rejection of their clarificatory application, the impugned speaking order has been passed to deny the petitioners the eligibility to compete for the posts in question.

50. It may be noticed that the only undertaking given by the State before the Division Bench was to conclude the selection process in terms of the Advertisement dated 06.03.2020 (Annexure P-13) within a period of eight weeks. There was no undertaking given as to who will be



treated eligible and who will be ousted from the zone of consideration. The order is silent qua the said aspect. Hence, the plea of the petitioners that as per the order dated 19.12.2023, all the candidates who had applied are to be treated eligible, cannot be allowed.

51. Though, in the clarificatory application, the State sought the clarification of the order but in its wisdom the Division Bench held that the order dated 19.12.2023 was passed in open court and is perfectly clear as to how the department was to approach the said issue.

52. It may be noticed that the State had an option to approach the Hon'ble Supreme Court of India in case, they were aggrieved after the dismissal of their clarificatory application. But, once after the dismissal of the clarificatory application, the clarification sought by the State has already been answered by the Hon'ble Supreme Court of India vide order dated 08.04.2024 and the question of seeking the same clarification from the Hon'ble Supreme Court of India does not arise, as the clarification given by the Hon'ble Supreme Court of India on 08.04.2024 clarified the issue beyond doubt as to how the State has to make selection qua the advertised posts of ETT as advertised on 06.03.2020. Therefore, raising an argument that the respondents are bound to treat each and every candidate who has applied for the post in question in pursuance to the Advertisement dated 06.03.2020 (Annexure P-13) irrespective of the rules governing the service and the settled principle of law, cannot be accepted and is liable to be rejected and is accordingly rejected.



53. Learned counsel for the petitioners relies upon the judgment of the Hon'ble Supreme Court of India in ***Ram Sharan Morya Vs. State of U.P.***, 2020 Vol. XIII, 198, to contend that as per the judgment of the Hon'ble Supreme Court of India, the candidates having B.Ed. qualifications were entitled to be considered as eligible and were entitled for appointment. Qua the said argument, it may be noticed that at the time of passing order in ***Ram Sharan Morya's case (supra)***, the Notification dated 28.06.2018 was in force and every State was bound to implement the same and treat the B.Ed. candidates eligible. Subsequent to the judgment in ***Ram Sharan Morya's case (supra)***, the Hon'ble Supreme Court of India has set-aside the said Notification of the NCTE dated 28.06.2018 in case of ***Devesh Sharma's case (supra)*** to hold that the candidates having B.Ed. qualifications are not eligible to compete for the post of ETT. Any judgment passed by the Hon'ble Supreme Court of India till the amendment dated 28.06.2018 was in operation, cannot be made applicable subsequent to the judgment of the Hon'ble Supreme Court of India in ***Devesh Sharma's case (supra)***, where the view contended by the learned counsel for petitioners has already been set-aside, hence, no benefit of the judgment in ***Ram Sharan Morya (supra)*** can be given to the petitioners.

54. Learned counsel for the petitioners had lastly contended that once, the State had undertaken before the Division Bench in LPA No. 1898 of 2023 that the selection process was over, the State cannot be



allowed to re-frame the select list and the said statement given before the Court that the selection is final, cannot be re-opened, which has been re-opened while passing the impugned speaking order dated 05.06.2024 having endorsement dated 07.06.2024.

55. In this regard, it may be noticed that as per the clarification given by the Hon'ble Supreme Court of India vide order dated 08.04.2024 with regard to the applicability of the judgment in ***Devesh Sharma (supra)***, it has been held that even if the selection is complete, the same will not give any right to claim appointment, as only the eligible candidates can be appointed hence, the respondent-State was at liberty to adjudicate the eligibility of all the candidates in accordance with the guidelines of the NCTE, which were valid and also taking into account that the Notification dated 28.06.2018 making the B.Ed. candidates eligible was set-aside. Once, directions have been given by Hon'ble Supreme Court of India to all the State to act in accordance with the judgment in ***Devesh Sharma (supra)***, respondent-State has no option but to treat candidates with B.Ed. qualification as ineligible. Once, such directions have been given by the Hon'ble Supreme Court of India, the State is bound to implement those directions and in the facts and circumstances of the present petitions, it cannot be said that the State is violating any undertaking recorded in the order dated 19.12.2023.

56. Learned counsel appearing on behalf of the petitioners in CWP No. 14726 of 2024 and CWP No. 15512 of 2024 submits that there



was a challenge to the Advertisement in the said petition but at the time of the hearing, the said prayer was not pressed and accordingly, the same is not being dealt with for the purpose of the present judgment.

57. No other argument was raised.

58. Keeping in view the above, all the writ petitions challenging the speaking order dated 05.06.2024 having endorsement dated 07.06.2024 (Annexure P-44) are dismissed without there being any order as to costs.

59. Pending miscellaneous application, if any, also stands disposed of.

60. A photocopy of this order be placed on the file of connected cases.

July 11, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes