

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2025:PHHC:059781-DB

Date of pronouncement: 7th May, 2025

1. **CWP No. 1922 of 2025 (O&M) Reserved on : 4th March, 2025**
Union Territory, Chandigarh and others ... Petitioners
Versus
Sakshi Malik and others ... Respondents.
2. **CWP No. 5969 of 2025 (O&M) Reserved on : 4th March, 2025**
Union Territory, Chandigarh and others ... Petitioners
Versus
Lalita Kaushik and others ... Respondents.
3. **CWP No. 9970 of 2025 (O&M) Reserved on 28th April, 2025**
Chandigarh Administration and another ... Petitioners
Versus
Central Administrative Tribunal and another ... Respondents.

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Ms. Madhu Dayal, Additional Standing Counsel,
U. T. Chandigarh and
Ms. Shubreet Kaur, Junior Panel Counsel,
U. T. Chandigarh, for the petitioners.

Mr. Rakesh Sobti, Advocate, for the petitioners
In CWP No. 9970 of 2025.

Mr. Parunjeet Singh, Advocate, for respondent no.1-Caveator
In CWP No. 1922 of 2025.

SANJEEV PRAKASH SHARMA, J.

This order will dispose of CWP Nos. 1922, 5969 and 9970 of 2025 as common questions of law and facts are involved therein.

2. By way of these writ petitions, the petitioners have assailed the orders dated 19.09.2024, 25.11.2024 and 25.10.2024 passed by the Central Administrative Tribunal whereby it allowed the OAs filed by the

respondents-applicants and directed to consider their candidature for recruitment as Junior Basic Teachers, in pursuance of the advertisement.

3. Learned counsel for the Chandigarh Administration has submitted that an advertisement was issued on 16.01.2024, inviting applications for the posts of Junior Basic Teachers and the essential qualifications for recruitment, as per the Chandigarh Education Service (School Cadre) (Group-C), Recruitment Rules, 1991, [as amended vide Chandigarh Education Service (School Cadre) (Group-C) Recruitment (Amendment) Rules, 2018], are as under:-

“(i) Graduate or its equivalent from a recognized University and

(ii) Diploma in Elementary Education (D.El.Ed) (By whatever name known) of not less than 2 years duration recognized by NCTE.

OR

Graduation with at least 50% marks and Bachelor of Education (B.Ed)

(iii) Pass in Central Teacher Eligibility Test conducted in accordance with the Guidelines framed by NCTE.”

4. It is submitted that written test was conducted on 28.04.2024 and the provisional merit list was published. The respondents-applicants, alongwith others, were called on 02.07.2024 and 03.07.2024 for the document verification whereafter they (respondents) were declared ineligible on the ground that though they were possessing the qualification of Bachelor of Elementary Education (B.El.Ed.) but they did not possess the two year' Diploma in Elementary Education (D.El.Ed.) as required under the advertisement. Further opportunity was granted to them to submit their clarification by 01.08.2024 and they submitted their representation, maintaining that the qualification of Bachelor of Elementary Education was

duly recognized by the NCTE. However, finding that they did not meet the requirement of the advertisement or the Rules framed by the Chandigarh Education Service (School Cadre) (Group-C), Recruitment Rules, 1991, as amended in 2018, the respondents were declared ineligible.

5. OAs were preferred before the Tribunal and the same were contested by the petitioners. However, the impugned orders (supra) were passed by the Tribunal.

6. Learned counsel for the petitioners submitted that the Tribunal's orders dated 19.09.2024, 25.11.2024 and 25.10.2024 were clearly erroneous in the light of the requirement of qualification under the advertisement dated 16.01.2024. The qualifications laid down in the advertisement were in conformity with the Chandigarh Education Service (School Cadre) (Group-C) Recruitment Rules, 2018, as amended. It was also submitted that since the advertisement required lower qualification, therefore, allowing the candidates with higher qualification to compete for the post, while the Rules exclusively mandated lower qualification, would be in violation of the advertisement and create unjust disparities. She relied upon the judgment passed by Hon'ble the Supreme Court in **Maharashtra Public Service Commission vs Sandeep Shriram Warade** 2019 (6) SCC 362 and the judgment of Full Bench of this Court in **Som Dutt vs State of Haryana** 2 ILR (1984) (1) PB & Hy. 400. She also referred to the judgment passed in **Devesh Sharma vs Union of India and others** 2023 INSC 704, wherein the Apex Court did not approve the B.Ed qualification for appointment to the post of Primary School Teacher.

7. We have heard learned counsel for the caveator too. He submitted that the qualification of Bachelor of Elementary Education has

been duly recognized as one of the requisite qualifications for appointment, recognizing B.El.Ed. as equivalent to Diploma in Elementary Education. Learned counsel submits that the NCTE is the recognized Council under the NCTE Act, so as to declare equivalent qualifications for the appointment of teachers of various levels. Vide notification dated 22.08.2010, the courses of Bachelor of Elementary Education and Diploma in Elementary Education have been duly recognized by the NCTE as equivalent for the purpose of appointment as Junior Basic Teacher, i.e. the posts which had been advertised vide the advertisement dated 16.01.2024 and, therefore, the Tribunal has rightly directed that B.El.Ed qualification be considered as sufficient for the purpose of appointment to the said posts.

8. It is further submitted that the respondents have already participated in the process of selection and have been duly selected. It has also been informed that Chandigarh Administration has realised its mistake and has already issued circular dated 16.02.2024 with the instructions for framing/amending the recruitment rules in conformity with the NCTE.

9. We have considered the submissions as made by learned counsel for the parties and have perused the orders passed by the Tribunal.

10. Coming to the facts of these cases, initially the post of JBT required a candidate to possess Matriculation with JBT certificate. However, after the National Council for Teacher Education Act came into force, the qualifications required for filling up the post have to be in consonance with the NCTE Act. Thus, the amendments were made in the Rules accordingly from time to time.

11. In Devesh Sharma's case (supra), the advertisement dated 11.01.2021 issued by the Board of Secondary Education, State of Rajasthan, excluded B.Ed. degree holders from the list of eligible candidates for participating in RTET Level-1 exam was challenged. Another batch of petitioners holding Diploma in Elementary Education (D.El.Ed.) challenged the inclusion of B.Ed. qualified candidates for the post of teachers at primary level in the notification dated 28.06.2018 issued by the NCTE. The Supreme Court distinguished the requirement in imparting education to primary level students, secondary and higher secondary level students and held that there was no occasion for inclusion of B.Ed. candidates for primary classes and held as under:-

“It is therefore clear that a B.Ed. course is not designed for teaching at primary level.

Moreover, the inclusion of B.Ed. candidates for primary classes is in the teeth of several decisions of this Court, as this Court has consistently held that Diploma in elementary education (D.El.Ed.) and not B.Ed., is the proper qualification in Primary Schools.”

Hon'ble the Supreme Court proceed further to hold as under:-

“27. B.Ed. is not a qualification for teachers at Primary level of schooling. The pedagogical skills and training required from a teacher at Primary level is not expected from a B.Ed. trained teacher. They are trained to teach classes at higher level, post primary, secondary and above. For primary level i.e. class I to class V the training is D.El.Ed. or what is known as diploma in elementary education. It is a D.El.Ed. training course which is designed and structured to impart skills in a teacher who is to teach Primary level of students.

Therefore, by implication the inclusion of B.Ed. as a qualification amounts to lowering down of the 'quality' of education at Primary level. 'Quality' of education which was such an important component of the entire elementary education movement in this country, which we have discussed in the preceding paragraphs of this order."

12. Section 12A of the NCTE Act was examined by the Apex Court in **Devesh Sharma**'s case (supra) along with Sections 29 of the NCTE Act and 23 of the RTE Act and was held that the NCTE is bound to follow the directions of the Central Government. The relevant from the judgment of Hon'ble the Supreme Court is extracted as under:-

"The NCTE is bound to follow the directions of the Central Government in this regard and the direction in the present case was to include B.Ed. as a qualification for teachers in primary school, which has been done by NCTE through notification dated 28.06.2018, are the submission of the learned counsel for the appellants as well as that of the learned ASG Ms. Aishwarya Bhati on behalf of the Union of India. Moreover, as per sub-Section (2) of Section 29, the decision of the Central Government as to what constitutes a policy decision will ultimately matter, is also the argument."

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A policy decision which is totally arbitrary; contrary to the law, or a decision which has been taken without proper application of mind, or in total disregard of relevant factors is liable to be interfered with, as that also is the mandate of law and the Constitution. This aspect has been reiterated by this Court time and again."

13. In *State of Maharashtra vs Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and others* 2006 (9) SCC 1, the Supreme Court held as under:-

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

63. In the instant case, admittedly, Parliament has enacted 1993 Act, which is in force. The Preamble of the Act provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving planned and coordinated development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher- education system and for matters connected therewith. With a view to achieving that object, National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is fully and completely occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament alone could have exercised the power by making appropriate law. In the circumstances, it is not open to State Government to refuse permission relying on a State Act or on 'policy consideration'.

68. *In view of the fact, however, that according to us, the final authority lies with NCTE and we are supported in taking that view by various decisions of this Court, NCTE cannot be deprived of its authority or power in taking an appropriate decision under the Act irrespective of absence of No Objection Certificate by the State Government/ Union Territory. Absence or non-production of NOC by the institution, therefore, was immaterial and irrelevant so far as the power of NCTE is concerned.”*

14. In **Maa Vaishno Devi Mahila Mahavidyalaya vs State of Uttar Pradesh and others** 2013 (2) SCC 617, the Supreme Court while considering the requirement of establishment of NCTE and the need for a council to maintain higher standards of education in teachers training was noticed and necessity of recognition of courses by any institution/ NCTE, therefore, was held to be essential. Recognition of courses, thus, has been held to be in exclusive domain of the NCTE. It has been held as under:-

“59. The above enunciated principles clearly show that the Council is the authority constituted under the Central Act with the responsibility of maintaining education of standards and judging upon the infra-structure and facilities available for imparting such professional education. Its opinion is of utmost importance and shall take precedence over the views of the State as well as that of the University. The concerned Department of the State and the affiliating University have a role to play but it is limited in its application. They cannot lay down any guideline or policy which would be in conflict with the Central statute or the standards laid down by the Central body. State can frame its policy for admission to such professional courses but such policy again has to be in conformity with the directives issued by the Central body. In the present cases, there is not much conflict on this issue, but it needs to be clarified that while the State grants its approval, and University its affiliation, for increased intake of seats or

commencement of a new course/college, its directions should not offend and be repugnant to what has been laid down in the conditions for approval granted by the Central authority or Council. What is most important is that all these authorities have to work ad idem as they all have a common object to achieve i.e. of imparting of education properly and ensuring maintenance of proper standards of education, examination and infrastructure for betterment of educational system. Only if all these authorities work in a coordinated manner and with cooperation, will they be able to achieve the very object for which all these entities exist.

60. *The NCTE Act has been enacted by the Parliament with reference to Entry 66 of List I of Schedule VII of the Constitution. There is no such specific power vested in the State Legislature under List II of the Seventh Schedule. Entry 25 of List III of the Seventh Schedule is the other Entry that provides the field for legislation both to the State and the Centre, in relation to education, including technical education, medical education and Universities; vocational and technical training and labour. The field is primarily covered by the Union List and thus, the State can exercise any legislative power under Entry 25, List III but such law cannot be repugnant to the Central law. Wherever the State law is irreconcilable with the Central law, the State Law must give way in favour of the Central law to the extent of repugnancy. This will show the supremacy of the Central law in relation to professional education, including the teacher training programmes.*

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66. *From the above consistent view of this Court it is clear that wherever the field is covered by the Parliamentary law in terms of List I and List III, the law made by the State Legislature would, to the extent of repugnancy, be void. Of course, there has to be a direct conflict between the laws. The direct conflict is not necessarily to be restricted to the*

obedience of one resulting in disobedience of other but even where the result of one would be in conflict with the other. It is difficult to state any one principle that would uniformly be applicable to all cases of repugnancy. It will have to be seen in the facts of each case while keeping in mind the laws which are in conflict with each other. Where the field is occupied by the Centre, subject to the exceptions stated in Article 254, the State law would be void.”

15. Hon’ble the Supreme Court reiterated the same position of law in the case of **State of Rajasthan vs LBS B.Ed. College** 2016 (16) SCC 110, and held as under:-

“14. As we find from the aforesaid authorities as well as the Regulations framed by the NCTE, the State has a say, may be a limited one. We are inclined to use the word 'limited' because the State's say is not binding on the NCTE. However, the NCTE is required to take the same into consideration, for the State has a vital role to offer proper comments supported by due reasoning. It needs no special emphasis to say that final authority rests with the NCTE. It is the clear legal position.”

16. We find that the Right of Children to Free and Compulsory Education Act, 2009, commonly known as RTE Act, mandates free and compulsory education for children aged 6-14 years and the National Council for Teacher Education (NCTE) laid down the minimum qualification for teachers of various classes.

17. We also find that the post of JBT, i.e. Junior Basic Teacher, required the qualification, as noticed above. However, the NCTE, vide notification dated 23.08.2010, issued in terms of the powers exercised under Sub-section (1) of section 23 of the RTE Act, laid down the minimum qualification for teachers, who would teach Class I to V as under:-

“(i) *Classes I-V*

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2- year Diploma in Elementary Education (by whatever name known)

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2 – year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure), Regulations 2002

OR

Senior Secondary (or its equivalent) with at least 50% and 4 – year Bachelor of Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% and 2 – year Diploma in Elementary (Special Education)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.”

That apart, it was provided as under:-

“5. Teacher appointed after the date of this Notification in certain cases.- Where an appropriate Government, or local authority or a school has issued an advertisement to initiate the process of appointment of teachers prior to the date of this Notification, such appointments may be made in accordance with the NCTE (Determination of Minimum Qualification for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time).”

Thus, it was incumbent on the Chandigarh Administration to have adopted and framed their Rules in conformity with the notification issued by the NCTE in terms of the RTE Act and a departure could not have been made while issuing the advertisement.

18. Therefore, what is essential is that a candidate must possess knowledge in Elementary Education. There are two different qualifications which have been allowed for the said purpose i.e. Diploma in Elementary Education or Bachelor in Elementary Education by NCTE. After coming into force of the aforesaid Regulations of 2010, it was necessary for the State and UT Authorities to have framed their Rules in conformity with the RTE Act and NCTE Act. Default on the part of the Chandigarh Administration cannot give any advantage to a particular individual. The contention of learned counsel for the petitioners based on Devesh Sharma's case (supra) is wholly misconceived. The facts of the case of Devesh Sharma's are completely different.

19. Having noticed the above, in the present case, it is apparent that the Chandigarh Administration, though in the subsequently issued Draft Rules, which are yet to be notified, has incorporated the qualification of B.El.Ed.

20. In order to maintain uniformity and to remove the ambiguity, but we must read down the advertisement to include B.El.Ed apart from D.El.Ed. to be equal qualification for the purpose of appointment as JBT Teacher with the sole purpose to save the advertisement and the selections which have already been made. The Court must always attempted to harmonize the provisions of law in order to save the selections which have already been conducted. We find that the applicants in OAs have already participated in the selection process and have also been placed in the select list.

21. In the facts of the case, we affirm the judgment passed by the Central Administrative Tribunal. No case for interference is made out. The

writ petitions are, accordingly, dismissed.

22. The respondents, original applicants, shall now be considered in terms of the directions given by the Tribunal. The exercise for consideration of their appointment shall be completed within a period of two months henceforth.

23. All pending applications stand disposed of.

24. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

7th May, 2025
vs

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No