**IN THE HIGH COURT OF RAJASTHAN AT JODHPUR**

D.B. Civil Writ Petition No. 3964/2011

Decided On: 20.05.2011

Appellants: **Sushil Sompura and Ors.**
**Vs.**
Respondent: **State (Education) and Ors.**
[Alongwith D.B. Civil Writ Petition Nos. 2584, 3258, 4403 and 4421/2011, S.B. Civil Writ Petition Nos. 3061, 3205, 3210, 3223, 3224, 3225, 3249, 3261, 3267, 3273, 3274, 3275, 3277, 3280, 3282, 3283, 3284, 3286, 3290, 3318, 3320, 3321, 3324, 3327, 3331, 3341, 3342, 3390, 3696, 3848, 3913, 4105, 4106, 4108, 4416, 4417, 4436 and 4444/2011]

**Hon'ble Judges/Coram:**
Arun Kumar Mishra , C.J. and Kailash Chandra Joshi, J.

**ORDER**

**Arun Mishra, C.J.**

1. In these writ petitions, the Petitioners have prayed for relief to quash the Gazette Notification dated 23rd August, 2010 issued by the National Council for Teacher Education (hereinafter referred to as "the NCTE") in exercise of the powers conferred by Sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as "the Act of 2009") laying down minimum qualifications to be eligible for appointment as a Teacher in Class I to VIII in a school referred to in Clause (n) of Section 2 of the Act of 2009. Prayer has also been made by the Petitioners to quash the condition of having minimum 45% or 50% marks in graduation. In some of the matters, prayer has been made to include the qualification of B. Com. also in graduation. Prayer has also been made to declare that the Notification dated 23.8.2010 shall operate prospectively. In some of the petitions, the Petitioners have prayed that as they have passed graduation from the University in Jammu and Kashmir, the Respondents be directed to ignore the minimum percentage in the graduation. Prayer has also been made in some of the petitions that Vidhyarthi Mitra and Serva Shiksha Karmik (CRCF) may not be compelled to qualify the Teacher Eligibility Test (hereinafter referred to as "the TET").

2. The reference has been made by the Single Bench to 5 the Division Bench in Writ Petition No. 3964/2011 Sushil Sompura and Ors. v. State of Rajasthan and Ors. vide order dated 9th May, 2011. The following questions have been referred for adjudication by Division Bench:

(A) Whether in absence of any eligibility or qualification in the rules the State Government can be permitted to conduct TET without amending the service rules made under Article 309, Constitution of India on the basis of notification dated 23.08.2010 which the Division Bench held vide order dated 13.4.2011 that it is not statutory in character?

(B) Whether in view of the fact that stay order was in existence on 06.05.2011 upon conducting the TET in S.B. Civil Writ Petition No. 3749/2011 and order for modifying the order dated 15.4.2011 passed in S.B. Civil Writ Petition No. 3068/2011 could be made allowing the State Government to go ahead with conducting the TET examination?

(C) Whether once opinion is expressed by the Division Bench that notification dated 23.8.2010 is not statutory in character, the learned Single Bench can pass order permitting the State Government to conduct TET examination which is not even enumerated in the service rules as eligibility or qualification on the basis of notification dated 23.8.2010 which is admittedly found to be administrative instruction by the Division Bench?

(D) Whether in absence of eligibility prescribed in the rules the State Government will suffer any irreparable injury in not conducting TET till adjudication of the matter and whether while conducting TET and declaring any candidate unsuccessful and thereby denying consideration for appointment on the post of Teacher under the existing rules is legal?

(E) Whether the State Government can withhold recruitment on the ground that first they will 6 conduct TET and thereafter proceed for prescribing qualification in the rules?

3. It appears that there are conflicting opinion expressed by the Single Benches whether the cases are required to be heard by Single Bench or Division Bench. There are also conflicting orders of interim stay granted in different matters by different Benches, as such, cases have been referred to the Division Bench. Considering the fact that the Notification dated 23.8.2010, which has been issued by the NCTE, is under Section 23(1) of the Act of 2009, we have directed for listing of all the petitions before the Division Bench and have heard the learned Counsel appearing on behalf of the parties on merits of the cases including questions which have been referred and they are being decided by this common order.

4. It is averred in Writ Petition No. 3964/2011 that the Petitioners have qualified three years degree course of graduation from respective colleges/university and thereafter, they have completed B. Ed. Course. Some of them have been appointed as Vidhyarthi Mitra under the Scheme introduced by the State Government for the purpose of teaching students of primary, upper primary, secondary and senior secondary schools. One incumbent is working on the post of CRCF in the Sarva Shiksha Abhiyan.

5. It is further averred that the NCTE vide Notification dated 23.8.2010 issued under Section 23(1) of the Act of 2009 had laid down the minimum qualifications for being eligible for appointment as Teacher in Class I to VIII in a school referred to in Clause (n) of Section 2 of the Act of 2009. Such Notification could not have been issued in view of 7 availability of persons under Section 23. It could have been done only in cases where there are no adequate institutions offering course or training in teacher education are available with the State Government. TET will be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE as per communication P/4 dated 11.2.2011 issued by the Member Secretary, NCTE. The State Government issued advertisement along with guidelines dated 30th March, 2011 for conducting TET and last date for submitting application was 18.4.2011 and the date of examination was fixed as 22.5.2011. It has been prescribed that 50% marks in B.A., B. Sc. are compulsory for appearing in TET examination, 2011 whereas the Petitioners were allowed to appear in B. Ed. Course on the basis of marks obtained by them in graduation irrespective of the fact whether they have secured the marks more than 50% or below 50%. Thus, their degree of B. Ed. are being de-recognized with retrospective effect by imposing rider of certain percentage in the graduation (B.A., B. Sc. etc.). It is also submitted that as the Petitioners are working as Vidhyarthi Mitra for several years, as such, they are not required to qualify TET examination. They should have been exempted from appearing in the TET examination. It is also submitted by the Petitioners that as per the prevailing Rules of Recruitment in Rajasthan, the recruitment of teacher Gr.III is through RPSC or recruitment under the Rajasthan Panchayati Raj Rules 1996 or the Rajasthan Education Subordinate Rules 1971 and they do not provide holding of TET. Thus, action of holding TET examination is contrary to the Recruitment Rules.

6. In some of the petitions, prayer has been made to treat the qualification of B. Com. in the graduation, which has been accepted by NCTE and B. Com. has been included in the group of qualification of graduation in the eligibility criteria. To that extent, prayer of the Petitioners stands satisfied.

7. In some of the petitions, prayer has been made by the Petitioners that as they have passed B. Ed. Examination from Jammu and Kashmir where there is no applicability of eligibility criteria specified by NCTE, as such, irrespective of their percentage in the graduation etc., they should be permitted to participate in the TET.

8. The relief prayed by the Petitioners stands satisfied in view of the agreement expressed on behalf of NCTE to the effect that in case they have passed B.A, B. Sc., B. Com., Senior Secondary or its equivalent qualification and obtained admission in the requisite courses such as B. Ed., B. El.Ed., D. Ed. etc. as mentioned in para-1 of the Notification dated 23.8.2010, prior to the prescription of the minimum qualifying marks by NCTE in Bachelor's degree or Master's Degree etc. or any other qualification equivalent thereto vide notifications dated 27.9.2007 and 31.8.2009, the minimum qualification of having 45% or 50% marks, as the case may be, in the bachelor's degree or master's degree etc. or any other equivalent qualification, shall not be insisted as stated by Mr. Kuldeep Mathur, learned Counsel appearing on behalf of the NCTE on being instructed by Regional Director, NCTE. Thus, the major grievance of the Petitioners that their qualifications of B. Ed. B. El.Ed. etc. mentioned in Para 1 are being derecognized with retrospective effect when there was no prescription of minimum qualifying marks of 45% or 50%, as the case may be, stands redressed in view of the statement made by learned Counsel appearing on 9 behalf of the NCTE. It has been further stated by the learned Counsel for the NCTE that for the first time, de-novo qualifications were prescribed by the NCTE vide Notification dated 27.9.2007 and further, qualifications were prescribed vide Notification dated 31.8.2009 and in case admission has been taken by the incumbents in any of the courses of B. Ed. B. El.Ed. etc. as mentioned in para-1 of the Notification dated 23.8.2010 prior to aforesaid dates, they shall not insist for having 45% or 50% marks, as the case may be, in qualifying examination for aforesaid courses. Thus, Respondents have to allow aforesaid incumbents in TET examination, 2011.

9. Coming to the question of surviving relief's, it is submitted that notification dated 23.8.2010 is illegal, arbitrary and ultra vires the Constitution. It is not necessary and it is repugnant to the Rules of Service in the State. The guidelines for conducting TET as contained in P/6 provides that the implementation of the Act of 2009 requires the recruitment of a large number of teachers. It is necessary to ensure that persons recruited as teachers possess the essential aptitude and ability to meet the challenges of teaching at the primary and upper primary level Class I to VIII. Section 23(1) of the Act of 2009 provides for minimum qualifications as laid down by the Academic Authority, authorized by the Central Government by notification. NCTE has been authorized by the Central Government to lay down minimum qualifications and vide notification dated 23rd August, 2010, NCTE has notified minimum qualifications, which are essential for teaching in any school as referred to in Clause (n) of Section 2 of the Act of 2009. It is necessary that incumbent should pass TET which will be conducted by the 10 appropriate Government. The rationale for including TET as one of the minimum qualifications is quoted below:

3. The rationale for including the TET as a minimum qualification for a person to be eligible for appointment as a teacher is as under:

i. It would bring national standards and benchmark of teacher quality in the recruitment process;

ii. It would induce teacher education institutions and students from these institutions to further improve their performance standards;

iii. It would send a positive signal to all stakeholders that the Government lays special emphasis on teacher quality.

10. Section 23 of the Act of 2009 which is enabling provision for prescription of the qualifications is quoted below:

23. Qualifications for appointment and terms and conditions of service of teachers.- (1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorized by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under Sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification.

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under Sub-section (1), shall acquire such minimum qualifications within a period of five years.

(3) The salary and allowances payable to, and the terms and conditions of service of, teacher shall be such as may be prescribed.

11. Section 2(n) of the Act of 2009 which specifies schools for imparting elementary education is quoted below:

2(n) "School" means any recognized school imparting elementary education and includes-

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;

12. The notification dated 23rd August, 2010 is quoted below:

NATIONAL COUNCIL FOR TEACHER EDUCATION

NOTIFICATION

New Delhi, the 23rd August, 2010

F. No. 61-03/20/2010/NCTE/(N&S).- In exercise of the powers conferred by Sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009), and in pursuance of Notification No. S.O 750(E) dated 31st March, 2010 issued by the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India, the National Council for Teacher Education (NCTE) hereby lays down the following minimum qualifications for a person to be eligible for appointment as a teacher in Class I to VIII in a school referred to in Clause (n) of Section 2 to 12 the Right of Children to Free and Compulsory Education Act, 2009, with effect from the date of this Notification:

1. Minimum Qualifications.-

(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% marks and 4-year Bachelor of Elementary Education (B. El. Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2- year Diploma in Education (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.

(ii) Classes VI-VIII

(a) B.A./B. Sc. and 2- year Diploma in Elementary Education (by whatever name known)

OR

B.A./B. Sc. With at least 50% marks and 1-year Bachelor in Education (B. Ed.)

OR

B.A./B. Sc. With at least 45% marks and 1-year Bachelor in Education (B. Ed.) in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard

OR

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

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 year BA/B. Sc. Ed or B.A. Ed./B Sc. Ed.

OR

BA/B. Sc. With at least 50% marks and 1-year B. Ed. (Special Education).

AND

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

2. Diploma/Degree Course in Teacher Education.-For the purposes of this Notification, a diploma/degree course in teacher education recognized by the National Council for Teacher Education (NCTE) only shall be considered.

However, in case of Diploma in Education (Special Education) and B. Ed. (Special Education), a course recognized by the Rehabilitation Council of India (RCI) only shall be considered.

3. Training to be undergone.-A person-

(a) with BA./B. Sc. With at least 50% marks and B. Ed. qualification shall also be eligible for appointment for class I to v. up to 1st January, 2012 provided he undergoes, after appointment, an NCTE recognized 6 month special programmed in Elementary Education.

(b) with D. Ed (Special Education) or B. Ed. (Special Education) qualification shall undergo, after appointment, an NCTE recognized 6-month special programmed in Elementary Education.

4. Teacher appointed before the date of this Notification.- The following categories of teachers appointed for classes I to VIII prior to date of this Notification need not acquire the minimum qualifications specified in Para (i) above.

(a) A teacher appointed on or after the 3rd September, 2001 i.e. the date on which the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time) came into 14 force, in accordance with that Regulation.

Provided that a teacher of class I to v. possessing B. Ed. Qualification, or a teacher possessing B. Ed. (Special education) or D. Ed. (Special Education) qualification shall undergo an NCTE recognized 6-month special programmed on elementary education.

(b) A teacher of class I to v. with B. Ed. Qualification who has completed a 6-month Special Basic Teacher Course (Special BTC) approved by the NCTE.

(c) A teacher appointed before the 3rd September, 2001, in accordance with the prevalent Recruitment Rules.

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 Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time).

HASIB AHMAD, Member Secy.

13. It is stated by the learned Counsel appearing on behalf of the NCTE that prior to 27.9.2007, NCTE has not prescribed qualifying marks in B.A., B. Com., B. Sc. or Senior Secondary etc. By way of the said Notification dated 27.9.2007, the eligibility criteria was prescribed to the effect that candidates with at least 45% marks either in the Bachelor's Degree and/or in the Master's degree or any other qualification equivalent thereto, were eligible for admission to the programmed of B. Ed. etc. The reservation for SC/ST/OBC and other categories were provided as per the Rules of the Central Government/State Government, whichever was applicable. Relaxation of 5% marks was provided in favor of SC/ST/OBC and other categories of candidates. The eligibility criteria laid down in the Notification dated 27.9.2007 is quoted below:

3.2 Eligibility

3.2.1. Candidates with at least 45% marks either in the Bachelor's Degree and/or in the Master's degree or any other qualification equivalent thereto, are eligible for admission to the programmed.

3.2.2. The reservation for SC/ST/OBC and other categories shall be as per the rules of the Central Government/State Government, whichever is applicable. There shall be relaxation of 5; marks in favor of SC/ST/OBC and other categories of candidates.

14. In the Notification dated 31.8.2009, the eligibility criteria laid down was to the effect that candidates with at least 50% marks either in the Bachelor's Degree and/or in the Master's degree or any other qualification equivalent thereto, were eligible for admission to the programmed. Para 3(2) prescribing eligibility is quoted below:

3(2). Eligibility

(a) Candidate with at least fifty percent marks either in the Bachelor's Degree and/or in the Master's degree or any other qualification equivalent thereto, are eligible for admission to the programmed.

(b) The reservation in seats and relaxation in the qualifying marks in favor of the reserved categories shall be as per the rules of the concerned Government.

15. It is apparent from the above that 50% marks were required either in Bachelor's Degree and/or Master 16 Degree or any other qualification equivalent thereto with effect from 31.8.2009. Earlier 45% marks were required in Bachelor's Degree or Master Degree or any other qualification equivalent thereto w.e.f. 27.9.2007. The said criteria as stated by learned Counsel appearing on behalf of the NCTE on being instructed by Regional Director, shall not be insisted in case admission has been taken by the incumbent in the requisite courses specified in para 1 of the notification dated 23.8.2010, prior to the aforesaid dates. It is apparent that incumbents having 45; marks either in the Bachelor's Degree or in the Master's degree or any other qualification equivalent thereto, were eligible for admission with effect from 27.9.2007 and 50% marks with effect from 31.8.2009. The said criteria shall not be applicable to an incumbent who has obtained admission earlier in the requisite courses prior to aforesaid dates.

16. It is submitted by the learned Counsel for the Petitioners that the Notification dated 23.8.2010 is illegal, arbitrary and ultra vires being wholly unnecessary and repugnant to the Service Rules of the State. In our opinion, the said notification cannot be said to be illegal or ultra vires the Constitution. It has been issued as per mandate of Section 23(1) of the Act of 2009 which enables the NCTE being academic authority authorized by Central Government by notification to prescribe minimum qualifications. The Notification has been issued with the objective to provide efficient education at the primary and upper primary level. The Act of 2009 has been enacted to provide for free and compulsory education to all children of the age of six to fourteen years. Over the years there has been significant spatial and numerical expansion of elementary schools in the country, yet 17 the goal of universal elementary education continues to elude us. The number of children, particularly children from disadvantaged groups and weaker sections, who drop out of school before completing elementary education, remains very large. Moreover, the quality of learning achievement is not always entirely satisfactory even in the case of children who complete elementary education. The Act of 2009 seeks to provide that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards. It provides compulsory education, free education, duties and responsibilities of the appropriate Government, local authorities, parents, schools and teachers in providing free and compulsory education and a system for protection of the right of children and decentralized grievance redressed mechanism. The legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. The implementation of the Act of 2009 requires recruitment of large number of teachers and it is desirable to ensure that quality requirement for recruitment of teachers are not diluted at any cost and thus, it is necessary to ensure that persons recruited as teachers possess the essential aptitude and ability to meet the challenges of teaching at the primary and upper primary level. Considering the provisions of the Act of 2009, aims and objects of the Act of 2009 and the purpose for which minimum qualifications have been prescribed vide Notification dated 23rd August, 2010, we find that prescription of minimum qualifications is with the objective to ensure 18 providing of quality education at primary and upper primary level. In the present scenario, there is high competition and deterioration in the standard of education, mushroom growth of institutions without requisite infrastructure and keeping this aspect in mind, it has been considered appropriate to ensure that the children, who are future of the Nation, are efficiently taught by the qualified incumbents and for that if TET was prescribed, such prescription cannot be said to be illegal or arbitrary or impermissible at all, rather it would bring national standards and benchmark of teacher quality in the recruitment process, it would induce teacher education institutions and students from these institutions to further improve their performance standards and it would convey positive message to all stakeholders that the Government lays special emphasis on teacher quality and ultimately, by recruiting highly qualified teachers, children would be benefited. It is also permissible to lay down certain qualifications for appearing in the TET. However, as agreed by learned Counsel for the NCTE, the NCTE is not going to wipe off the qualification obtained by taking admission prior to 27.9.2007 and 31.8.2009. As per the concession provided by the NCTE, it cannot be said that there is wiping out of the qualification with retrospective effect when such standards were not prescribed.

17. Submission was raised by the learned Counsel for the Petitioners that in Service Rules of the State such qualifications are not being provided. The State Government vide Notification dated 11.5.2011 amended the qualification criteria as laid down in the Rules 266, 273 and schedules appended to the Rajasthan Panchayati Raj Rules, 1996. Copy of the said 19 Notification has been placed on record, which shows that the State Government has framed the amended rules, namely, Rajasthan Panchayati Raj (Second Amendment) Rules, 2011 by which Rules 266 and 273 and schedules attached thereto were amended and for recruitment to the post of Teacher, the qualifications as prescribed from time to time by NCTE as per provisions of Sub-section (1) of Section 23 of the Act of 2009 were laid down. Thus, submission raised by the learned Counsel for the Petitioners that the Notification issued under Section 23(1) of the Act of 2009 is repugnant to the said Service Rules does not survive. Apart from this, clearing TET does not ensure the employment, but ensures the quality whereas the Service Rules in the State of Rajasthan deal with employment. Thus, examination of TET was not necessary to be provided in the State Service Rules. However, in any view of the matter, as already stated above, it has now been provided by way of amendment in Service Rules.

18. It is submitted by the learned Counsel for the Petitioners, who have passed B. Ed. or its equivalent course from the Jammu and Kashmir that though they are resident of Rajasthan, but obtained admission in Jammu and Kashmir where prescription of minimum 45% marks in graduation or post graduation or equivalent qualification with effect from 27.9.2007 and 50% in graduation or post graduation or equivalent qualification with effect from 31.8.2009 etc. was not applicable and as such, even if they have obtained admission in requisite courses in Jammu and Kashmir after aforesaid prescription of minimum percentage by NCTE, they should be permitted to stake their claim in the TET examination ignoring the eligibility criteria prescribed by NCTE with effect from 27.9.2007 and 20 31.8.2009.

19. We cannot accept the aforesaid submission. In case they have passed the B. Ed. or any other requisite course, which is prescribed by NCTE in the Notification dated 23.8.2010, obviously, they can stake their claim subject to the condition that they fulfill the eligibility criteria as prescribed by NCTE applicable in Rajasthan vide notifications dated 23.9.2007 and 31.8.2009. In our opinion, it was open to the NCTE to lay down such qualifications and they cannot be circumvented by the Petitioners in the manner they have suggested. They are bound by the qualifications prescribed in the notification dated 23.8.2010. Only in case they had obtained admission in the requisite course prior to 27.9.2007 or 31.8.2009 as the case may be, without violating the norms of NCTE, they can be permitted to appear in the TET not otherwise. In case they have not taken admission in the requisite course prior to 27.9.2007 or 31.8.2009 and they were not having minimum percentage and qualifications as prescribed vide notifications dated 27.9.2007 or 31.8.2009 even though such qualifications were not applicable in Jammu and Kashmir, they cannot stake their claim in TET which is being conducted in State of Rajasthan. It is open to NCTE to lay down eligibility criteria which is equally applicable to all. There cannot be different criteria for Rajasthan incumbents and incumbents from Jammu and Kashmir.

20. The learned Counsel for the Petitioners have relied upon the decision of Allahabad High Court in Kanhiya Lal v. State of UP and Ors. (decided on 5th January, 2010) in which Allahabad High Court has observed that there was valid reason for not treating incumbents obtaining degree from Jammu & Kashmir eligible for admission for Special B.T.C. Course. If 21 the Government decides that such educational qualification, which fulfill the minimum standard set by NCTE would be valid qualification for admission in Special B.T.C. the decision of the Government cannot be treated to be per se illegal as the Bar created in NCTE Act admittedly applies to the State of UP. The petition was dismissed. The decision is of no help to the cause espoused by the Petitioners.

21. Yet another decision of Allahabad High Court has been relied upon in Smt. Sadhana Singh v. State of UP. and Ors. (Special Appeal No. (1323) of 2009) in which Petitioner has obtained degree of B. Ed. from the Jammu and Kashmir University and applied in the selections for Special BTC Training Course, 2007 designed specially for those, who have B. Ed. degrees for training to fill up vacancies of teachers with primary school teachers training, after seeking approval of the NCTE. The Petitioner was excluded from the selection on the ground that she has obtained B. Ed. degree from Jammu and Kashmir University. In that, the decision of the Full Bench of Allahabad High Court dated 6.1.2009 in Special Appeal No. 858 of 2008 Bhupendra Nath Tripathi and Ors. v. State of U.P. and Ors. was referred to in which it has been laid down that exclusion of the candidates from the field of eligibility for Special Basic Training Course 2007, who had obtained B. Ed. degree prior to enforcement of National Council for Teacher Education Act, 1993 or after the enforcement of National Council for Teacher Education Act, 1993 during the period when the application of the Institution or the University was pending consideration was arbitrary, unreasonable and volatile of Articles 14 and 16 of the Constitution of India. The decision does not assist the Petitioners as it is the case where NCTE Act was not enforced or 22 where institutions have applied but the recognition was not given. In the instant case, NCTE Act was in force in the area in question in Rajasthan and NCTE has prescribed the eligibility criteria, which is equally applicable to all. Thus, the above decision is of no help to the Petitioners.

22. In Hanuman Lal Harijan v. State of Rajasthan (1997 WLC (Raj.) 142), the Division Bench of this Court has laid down with respect to eligibility that once eligibility was recognized and subsequent derecognizing of any qualification will have prospective effect and qualification acquired before derecognizing would be treated as valid qualification. In State of Rajasthan and Ors. v. Shiv Karan and Ors. (1994 WLC (Raj.) 594), it has been held that since the Petitioner passed Prathma Examination prior to its de-recognition and said examination at the relevant time was recognized as equivalent to High School/Matriculation, he was entitled to be considered for promotion on the basis of Prathma qualification. To that extent, the NCTE has agreed to consider the candidature of the persons in case admission was obtained by them in the requisite course when the prescription of minimum percentage was not in force.

23. The learned Counsel for the Petitioners pressed into service the decision in State of Rajasthan v. Bhupendra Singh ( 2002 (1) RLR 198) in which it has been laid down that the State Government cannot provide two different standards for admission to LL.B. and providing of minimum 60% marks for graduates from University outside the State of Rajasthan and 45; marks for graduates from University within State of Rajasthan was held to be unfair, arbitrary and volatile of Article 14 of the Constitution. The above decision is of no help to the Petitioners, but rather 23 defeats the cause espoused by them as students obtaining degrees from Jammu and Kashmir cannot claim differential treatment in the matter of prescription of qualifications from time to time by NCTE which are equally applicable to all in Rajasthan.

24. In Basic Education Board UP v. Upendra Rai and Ors. ( : (2008) 3 SCC 432), the Apex Court has considered the question of recruitment process and change in eligibility conditions with respect to educational qualifications, equivalent qualification, recognition/derecognizing, granting/revocation of equivalent and held that Diploma in Education (D Ed) is no longer regarded as equivalent to Basic Teacher's Certificate after the circular dated 11.8.1997 in UP. The Apex Court has also laid down that the court cannot interfere with policy decision of the Government unless it is in violation of some statutory or constitutional provision. The Apex Court has also laid down that grant of equivalence or revocation of equivalence is an administrative decision which is in the sole discretion of the authority concerned and the court has nothing to do with such matters. The matter of equivalence is decided by the experts appointed by the Government, and the court does not have expertise in such matters and it should exercise judicial restraint and not interfere in it. The Apex Court has held thus:

14. The Respondent admittedly got appointment after the Circular dated 11.8.1997 and hence this circular applies to him. Admittedly, the Respondent does not possess the qualification mentioned in the said circular. He does not either possess BTC, Hindustani Teaching Certificate, JCT or Certificate of Teaching. The D Ed Certificate is no longer regarded as equivalent to BTC after the Circular dated 11.8.1997. This was a policy decision of the U.P. Government, and it is well 24 settled that the court cannot interfere with policy decision of the Government unless it is in violation of some statutory or constitutional provision. Hence, we are of the opinion that the Respondent was not entitled to be appointed as Assistant Master of a junior basic school in U.P.

15. Grant of equivalence and/or revocation of equivalence is an administrative decision which is in the sole discretion of the authority concerned, and the court has nothing to do with such matters. The matter of equivalence is decided by experts appointed by the Government, and the court does not have expertise in such matters. Hence, it should exercise judicial restraint and not interfere in it.

25. The Apex Court in the above case has also discussed the scope of the National Council for Teacher Education Act, 1993. However, in the instant case, we are concerned with the Act of 2009 and the eligibility criteria prescribed in the Notification dated 23rd August, 2010 issued by NCTE under the authority of Section 23(1) of the Act of 2009. In such matter, scope of interference is minimum and we cannot accept the submission raised by the Petitioners that qualification of possessing minimum percentage 45% or 50% as the case may be in the requisite course after 27.9.2007 or 31.8.2009 as the case may be, should be given go-bye. They can stake their claim on the basis of requisite course of B. Ed. provided they fulfill the other requirement as per notifications dated 27.9.2007 and 31.8.2009. In case they obtained admission before the said dates in the requisite courses in Jammu & Kashmir, obviously their qualification would be recognized and they can stake their claim in the TET otherwise not.

26. In Rajasthan Public Service Commission v. Kaila Kumar Paliwal and Anr.  : (2007) 10 SCC 260), where for 25 promotion to the post of Headmaster, teaching experience of five years was essential as per the relevant Rules and feeder post for promotion to Headmaster was Teacher Grade II and for Grade II feeder post Grade III and it was held by the Apex Court that Public Service Commission rightly decided that teaching experience as Teacher Gr.III did not satisfy the conditions for appointment as Headmaster. A person in order to be considered for promotion to a higher post must possess the essential qualification. If he does not do so, he cannot be considered therefore.

27. Coming to the submission raised by the Petitioners that as they are already working as Teachers, they should be exempted from appearing in the TET. With respect to the aforesaid prayer, provision has been made in para 4 of the Notification dated 23rd August, 2010, which provides that categories of teachers mentioned in para 4(a) to (c) appointed for classes I to VIII prior to date of this Notification need not acquire the minimum qualifications specified in para (1) of the said Notification. Para 4(a) provides a teacher appointed on or after the 3rd September, 2001 i.e. the date on which the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time) came into force, in accordance with that Regulation. Provided that a teacher of class I to v. possessing B. Ed. qualification, or a teacher possessing B. Ed. (Special education) or D. Ed. (Special Education) qualification shall undergo an NCTE recognized 6-month special programmed on elementary education. Para 4 (b) provides a teacher of class I to v. with B. Ed. Qualification who has completed a 6-month Special Basic Teacher Course (Special BTC) approved by the NCTE. Para 4(c) provides a teacher appointed 26 before the 3rd September, 2001, in accordance with the prevalent Recruitment Rules. In case the Petitioners fall in the aforesaid categories of teachers, obviously they are not supposed to undergo TET. Since there are various kind of teachers appointed under the Rules in Rajasthan, we direct the NCTE to specify in State of Rajasthan categories of Teachers, which are exempted as per para 4 of the said Notification. Let it be done within a period of one month.

28. Consequently, the questions referred by the Single Bench for adjudication by the Division Bench are answered in seriatim thus:

Answer to question (A):

The State Government has amended the Service Rules and even otherwise, in our opinion, as Notification dated 23rd August, 2010 was having statutory force of Section 23(1) of the Act of 2009, it was open to the NCTE to prescribe holding of TET even without amending the Service Rules. However, as already stated, Rajasthan Punchayati Raj Rules,1996 have been amended vide notification dated 11.5.2011. Thus, question (A) stands answered accordingly.

Answer to question (B):-

The question (B) has assumed academic significance as we have heard the matters and decided the same on merits by this common order.

Answer to question (C)-

As to question (C), we are of the opinion that since Notification dated 23rd August, 2010 was issued under Section 23(1) of the Act of 2009, therefore, it has statutory force. Apart from this, the State Government has amended the Service Rules. Even otherwise, it was open to the NCTE to prescribe conducting of TET. The notification dated 23.8.2010 cannot be said to be administrative instructions, it has legislative 27 force. The prescription of eligibility qualifications has statutory force.

Answer to question (D)-

The question (D) has been rendered unnecessary in view of the final decision being rendered by us. Apart from this, the question has assumed academic importance as the Service Rules has been amended prescribing conducting of TET. Holding of TET is necessary for manning the teachers in the various schools at large. Thus, non-holding of TET would be detrimental to the public interest as primary and upper primary schools cannot be left without qualified teachers which is dependent upon holding of TET. Hence, holding of TET is necessary for the interest of the children.

Answer to question (E)-

As already stated above, holding of TET is necessary for the recruitment to be made in the schools. Thus, there is no question of State Government withholding recruitment as after TET, recruitment is open to be made.

29. For the reasons stated above, the interim stay is vacated. The Respondents are free to hold the TET examination. The prayer of the Petitioners regarding inclusion of qualification of B. Com. in the group of qualification of graduation in the eligibility criteria has already been allowed. The Respondents shall not insist on the qualification of having 45; or 50% marks, as the case may be, in the bachelor's degree or master's degree etc. or any other equivalent qualification, in case incumbents have obtained admission in the requisite courses such as B.A., B. Com., B. Sc., B. Ed., B. El.Ed, Senior Secondary etc. prior to prescription of the minimum qualifying marks by NCTE vide notifications dated 27.9.2007 and 28 31.8.2009. It is made clear that the incumbents, who have obtained the B. Ed. etc. before the minimum qualifications were prescribed vide notifications dated 27.9.2007 and 31.8.2009, shall be allowed to appear in the TET Examination. The incumbents, who have passed out B. Ed. Course from Jammu & Kashmir, have to be dealt with on similar yard sticks in case the qualification is otherwise recognized. Let NCTE specify categories of teachers under para 4 of Notification dated 23.8.2010. As prayed by NCTE, let amended notification be issued within one month covering aforesaid aspects.

30. With the aforesaid directions, the writ petitions stand disposed of accordingly. The stay applications also stand disposed.