**IN THE HIGH COURT OF CALCUTTA**

W.P. No. 24817 (W) of 2012

Decided On: 13.12.2012

Appellants: **Rupa Paul**
**Vs.**
Respondent: **State of West Bengal**

**Hon'ble Judges/Coram:**Debasish Kar Gupta, J.

**JUDGMENT**

**Debasish Kar Gupta, J.**

1. This is an application filed by the petitioners assailing a notification dated October 19, 2012 issued for appointment of Primary School Teachers in different Primary Schools throughout the State of West Bengal. According to petitioners, all of them fulfilled the qualification mentioned in Clause 2 of the impugned notification with two year diploma in elementary education from the recognised institution. The National Council for Teachers Education Act, 1993, thereinafter referred to as the "said Act, 1993") has been enacted by the Parliament to provide for establishment of a National Council for Teachers Education with a view to achieve planed and coordinated development of the teacher education system through out the country, the regulation and proper maintenance of norms and standards in teacher education system and for matters enacted therewith, section12 of the said Act, 1993 empowers the National Council for Teachers Education (hereinafter referred to as the "NCTE") to take steps for the purpose of ensuring planed and coordinated development of teacher education and for determination and maintenance of standards for teacher education including laying down of guidelines in respect of minimum qualification for a person to be employed as a teacher in schools or in recognised institutions.

2. The provisions of section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the said Act, 2009) relates to qualifications for appointment and terms of service of teachers. Sub-section (1) of section 23 of the said Act, 2009 prescribes that any person possessing such qualification, as laid down by academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

3. The NCTE published a notification in the Gazette of India on August 25, 2010 in exercise of power conferred on it under sub section (1) of section 23 of the said Act, 2009 prescribing minimum qualification for a person to be eligible/or appointment as a teachers in Class I to VIII in a school referred to in clause (n) of section 2 of the said Act, 2009. The NCTE framed guidelines for conducting Teachers Eligibility Test (TET) under the said Act, 2009 by a Notification No. 76 04/2010/NCTE/ACAD dated February 11, 2011.

4. The State of West Bengal, thereafter, submitted a proposal to the Central Government for grant of relaxation of the minimum qualification norms laid down by the NCTE in its notification published in the Gazette of India on August 25, 2010.

5. The Ministry of Human Resource Development (Department of School Education and Literacy), Government of India published a notification dated June 01, 2011 in exercise of power conferred by sub-section (2) of section 23 of the said Act, 2009 granting relaxation to the State of West Bengal in respect of minimum teacher qualification norms notified by the NCTE as published in Gazette of India dated August 25, 2010 in so far as they relate to Classes I to VIII. Clause 6 of the above notification is set out below:

6. Now, therefore, in exercise of the powers conferred by sub-section (2) of section 23of the RTE Act, the Central Government hereby grants relaxation to the State Government of West Bengal in respect of the minimum teacher qualification norms notified by the NCTE as published in the Gazette of India vide No. 215 dated the 25th August, 2010, in so far as they relate to classes I VIII as under:

(a) 2 year Diploma in Elementary Education (by whatever name known) for appointment of a teacher in classes IV; and

(b) 1 Year Bachelors in Education (B.Ed.) for appointment of a teacher in classes VI to VIII.

Note: 1. The aforementioned relaxation shall be valid upto 31st March, 2014 and shall be subject to the following conditions, namely:--

(i) as specified in the aforementioned Notification of the NCTE, the State Government of West Bengal shall conduct the Teacher Eligibility Test (hereinafter referred to as TET) in accordance with the Guidelines dated the 11th February, 2011 issued by the NCTE and only those persons who pass the TET can be considered for appointment as a teacher in elementary classes;

(ii) the State Government and other school managements shall amend the Recruitment Rules to correspond with the minimum qualification norms laid down by the aforementioned notification of the NCTE;

(iii) in the matter of appointment, the State Government shall give priority to those eligible candidates who possess the minimum qualifications specified in the NCTE's notification dated 25th August, 2010, and only thereafter, consider the eligible candidates with the relaxed qualifications specified in this notification;

(iv) advertisement for appointment of teachers should be given wide publicity, including outside the State;

(v) the State Government and other school managements shall ensure that teachers not possessing the minimum academic and professional qualifications laid down in the aforementioned notification of the NCTE shall acquire the same within the time limit specified under sub section (2) of section 23 of the RTE Act;

(vi) the State Government and other School managements shall ensure that teachers who are appointed under the relaxed qualification norms acquire the minimum qualification specified in the NCTE notification within a period of two years from the year of appointment;

(vii) the relaxation specified in this notification shall be one time and no further relaxation under sub section (2) of section 23 shall be granted to the State Government.

2. In accordance with sub para (iii) of para 5 of the TET Guidelines issued by the NCTE vide its letter dated the 11th February, 2011, the following persons shall also be eligible for appearing in the TET conducted by the State Government of West Bengal in respect of teacher appointments made in the State up to the 31st March, 2014:

(i) for classes 1 to V - Senior Secondary (or equivalent) with at lest 50% marks;

(ii) for classes VI to VIII - Graduation with at least 50% marks.

6. In exercise of power conferred by section (1) and clause (k) and sub-section (2) of section 106 read with Clause (k) of sub-section (1) of section 60 of the West Bengal Primary Education Act, 1973. The Government of West Bengal, School Education Department issued a notification dated July 24, 2012 for the amendment in West Bengal Primary School Teachers Recruitment Rules, 2001. Note 2 of Clause (2) of Rule 6 of the said Rules, 2001 is set out below:

Note 2. - The persons having qualification of Higher Secondary pass under the West Bengal Council of Higher Secondary Education or its equivalent with at least 50% marks of graduate (irrespective of marks obtained therein) or equivalent without 2 year Diploma in Elementary Education (by whatever name known) or 4 year Bachelor of Elementary Education (B.El.Ed.) or 2 year Diploma in Education (Special Education) shall also be eligible for appearing in the Teacher Eligibility Tost (TET) to be conducted for appointment of primary school teachers in the State upto 31st March, 2014, subject to condition that those who are appointed without professions qualifications shall acquire the professional qualification as specified in sub rule (2) of rule 6 above within a period of two (2) years from the year of appointment.

7. The impugned notification was published inviting applications from the eligible candidates for appointment of primary school teachers in different primary schools running under the provisions of the West Bengal Primary Education Act, 1973.

8. Table A to Note 1 of Clause 4 of the impugned notification together with its notes are set out below:

4. Manner of Selection: (a) The Teacher Eligibility Test (TET) shall be held as per guidelines issued for time to time by the National Council for Teacher Education an a person who will score 60% or above in the Teacher Eligibility Test (TET) examination shall be considered as Teacher Eligibility Test (TET) pass provided relaxation upto 5% marks shall be allowed to the candidates belonging to the reserved categories, such SC/ST/OBC/PH/EC.

(b) Teacher Eligibility Test (TET) examination shall be held in 100 marks consisting of the following five (5) Sections;

(a) section I - Child Development-20 Marks

(b) section II - Language 1-20 Marks

(c) section III - Language 11 - 20 Marks

(d) section IV - Mathematics - 20 Marks

(e) section V - Environmental Science - 20 Marks

Note 1. - All questions shall be of multiple choice types with four alternatives out of which one option will be correct. All questions shall be compulsory and each item shall carry one mark. But there will be no negative marking.

Note 2. - First Language of the candidate shall be determined as per the medium of instruction of the primary school for which the vacancy occurred and Second Language be English.

(c) The Selection Committee shall call all Teacher Eligibility Test (TET) qualified candidates as mentioned in sub-rule (2), for the Viva Voce/interview. The performance of the candidates who will be called for Viva Voce/interview shall be assessed out of 10 marks by the interview Board formed for the specific purpose.

(d) Thereafter, academic, training, performance in Teacher Eligibility Test (TET), Extra Curricular Activities and performance in Viva Voce/interview of the candidate appeared at the Viva Voce/interview shall be computed in the following manner as mentioned in Table A below:



Note 1. - The percentage of marks to the total full marks obtained by the candidate in the Madhyamik Examination or its equivalent excluding additional marks, if any, shall be computed as percentage of 10.

Note 2. - The percentage of marks to the total full marks obtained by the candidate in the H.S. Examination or its equivalent excluding additional marks, if any, shall be computed as percentage of 15.

Note 3. - 70% and above marks obtained by the candidate in Training shall be awarded 20, 50% above but below 70% marks obtained by the candidate in Training shall be awarded 17 and below 50% marks but passed in the Training by the candidate shall be awarded 15.

Note 4. - The percentage of marks to the total full marks obtained by the Teacher Eligibility Test (TET) qualified candidate in Teacher Eligibility Test (TET), shall be computed as percentage of 40.

Note 5. - Maximum five (5) marks shall be awarded to the candidates in the Extra Curriculum Activities on the following Extra Curriculum Activities:



(a) A certificate of representation in the State/National/International level Games or Sports issued by the Competent State Govt. or Central Government Authorities or agencies, shall be awarded (01) mark.

(b) Minimum 'A' certificate of National Cadet Corps (NCC) shall be awarded (01) mark.

(c) A certificate that any essay, story, short story, drama, poetry written by the candidate selected for publication in State Level or National newspaper or Magazine (Certificate along with a copy of publication shall be submitted), shall be awarded (01) mark.

(d) A certificate that the candidate has obtained proficiency in Performing Art (drama) issued by the National School of Drama or by the State Government or Central Government shall be awarded (01) mark.

(e) A certificate that the candidate has obtained proficiency in Music or Instrumental Music issued by the State Government or Central Government shall be awarded (01) mark.

9. It is submitted by Mr. Subrata Mukhopadhyay, learned advocate appearing on behalf of the petitioners, that the above notification has been issued for recruitment of primary school teachers in different primary schools in the State running under the provisions of the West Bengal Primary School Education Act, 1973 in violation of the relaxation granted by the Central Government in its notification dated June 01, 2011. According to him, the relaxation was granted subject to the conditions, amongst others, that the State Government shall give priority to the eligible candidate who possess minimum qualification prescribed by NCTE in its notification published in Official Gazette dated August 25, 2010 and only thereafter consider the eligible candidates with relaxed qualifications specified in the notification. According to Mr. Mukhopadhyay. no Teacher Eligibility Test is required to be held in view of the fact that about 11,000 eligible candidates possessing minimum qualification specified in the aforesaid NCTE notification are available against 34,000 vacancies (approximately). After their appointment the cases of eligible candidates with relaxed qualifications should be considered. According to Mr. Mukhopadhyay, even after giving preference to the eligible candidates possessing minimum qualification specified in NCTE notification it is an attempt to give appointment to the eligible candidates with relaxed qualification as appears from the decision making process of preparing merit list in view of the table A of the impugned notification read with note Nos. I to VII.

10. Mrs. Asha G. Gutgutia, learned counsel appearing for the NCTE, submits that in view of the relaxation granted by the Central Government under notification dated June 01, 2012 read with the guideline framed by the NCTE, one selection test for eligible candidates with qualification prescribed by NCTE and those without possessing qualification prescribed by NCTE cannot be sustained in law. According to Mrs. Gutgutia, one selection process for eligible candidates with qualification prescribed by NCTE should be conducted first. If any vacancy remains, then only selection test may be conducted allowing the eligible candidates without possessing requisite qualification prescribed by NCTE to appear in that selection process. Mrs. Gutgutia also submits that in view of the condition (1) of Note 1 of Clause (6) of the notification dated June 01, 2011 holding of Teacher Eligibility Test is a must.

11. It is submitted by the learned Government Pleader appearing on behalf of the State Respondents, that the petitioners cannot claimed priority over the eligible candidates participating in the selection process with relaxed qualification. According to him, preference is given to the eligible candidates with minimum qualification specified in NCTE notification published in Official Gazette dated August 25, 2010. It is also submitted by the learned Government Pleader that in view of the settled proposition of law as decided in the mater of Basic Education Board, U.P. vs. Upendra Rai reported in  : (2008)3 SCC 432, the State Government is the only authority to fix the eligibility criteria for appointment of primary school teachers.

12. Mr. L.K. Gupta, learned Senior Advocate appearing on behalf of the West Bengal Board of Primary Education, submits that in the matter of appointment of primary teachers, compliance of condition III of note 2 of Clause 6 of Notification dated June 01, 2011 is yet to be arrived at. According to him, the above provision has nothing to do at the time of conducting Teacher Eligibility Test (hereinafter referred to as TET). Mr. Gupta, submits, on instruction, that at the time of giving appointment to the selected candidates, eligible candidates who possess minimum qualification specified in NCTE notification, shall be given preference and only thereafter the cases of eligible candidates with relaxed qualification shall be considered.

13. Let affidavit-in-opposition be filed within two weeks after reopening of the Court after Christmas Vacation; affidavit in reply thereto, if any, be filed one week thereafter. Liberty is given to the parties to mention the above matter before the appropriate Bench for expeditious hearing after expiry of the above period.

14. I am of the prima facie opinion that the term "in the matter of appointment" used in condition (iii) of Note 1 of Clause 6 of Notification dated June 01, 2011 is different from the term "at the time of appointment" and the former indicates priority in the entire selection process from the stage of TET. I am also of the prima facie opinion, on the basis of the submissions made by the learned Government Pleader, High Court, Calcutta, that preference will be given to the candidates fulfiling requisite qualifications prescribed by NCTE instead of giving priority to them over the candidates fulfiling eligibility conditions with relaxation. Prima facie it appears to me considering that the term "Priority" is different from the term "Preference", the petitioners have made out a strong prima facie case.

15. For prima facie consideration of the balance of convenience and/or inconvenience in passing the interim order, it is evident from the condition I of Note 1 of Clause 6 of the Notification dated June 01, 2011 issued by the Ministry of Human Resource Development (Department of School Education and Literacy), Government of India, prescribes appointment of a teacher in elementary classes subject to passing Teacher Eligibility Test. Therefore, I prima facie do not find any substance in the submission made on behalf of the petitioners that no Teacher Eligibility Test is required to be conducted for selection of primary school teachers.

16. So far as the next ground is concerned, I prima facie find that condition (iii) of Note 1 of clause 6 of notification dated June 01, 2011 prescribes in no uncertain terms that candidates possessing minimum qualification specified in NCTE notification should be given priority in the matter of appointment and only thereafter the cases of eligible candidates with relaxed qualification be considered. From the Table A mentioned in clause 4 of the impugned notification read with Notes 1, 2, 3, 4 and 5 it is prima facie evident that the preparation of panel/merit list of the selected candidates depends upon overall performance of a candidate in Madhyamik Examination, Higher Secondary Examination, Teachers Eligibility Test, Extra Curricular Activities, viva voce or interview and even after allotment of 20 marks to the trained candidates in the manner prescribed in Note 3. A candidate with relaxed qualification may be placed above a candidate possessing minimum qualification specified in NCTE test. No material is produced before this Court or attention is not drawn as yet to any provision of the impugned notification in support of the submissions made on behalf of the respondents that the aforesaid condition (iii) of Note 1 of Clause 6 of the notification dated June 01, 2011 will be fulfilled so far as the candidates possessing minimum qualification specified in NCTE notification are concerned.

17. I do not prima facie find that the decision of Upendra Rai (Supra) has any manner of application in the issue involved in the instant case in view of the distinguishable facts and circumstances of the instant case. The issue involved in that case was the power of the State Government to ascertain the weightage to be given to D.Ed. Certificate in relation to BTC examination. But in the instant case the issue is the alleged violation of the condition prescribed by the Central Government in case of giving relaxation to the eligible candidates with relaxed qualification specified in notification.

18. In the event, no interim relief is given to the petitioners and the State is allowed to take Teacher Eligibility Test on the basis of the impugned notification and the writ application ultimately succeeds in that event there will be wastage of huge amount of money from the public exchequer apart from putting the fate of a huge number of unemployed youth in jeopardy after their selection and/or appointment as primary school teachers. On the other hand, if interim relief is granted and the writ application ultimately fails there will be no bar and/or impediment for the respondents to proceed on the basis of the impugned notification after disposal of the writ application without wastage of money from public exchequer ensuring an atmosphere for the unemployed eligible youths to participate in the selection process without any doubt or apprehension in their mind as indicated hereinabove.

19. Therefore, the operation of the impugned notification is stayed from the stage of conducting Teacher Eligibility Test until further orders.

20. Liberty is granted to the parties to apply for vacating, variation and/or modification of this order with prior notice upon the other side.

21. Let photostat plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the appearing parties on usual undertakings by December 17, 2012.

Later:

A prayer is made on behalf of the State Respondents for staying operation of the aforesaid interim order and the same is rejected.v