**IN THE HIGH COURT OF ALLAHABAD**

Civil Misc. Writ Petition No. 59566 of 2011

Decided On: 11.11.2011

Appellants: Mithai Lal & Ors.
**Vs.**
Respondent: **State of U.P. & Ors.**

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

**JUDGMENT**

**Hon. Dilip Gupta, J.**

1. The petitioners, who have obtained the B.Ed. two years Degree by Distance Mode from U.P. Rajshree Tandon Open University have filed this petition for a direction upon the respondents to consider it as a valid qualification for appearing at the U.P. Teachers Eligibility Test (hereinafter referred to as the 'U.P.-TET') scheduled to commence from 13th November, 2011.

2. It is stated that in exercise of the powers conferred by Section 23(1) of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the 'Act') and in pursuance of the notification dated 31st March, 2010 issued by the Government of India, the National Council for Teachers Education (hereinafter referred to as the 'NCTE') issued the notification dated 23rd August, 2010 laying down the minimum qualifications for a person to be eligible for appointment as a teacher in Classes I to VIII in a School referred to in Section 2(n)of the Act, which amongst others, provides that the person should pass the TET to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose. The Board of High School and Intermediate Education (hereinafter referred to as the 'Intermediate Education Board'), which has been authorised by the State Government to hold such a test, issued the advertisement dated 22nd September, 2011 inviting applications from the eligible candidates for appearing in the UP-TET but persons who have obtained B.Ed. Degree in two years by distance mode have not been permitted to appear in the test. It is, therefore, asserted that the petitioners, who have obtained B.Ed. Degree in two years through Distance Mode stand excluded from appointment as teachers in Classes I to VIII since a person who has cleared the TET is only considered eligible for appointment.

3. It is contended by Sri Shashi Nandan, learned Senior Counsel for the petitioners that notification dated 23rd August, 2010 issued by the NCTE under Section 23(1) of the Act regarding minimum qualification for a person to be eligible for appointment as a teacher in Classes I to VIII so far as it restricts candidates obtaining B.Ed. Degree in one year should be modified to include candidates who have obtained B.Ed. Degree by distance mode in two years as such candidates are at parity with the candidates obtaining B.Ed. Degree in one year in view of the decision of the Division Bench of the Court in Special Appeal No. 1271 of 2007 (Gyanendra Kumar Sharma & 49 others Vs. State of U.P. & Ors.) decided on 3rd October, 2007. He, therefore, submits that the petitioners, who have obtained the B.Ed. Degree by distance mode in two years, should also be considered eligible under the advertisement dated 22nd September, 2011 issued by the Intermediate Education Board.

4. Sri. R.A. Akhtar, learned counsel appearing for the NCTE has pointed out that the B.Ed. Distance Mode Program is offered by a University recognised by NCTE for working Teachers possessing minimum two years teaching experience and therefore, a person who is already appointed as a teacher is not required to undertake TET and it is for this reason that the B.Ed. Degree of two years obtained by Distance Mode has not been included in the notification. He has stated that he has made this submission on the basis of the instructions sent to him by the NCTE on 26th July, 2011.

5. I have considered the submissions advanced by the learned counsel for the parties.

6. The petitioners, who claim to be possessing B.Ed. degree obtained in two years through Distance Mode are desirous of appearing at the UP-TET conducted by the Intermediate Education Board so that they can possess the minimum qualification for a person to be considered eligible for appointment as a teacher in Classes I to VIII in a school referred to in Section 2(n) of the Act.

7. In order to appreciate the controversy involved in these petitions, it will be necessary to refer to various provisions of the Act and the relevant Regulations and Notifications.

8. Section 23(1) of the Act deals with the qualification for appointment and terms and conditions of service of teachers and is as follows:

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

9. Elementary Education has been defined under Section 2(f) of the Act while a School has been defined under Section 2(n) of the Act and the definitions are as follows:

2(f). "elementary education" means the educationfrom first class to eight class;..

(n) "school" means any recognised 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;

10. The Central Government, by means of the notification dated 31st March, 2010 published in the Official Gazette dated 5th April, 2010, has authorised the NCTE as the 'academic authority' to prescribe the minimum qualifications which notification is as follows:

NOTIFICATION

New Delhi, the 31st March, 2010

S.O. 750(E). - 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, the Central Government hereby authorises the National Council for Teacher Education as the academic authority to lay down the minimum qualifications for a person to be eligible for appointment as a teacher.

11. The NCTE, accordingly, issued the notification dated 23rd August, 2010 which was published in the Gazette of India dated 25th August, 2010. The said notification lays down the minimum qualification for a person to be eligible for appointment as a teacher in Classes I to VIII in a school referred to in Section 2(n) of the Act with effect from the date of the notification. However, another notification dated 29th July, 2011 was published in the Gazette of India dated 2nd August, 2011. This notification made certain amendments to the notification dated 23rd August, 2010 published in the Gazette of India dated 25th August, 2010. The minimum qualifications prescribed in the notification after the amendment for a person to be eligible for appointment of a teacher are as follows:

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.E1. Ed.).

OR

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

OR

Graduation and two year Diploma in Elementary Education (by whatever name known)

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) Graduation and 2-year Diploma in Elementary Education (by whatever name known)

OR

Graduation with at least 50% marks and 1-year Bachelor in Education (B.Ed.)

OR

Graduation 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.EI.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

Graduation with at least 50% marks and 1-year B.Ed. (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.

2. Diploma/Degree Course in Teacher Education.

For the purprose of this Notification, a diploma/degree course in teacher education recognised 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 recognised by the Rehabilitation Council of India (RCI) only shall be considered.

3. Training to be undergone.- A person

(a) with Graduation with at least 50% marks and B.Ed. qualification or 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 shall also be eligible for appointment for Class I to V upto 1st January, 2012, provided he/she undergoes, after appointment, an NCTE recognised 6-month Special Programme in Elementary Education.

(b) with D.Ed. (Special Education) or B.Ed. (Special Education) qualification shall undergo, after appointment, an NCTE recognised 6-month Special Programme 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 (1) 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 School) Regulation, 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 recognised 6-month special programme 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.(a) 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).

(b) The minimum qualification norms referred to in this notification apply to teachers of Languages, Social Studies, Mathematics, Science, etc. In respect of teachers for Physical Education, the minimum qualification norms for Physical Education teachers referred to in NCTE Regulation dated 3rd November, 2001 (as amended from time to time) shall be applicable. For teachers of Art Education, Craft Education, Home Science, Work Education, etc. the existing eligibility norms prescribed by the State Governments and other school managements shall be applicable till such time the NCTE lays down the minimum qualifications in respect of such teachers.

12. It is stated by learned counsel for the NCTE that 3rd November, 2001 in paragraph 5(b) of the said notification had been wrongly mentioned and the date should be 3rd September, 2001.

13. It is, therefore, clear that it is only those candidates who have obtained the B.Ed. Degree in one year who can be considered eligible under the notification and, therefore, can appear at the U.P.-TET.

14. It is pointed out by Sri. R.A. Akhtar, learned counsel for NCTE that persons who obtain the B.Ed. Degree in two years by distance mode have at least two years teaching experience and, therefore, it is not necessary for them to appear at the U.P.-TET.

15. In this connection it will also be pertinent to refer to the Norms and Standard for Diploma in Elementary Education Programme through Open and Distance Learning Mode leading to Diploma in Elementary Education contained in Appendix-9 to the National Council for Teachers Education (Recognition, Norms and Procedure) Regulation, 2009 (hereinafter referred to as the '2009-Regulation'). The eligibility for admission to such course is Senior Secondary with 50% marks and two years teaching experience in a Government or Government aided Primary/Elementary School.

16. Clauses 1 to 5 of Appendix-9 to the 2009-Regulations are relevant for the purposes of the controversy and are reproduced below:

Appendix-9

Norms and standards for Diploma in elementary education programme through Open and Distance Learning System leading to Diploma in elementary education (D. El. Ed.).

1. Preamble. - (i) The elementary teacher education programme through Open and Distance Learning System is intended primarily for upgrading the professional competence of working teachers in the elementary schools (primary and upper primary/middle). It also envisages bringing into its fold those teachers who have entered the profession without formal teacher training.

(ii) The NCTE accepts open and distance learning (ODL) system as a useful and viable mode for the training of teachers presently serving in the elementary schools. This mode is useful for providing additional education support to the teachers and several other educational functionaries working in the school system.

2. Condition of offering the course. - The institutions or academic units specially established for offering ODL programmes like the National Open University, State Open Universities and the Directorates/ School of Open and Distance Learning in the Central or State Universities shall be eligible to offer teacher education programmes (The Deemed to be Universities, Agricultural or Technical Universities, which specialize in a field other than teacher education and other discipline specific Universities/Institutions are not eligible to offer teacher education programme through ODL).

3. Territorial Jurisdiction. - The University offering teacher education programme through ODL will have territorial jurisdiction as defined in the Act of the University. The Study Centres of the University shall also be located in the territorial jurisdiction of the University.

4. Duration. - The duration of the programme shall be of two academic sessions/years (four semesters). The commencement and completion of the programme shall be so regulated that two long spells of vacation (summer/ winter/staggered) are available to the learners for guided/ supervised instruction and fact to face contact sessions. Sandwitching the programme between two summer vacations will be an ideal proposition.

5. Intake, Eligibility and Admission Procedure.

(1). Intake. - The basic unit of intake for the D.El.Ed. programme, shall be five hundred students subject to the condition that one Study Centre shall enroll not more than one hundred students in a given session. The request for additional unit in any programme shall be examined by the NCTE on the basis of the availability of required facilities in respect of study centres and related support in the territorial jurisdiction of the university.

(2) Eligibility.

(i) Senior Secondary (Class XII) or equivalent examination passed with fifty percent marks.

(ii)Twoyears teaching experience in a Government or Government recognized primary/elementary school.

(3) Admission Procedure.

(i) The State Government shall develop a suitable procedure for the selection of candidates.

(ii)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 a relaxation of five percent marks in favour of SC/ST/OBC and other categories of candidates.

17. It is true that in Special Appeal No. 1271 of 2007 (Gyanendra Kumar Sharma & 49 others Vs. State of U.P. & Ors.) the candidates who had obtained two years B.Ed. Degree through Distance Mode were also permitted to seek admission in the Special B.T.C. Course but in the present case, it has been pointed out by the NCTE that only such candidates are permitted to take admission in B.Ed. two years course by Distance Mode who have at least 2 years teaching experience and a person who has already appointed is not required to undertake the U.P-TET.

18. It is, therefore, clear that the candidates who have to their credit at least two years teaching experience in a government or government recognized Primary Elementary Schools are granted admission to the aforesaid two years course by Distance Mode. Persons who have been appointed as teachers are not required to under take the U.P.-TET under the notification dated 23rd August, 2010.

19. In such circumstances, the relief claimed cannot be granted to the petitioners.

20. The petition is, accordingly, dismissed.