**IN THE HIGH COURT OF ALLAHABAD**

Civil Misc. Writ Petition No. 58884 of 2011

Decided On: 11.11.2011

Appellants: **Kamal Kishore Pal**
**Vs.**
Respondent: **State of U.P. and Others**

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

**JUDGMENT**

**Hon'ble Dilip Gupta, J.**

1. The petitioner, who has obtained the Diploma in L.T. from the Departmental Examination U.P. in the year 1996, has 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 Diploma in L.T. have not been permitted to appear in the test. It is, therefore, asserted that the petitioner, who has obtained Diploma in L.T. stands excluded from appointment as a teacher in Classes I to VIII since a person who has cleared the TET is only considered eligible for appointment.

3. It is contended by learned counsel for the petitioner 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/Two years Diploma in Elementary Education/Diploma in Education (Special Education)/Four Years Bachelor of Elementary Education, should be modified to include candidates who have obtained Diploma in L.T. as such candidates are at parity with the candidates obtaining B.Ed. Degree in one year. He, therefore, submits that the petitioner, who has obtained the Diploma in L.T. should also be considered eligible under the advertisement dated 22nd September, 2011 issued by the Intermediate Education Board.

4. Sri K.S. Kushwaha, learned Standing Counsel and Sri R.A. Akhtar, learned counsel appearing for the NCTE have pointed out that Diploma in L.T. Is not the qualification prescribed under the notification dated 23rd August, 2010 for appointment as a teacher in the School and, therefore, the petitioner cannot be permitted to appear at the U.P-TET.

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

6. The petitioner, who claims to be possessing Diploma in L.T. Is desirous of appearing at the UP-TET conducted by the Intermediate Education Board so that he 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 this petition, 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 education from first class to eight class;"

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(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/Two years Diploma in Elementary Education/Diploma in Education (Special Education)/Four Years Bachelor of Elementary Education, who can be considered eligible under the notification and, therefore, can appear at the U.P.-TET.

14. It is pointed out by learned counsel for the respondents that persons who obtain the Diploma in L.T. are not eligible for appointment as Assistant Teacher in the School and, therefore, it is not necessary for them to appear at the U.P.-TET. The contention of the petitioner that Diploma in L.T. should be treated at par with the B.Ed. Degree of one year cannot be accepted.

15. Such being the position, the petitioner is not eligible to appear at the U.P.-TET examination scheduled to commence from 13th November, 2011.

16. The petition is, accordingly, dismissed.