**IN THE HIGH COURT OF ALLAHABAD**

C.M.W.P. No. 6257 of 2012

Decided On: 09.02.2012

Appellants: **Committee of Management, Mahavir Singh Solanki Memorial Krishi Junior High School, Aliganj, Budaun**  
**Vs.**  
Respondent: **State of U.P. and others**

**JUDGMENT**

**Sudhir Agarwal, J.**

1. Petitioner's request for appointment as Assistant Teacher has been declined on the ground that without having passed T.E.T. examination, no appointment can be made in a Primary School. It is contended that there is no such provision under U.P. Basic Education (Teachers) Service Rules. 1981 and, therefore, the impugned order is bad. The submission cannot be accepted and no relief, as sought in writ petition can be granted after enactment of Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as "Act. 2009"). The Act 2009. vide Section 23 (1). provides that any person possessing such minimum qualification, as laid down by an academic authority authorised by the Central Government, by notification, shall be eligible for appointment as a teacher. It reads as under :

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. Since the provision does not contemplate appointment of a Teacher who is not qualified as per Regulations of N.C.T.C., any provisions made earlier even if permit unqualified persons to be appointed in certain cases, cannot be followed after framing of Regulations by Authorised Authority. In absence of a statutory provision prior to Act, 2009, the provisions permitting appointment of untrained persons could have been complied with since the same had no occasion to infringe any other statute having overriding effect but after Act, 2009 and Regulations framed there under, the situation has undergone a wide change. It is not disputed that National Council of Teachers Education has been notified as Authorised Academic Authority under Section 23 (1) and the said body has framed Regulations laying down minimum qualification and eligibility conditions for appointment of Teachers in Primary Schools. In the light of said provisions, which have been made under Act. 2009; the same have overriding effect and, therefore, the otherwise provisions under provincial legislation would sub-serve.

3. This Court in its judgment dated 12.12.2011 in Writ Petition No. 70682 of 2011. Sarita Shukla and others y. State of U. P. and others, having relied on provisions of U. P. Basic Education Act. 1972 and Rules framed there under as well as the provisions of Right of Children to Free and Compulsory Education Act,. 2009 (hereinafter referred to as Act, 2009) and Regulations framed by N.C.T.E. under Section 23 of Act, 2009, has clearly observed that after enforcement of Act. 2009 no appointment can be made on the post of Assistant Teacher in a Primary Institution If the person does not possess the qualification prescribed by N.C.T.E. in the Regulations notified under Section 23 of Act, 2009.

4. I am. therefore, clearly of the view that the relief, as sought in the writ petition, cannot be granted in the above circumstances. Dismissed.