**IN THE HIGH COURT OF PATNA**

CWJC No. 12319 of 2011

Decided On: 13.12.2011

Appellants: **Nuzhat Iqbal D/o Md. Iqbal, R/o Vill.-Makhdumchak, Via-Paliganj, Post-Janipur, P.S.-Phulwarisharif, Distt.-Patna & Ors.**
**Vs.**
Respondent: **The National Council for Teacher Education, Hans Bhawan (Wing-II) 1, Bahadur Shah Zafar Marg, New Delhi-110002, through Member Secretary & Ors.**

**Hon'ble Judges/Coram:**
Ramesh Kumar Datta, J.

**ORDER**

**Ramesh Kumar Datta, J.**

I.A. No. 8579 of 2011

1. Mr. Rajendra Prasad Singh, learned Sr. Counsel appearing for the petitioners alongwith Mr. Niranjan Kumar, Advocate On Record, submits that he is not pressing the interlocutory application in the present matter but seeks liberty to file a fresh writ petition for the reliefs sought to be added by way of amendment in the I.A. In view of the aforesaid submission, I.A. No. 8579 of 2011 is dismissed as not pressed with liberty to the petitioners to file a writ petition with respect to the reliefs sought to be added by the I.A.

2. Heard learned counsel for the petitioners and learned counsel for the respondents State of Bihar, Union of India, National Council for Teacher Education and State Council for Educational Research and Training and Bihar School Examination Board.

3. The writ application has been filed for quashing the press communique dated 20th May, 2011 (Annexure-11) by which the untrained candidates have been allowed to participate in the Teacher Eligibility Test which is going to be held by the State Council of Educational Research and Training and the Bihar School Examination Board by the name of Bihar Elementary Teacher Eligibility Test, 2011 for appointment of teachers in Primary and Upper Primary level schools. Subsequently through an I.A. challenge has been made to the Notification dated 1.6.2011 (Annexure-14) issued by the Department of School Education and Literacy, Ministry of Human Resources Development, Government of India by which relaxation has been granted by the Central Government in exercise of powers under Section 23(2) of the Right to Education Act permitting appointment of untrained candidates in the State of Bihar.

4. The petitioners are trained teachers who aspire for jobs in the Upper Primary and Primary Schools in the State of Bihar. It is the contention of learned counsel for the petitioners that after the Right of Children to Free and Compulsory Education Act, 2009 (in short 'Act') has been enforced it is not open to the respondent State to permit the appointment of any teacher in the schools of the State who do not have the qualification of training. Learned counsel submits that under Section 23(1) of the Act only such persons possessing such minimum qualifications as laid down by the academic authority of the Central Government, in this case National Council for Teacher Education (NCTE) shall be eligible for appointment as a teacher. It is urged that the NCTE has come out with a Notification dated 23.8.2010 under which the minimum qualifications for appointment as a teacher in Class-I to VIII has been laid down. In the said Notification the requirement of having trained qualification is essential. The further requirement under the said Notification is that the candidates pass in the Teacher Eligibility Test (TET) to be conducted by the appropriate Government (in this case the State Government) in accordance with the guidelines by the NCTE for the purpose. Pursuant to the said Notification by another Notification dated 11.2.2011 NCTE has come out with the guidelines for conducting TET under the **RTE** Act. The said guidelines clearly provide that only such persons who possess the academic and professional qualifications specified in the NCTE Notification dated 28.3.2010 shall be eligible for appearing in the TET.

5. Further contention of learned counsel for the petitioners is that while Section 23(2) of the Act provides that where a State does not have adequate institutions for training of teachers or teachers possessing minimum qualifications are not available in sufficient numbers the Central Government may if it deems necessary relax the minimum qualifications for appointment as a teacher for a maximum period of five years but in the present matter the pre-conditions laid down under Section 23(2) of the Act do not exist and thus the relaxation granted by the Central Government through the impugned Notification dated 1.6.2011 is contrary to the provisions of the Act and is arbitrary, unreasonable and irrational.

6. It is the contention of learned counsel that the State has adequate number of institutions for providing courses of training to the teachers and as many as 104 such institutions are shown running in the State on the website of NCTE with intake capacity of 10285 students. It is further contended that in addition to the above every year more than 25,000 students of the State are obtaining teachers training qualification from the training institutions outside the State and at present about 3 lakh persons having teachers training qualification are available in the State which is much more than the available roster cleared vacancies of the teachers meant for elementary schools. It is thus urged by learned counsel that allowing untrained teachers to compete with trained teachers can only jeopardize the chances of the trained teachers in getting the job. Learned counsel also refers to the earlier decisions of this Court under which this Court and the Apex Court had directed the respondent State Government to appoint only trained teachers and not to allow untrained teachers in the appointment of teachers.

7. In this regard learned counsel for the petitioner has assailed the figures regarding the number of trained candidates available in the State as stated in the counter affidavit of the State respondents and also the number of vacancies which may arise and which are proposed to be filled up in the course of one year and submits that all those figures are inflated figures only for the purpose of obtaining the relaxation and it would not be possible for the State Government to make appointment of as many as one lakh teachers in a year and the manner in which appointments are made there would be sufficient number of trained candidates available from year to year for the purpose of appointment as school teachers. In support of his stand learned counsel cites the case of Nand Kishore Ojha & Ors. vs. The State of Bihar & Ors.   : 2004 (3) PLJR 782.

8. It is also submitted by learned Sr. Counsel for the petitioners that the TET is in substance a scrutiny test for appointment and can only be undertaken after Rules are framed under Section 38 of the Act read with sub-section (3) of Section 23 as the latter sub-section provides that the salary and allowances payable to the teachers and terms and conditions of service of teachers shall be such as may be prescribed. Section 2(1) defines 'prescribed' to mean prescribed by rules under the Act which rules under Section 38 are to be made by the appropriate Government which again has been defined under Section 2(a) in relation to all schools other than schools established, owned or controlled by the Central Government within the territory of a State, the State Government. It is pointed out that no such rules have been framed till today. Hence the TET cannot be held de hors the Act and the Rules.

9. Learned Additional Advocate General No. 1 appearing on behalf of the State and some other respondents, on the other hand, raises at first an objection regarding maintainability of the writ petition. It is urged by him that the petitioners are not at all affected by the TET being conducted as the same is only a qualifying examination for eligibility to apply for appointment. He further submits that in terms of the relaxation granted by the Central Government also the trained candidates are to be first appointed and only thereafter if trained candidates are not available then untrained candidates are to be appointed as teachers. It is his submission that mere acquirement of eligibility by any person cannot be challenged by another, more so in the present circumstances when the rights of the trained candidates have been given priority and left intact. Since there has been no invasion of the legal rights of the petitioners, hence no mandamus can be issued.

10. In support of the aforesaid proposition he cites a decision of the Supreme Court in the case of Mani Subrat Jain etc. etc. vs. State of Haryana and Others   : AIR 1977 SC 276, in paragraph-9 of which it has been held as follows:-

9. The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something.......

11. On the merits it is submitted by learned AAG that after the enforcement of the **RTE** Act and keeping in view the pupil-teacher ratio laid down therein the State Government came to the conclusion that the requirement of elementary teachers in the State is about 3 lakhs out of which there was proposal to engage/appoint approximately one lakh elementary teachers and about 15,000 teachers at the secondary level in the coming next three years, whereas the number of trained candidates presently available could be estimated from the 94,205 applications submitted by the eligible trained candidates against 34,540 posts for which appointment process is going on in terms of the direction of the Supreme Court. It is further pointed out that in the said appointment process all the trained candidates belonging to the Scheduled Castes, Scheduled Tribes, BC-1 and Urdu, who had obtained teachers training qualification up to 23.1.2006 are expected to be absorbed and hardly a few would be available for appointments to be made thereafter. It is further stated that out of 94,205 trained candidates who have applied a large number of candidates are already engaged as Panchayat and Prakhand Teachers and once they are appointed there shall be that many vacancies in the Panchayat/Prakhand schools. Moreover, many of the said 94,205 trained candidates have already crossed even the age limit as per the ten years age relaxation given to trained candidates for TET.

12. Learned counsel points out the figures given in the supplementary counter affidavit filed on behalf of the State to show that even in the applications totaling 28,04,388 for TET it has been found that the total number of trained candidates is 70,149 out of 19,78,488, i.e., 3.5% of the applications which have been scrutinized and if the remaining applications are considered then taking the said ratio the number of trained candidates who applied for TET would come to 98,153. This figure would include several candidates who possess qualifications from unrecognized as also fake institutions and thus the contention of the petitioners regarding availability of huge number of trained candidates is falsified by the actual number of applications received earlier or with respect to the present TET also. It is thus the contention of the State that after the on going appointment of 34,540 candidates only about 30,000 to 35,000 eligible trained candidates would be available for appointment as elementary teachers which would be insufficient for making the immediate appointment of one lakh teachers. It is thus submitted by learned AAG that in the facts and circumstances as laid down above it cannot be said that the action of the Central Government in granting the relaxation is either irrational, arbitrary or unreasonable.

13. The submission of learned counsel is that nothing has been produced by the petitioners to clearly controvert the facts and figures brought on the record by the State and whatever factual statements are made on behalf of the petitioners are mere conjectures and thus raised disputed questions of fact which cannot and should not be the basis of exercise of discretion by this Court. In support of the proposition learned AAG has relied upon a decision of the Supreme Court in the case of Tata Cellular vs. Union of India:   : (1994) 6 SCC 651; paragraphs 77, 80, 81 & 83 of the said decision are quoted below:-

77. The duty of the court is to confine itself to the question of legality. Its concern should be:-

1. Whether a decision-making authority exceeded its powers?

2. Committed an error of law,

3. Committed a breach of the rules of natural justice,

4. Reached a decision which no reasonable tribunal would have reached or,

5. Abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:-

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. vs. Secretary of State for the Home Department, ex Brind, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention.

80. At this stage, The Supreme Court Practice, 1993, Vol. 1, pp. 849-850, may be quoted:

4. Wednesbury principle.-A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. (Associated Provincial Picture Houses Ltd. vs. Wednesbury Corpn., per Lord Greene, M.R.)

81. Two other facets of irrationality may be mentioned.

(1) It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld. Thus, in Emma Hotels Ltd. vs. Secretary of State for Environment, the Secretary of State referred to a number of factors which led him to the conclusion that a non-resident's bar in a hotel was operated in such a way that the bar was not an incident of the hotel use for planning purposes, but constituted a separate use. The Divisional Court analysed the factors which led the Secretary of State to that conclusion and, having done so, set it aside. Donaldson, L.J. said that he could not see on what basis the Secretary of State had reached his conclusion.

(2) A decision would be regarded as unreasonable if it is impartial and unequal in its operation as between different classes. On this basis in R. vs. Barnet London Borough Council, ex p Johnson the condition imposed by a local authority prohibiting participation by those affiliated with political parties at events to be held in the authority's parks was struck down.

83. A modern comprehensive statement about judicial review by Lord Denning is very apposite; it is perhaps worthwhile noting that he stresses the supervisory nature of the jurisdiction:

Parliament often entrusts the decision of a matter to a specified person or body, without providing for any appeal. It may be a judicial decision, or a quasi-judicial decision, or an administrative decision. Sometimes Parliament says its decision is to be final. At other times it says nothing about it. In all these cases the courts will not themselves take the place of the body to whom Parliament has entrusted the decision. The courts will not themselves embark on a rehearing of the matter. See Healey vs. Minister of Health. But nevertheless, the courts will, if called upon, act in a supervisory capacity. They will see that the decision-making body acts fairly. See H.K. (an infant), Re, and R. vs. Gaming Board for Great Britain, ex p Benaim and Khaida. The courts will ensure that the body acts in accordance with the law. If a question arises on the interpretation of words, the courts will decide it by declaring what is the correct interpretation. See Punton vs. Ministry of Pensions and National Insurance. And if the decision-making body has gone wrong in its interpretation they can set its order aside. See Ashbridge Investments Ltd. vs. Minister of Housing and Local Government. (I know of some expressions to the contrary but they are not correct). If the decision-making body is influenced by considerations which ought not to influence it; or fails to take into account matters which it ought to take into account, the court will interfere. See Padfield vs. Minister of Agriculture, Fisheries and Food. If the decision-making body comes to its decision on no evidence or comes to an unreasonable finding-so unreasonable that a reasonable person would not have come to it-then again the courts will interfere. See Associated Provincial Picture Houses Ltd. vs. Wednesbury Corpn. If the decision-making body goes outside its powers or misconstrues the extent of its powers, then, too the courts can interfere. See Anisminic Ltd. vs. Foreign Compensation Commission. And, of course, if the body acts in bad faith or for an ulterior object, which is not authorized by law, its decision will be set aside. See Sydney Municipal Council vs. Compbell. In exercising these powers, the courts will take into account any reasons which the body may give for its decisions. If it gives no reasons-in a case when it may reasonably be expected to do so, the courts may infer that it has no good reason for reaching its conclusion, and act accordingly. See Padfield case (as AC pp. 1007, 1061).

14. Learned counsel for the State also relies upon a decision of the Supreme Court in the case of Mansukhlal Vithaldas Chauhan vs. State of Gujarat:   : (1997)7 SCC 622 in which relying upon the decision of the Tata Cellular case (supra) and other decisions similar proposition has been laid down.

15. Learned counsel for the Union of India and National Council for Teachers Education adopt the submissions made by learned counsel for the State.

16. I have considered the submissions made by learned counsel for the parties. At the outset this Court may notice challenge to the maintainability of the writ petition made by learned AAG raising the plea that the petitioners have no legal right and they cannot be permitted to come before this Court and claim issuance of writ of mandamus since the examination in question is only a qualifying examination to become eligible for appointment as a teacher and not a competitive examination for appointment. This Court does not, find any force in the said submission. The petitioners being trained candidates have certainly right to come to this Court and claim quashing of the concerned notification on the ground that the pre-conditions laid down in the Act did not exist in the present case and thus the relaxation for untrained candidates is illegal and invalid. The petitioners being applicants for the said eligibility test and having a substantial interest in the appointment process also it is open to them to challenge any act of the State which is contrary to the statutory provisions and rules or guidelines framed thereunder. If the stand of learned counsel for the State is accepted then the State authorities will be liable to get away with any illegality they have committed only on the ground that those who have approached this Court may not be immediately affected by others becoming eligible for appointment only and not for the appointment process itself. It is not known as to who else can then be in a position to challenge the illegal acts of the State committed in such matter. The objection of learned AAG regarding maintainability of the writ petition does not have any sound basis and is accordingly rejected.

17. The principal issue to be considered by this Court in the present matter is as to whether the relaxation granted by the Central Government by the impugned notification dated 1.6.2011 is in accordance with the provisions of Section 23(2) of the Act. In this regard it would be useful to notice the provisions of Section 23 of the Act, which are quoted hereunder:-

23(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 course 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 teachers shall be such as may be prescribed.

18. On a consideration of the said provisions it is evident that eligibility for appointment as a teacher has to be on the basis of minimum qualifications as may be laid down by the appropriate authority authorized by the Central Government. By a Notification dated 31.3.2010 published in the Gazette of India dated 5.4.2010 the Government of India in exercise of powers conferred under Section 23(1) of the Act has authorized the National Council for Teachers Education as the academic authority to lay down the minimum qualifications for a person eligible for appointment as a teacher. By a subsequent Notification dated 29.7.2011 published in the Gazette of India on 2.8.2011 the NCTE has laid down the minimum qualifications for a person to be eligible for appointment as a teacher. The said notification provides for a training qualification as an essential prerequisite as also pass in Teachers Eligibility Test (TET) to be conducted by the appropriate Government in accordance with the guidelines laid down by NCTE for the said purpose. Thereafter by a circular letter dated 11.2.2011 the NCTE issued guidelines for conducting TET under the Act. The said guidelines provide that for appearing in the test a person who has acquired the academic and professional qualifications as provided in the NCTE Notification dated 28.3.2010 or pursuing Teachers Education Course recognized by the NCTE or RCI specified in the said Notification dated 28.3.2010 would be eligible for appearing in the TET. It is further clearly provided that eligibility condition for appearing in TET may be relaxed in respect of a State/UT which has been granted relaxation under Section 23(2) of the **RTE** Act, as may be specified in the Notification issued by the Central Government under that sub-section. Thereafter the Central Government in the Ministry of Human Resources Development (Department of School Education and Literacy) issued the Notification dated 1.6.2011 after examining and considering the proposal of the State Government for grant of relaxation under Section 23(2) of the Act providing that relaxation would be valid till 31.3.2015 subject to certain conditions as laid down in the said Notification. Clause (vi) of the said Notification which provides the relaxation is quoted hereunder:-

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."

19. In its supplementary counter affidavit the State Government has brought on the record the format in which the relaxation under Section 23(2) of the **RTE** Act was sought from the Central Government. In the said form the sanctioned strength of teachers in Government/local body schools is 4.79 lakhs and the actual strength is 3.17 lakhs of teachers and the difference between the two, i.e., the vacancy, is 1.49 lakhs. It is further stated therein that additional teacher requirement due to PTR norms under **RTE** Act would be 4.00 lakhs. It was also mentioned in the said form that only 29 institutions, both Government aided and Private/Self-Financing, were imparting two years course Diploma in Elementary Education and total number of trainees who passed out in 2010 from the said institutions was only 15,000. It was further estimated that total number of persons with B.Ed. qualification was 40,000 and with Senior Secondary qualification 20,000. With respect to one year B.Ed. course as many as 57 Government institutions were shown as imparting training and total number of trainees who passed out in academic session 2009-10 was 6110 and the availability of B.Ed. qualified persons not appointed as teachers was 20,000. On the strength of the said application and considering the figures provided by the State Government the relaxation has been granted. Learned counsel for the petitioners has assailed the said figures provided by the State Government but nothing specific has been brought on the record to show that those figures are wrong. It is true that in its further counter affidavit the State Government has admitted that the additional teachers requirement as per the norms laid down by the **RTE** Act would be 3 lakhs and not 4 lakhs as sent to the Central Government but that does not substantially affect the merits of the case.

20. It is evident from the provisions of Section 23(2) of the Act as quoted above that relaxation may be granted if a State Government does not have adequate institutions offering course of training for teachers education or sufficient number of teachers possessing minimum qualifications as laid down by NCTE are not available. The figures given in the counter affidavit filed on behalf of the State regarding number of institutions and candidates coming out of them after obtaining training has not been challenged by the petitioners by producing specific material which shows that the State does not have adequate institutions for imparting training course in teacher education so as to take care of the large number of appointments which are slated to be made in the immediate future, which, according to the State Government, would be in the range of one lakh teachers.

21. Moreover, even the number of teachers possessing the minimum qualifications does not appear to be sufficient in view of the actual applications that have been received for the TET which is estimated to be in the range of 98,000 considering the percentage of the trained applicants in the presently scrutinized applications. It has to be kept in mind that there are provisions of reservation in appointment of teachers to the extent of 50% under the Reservation Rules and the appointments are to be made for each category. There appears to be sufficient force in the contention of the State that after the present process of appointment of 34,540 teachers which is being conducted under the direction of the Apex Court there may not be many trained candidates available to fill up the number of teachers posts at least in the reserved category. It has also to be kept in mind that in all appointments of teachers at the Primary and Upper Primary school level 50% of the posts are reserved for female candidates and considering the total number of trained candidates it is unlikely that so many trained female teachers would be available.

22. In the aforesaid facts and circumstances and keeping in view the obligation of the State Government to provide free and compulsory education under the 2009 Act to all children which is also a Constitutional Right enjoined by Article 21A of the Constitution of India, the State had in this regard sufficient reasons for approaching the Central Government for obtaining relaxation under Section 23(2) of the Act. The submission of learned counsel for the petitioners is that many thousands of candidates in the State obtained their training qualification from the institutions outside the State cannot be reason for the State for not obtaining the relaxation as one of the conditions for relaxation is that the State itself does not have adequate institutions for training of teachers. That aspect of the matter has not been factually controverted by the petitioners by bringing any material on the record and thus the fact that many persons are obtaining teacher training qualification outside the State is not relevant fact so far as the challenge to the grant of relaxation is concerned.

23. In view of the aforesaid facts and circumstances and the provisions of law it cannot be said that the Central Government had acted either irrationally, arbitrarily or unreasonably in granting the relaxation under the provisions of Section 23(2) of the Act, rather the same appears to be in keeping with the substance and spirit of the relaxation provisions in the Act.

24. Further the provisions of relaxation are not absolute nor they affect the rights of the trained candidates. It is evident from the relaxation Notification dated 1.6.2011, as quoted above, that the relaxation is valid only till 31.3.2015 and, as a matter of fact, the Act itself does not provide for any relaxation beyond the said period. Moreover, one of the conditions laid down in the relaxation Notification is that 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 the 25th August, 2010 and only thereafter consider the eligible candidates with the relaxed qualifications specified in the notification. In that view of the matter, the petitioners and similarly situated trained candidates can have no grievance if non-trained persons are also permitted to appear in the TET as their acquiring eligibility under the TET cannot affect the chances of the trained candidates in the matter of appointment.

25. Moreover, there is a further condition that 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. It has further been clarified that the relaxation is a one-time measure and no further relaxation shall be granted to the State Government beyond the period of 31.3.2015. Thus, there cannot be any grievance regarding devaluation of the qualification as it is a specific condition for the grant of relaxation that those who are ultimately appointed shall acquire minimum qualification within a period of two years of their appointment.

26. Since the trained candidates cannot be expected to fill up all the existing vacancies and those that will arise in the near future considering the large numbers of teachers required, getting other qualified persons to work as teachers cannot be held to be unjustified. As a matter of fact, if such persons are to be appointed it would be much more in the interest of the educational institutions that such untrained persons at least undergo eligibility test like TET so that the best among untrained qualified persons are considered for appointment as teachers in the primary and upper primary schools of the State.

27. I may here consider the other submission of learned counsel for the petitioners that TET is in substance a scrutiny test for appointment and can only be undertaken after rules framed under Section 23(3) of the Act. The said submission is only to be noticed to be rejected. It is evident from the NCTE guidelines that passing TET is only one of the eligibility criteria. It has been further clarified in the guidelines dated 11.2.2011 issued by the NCTE that a person who obtains 60% or more in the TET will be considered as pass in TET but qualifying the TET would not confer a right on any person for recruitment/employment as it is only one of the eligibility criteria for appointment. In view of the clear guidelines in this regard by NCTE itself the submission of learned counsel for the petitioners has no legs to stand. Thus there can be no application of Section 23(3) of the Act so far as the holding of the TET is concerned as the said provision only lays down that the salary and allowances payable and the terms and conditions of service of teacher shall be such as may be prescribed. For the purpose of acquiring eligibility through the TET there can be no pre-condition for fixing the salary and allowances and the terms and conditions of service of the teachers.

28. I may at this stage also consider the submission of learned counsel for the petitioners that in earlier Division Bench decision of this Court in Nand Kishore Ojha's case and in similar matters the State Government was not permitted to appoint untrained candidates. The said decision was laid down under different conditions and different statutory rules. At present there is need for a large number of teachers for the Primary and Upper Primary Schools in the State in the context of the fundamental right to education under Article 21A of the Constitution as the Parliament has enacted the Right of Children to Free and Compulsory Education Act, 2009 which entails heavy responsibility on the State to provide such free and compulsory education by appointing a very large number of teachers. For carrying out of the said obligation if actions are taken within the purview of the Act, the provisions of which are not under challenge before this Court, then the said action are not open to challenge unless there has been violation of any statutory provision.

29. Thus, on a consideration of the entire facts and circumstances, the challenge to the relaxation given by the Central Government under its Notification dated 1.6.2011 must fail and accordingly the challenge to the other notifications has also no legs to stand upon. The writ application is, therefore, dismissed.