**IN THE HIGH COURT OF RAJASTHAN AT JODHPUR**

S.B. Civil Writ Petition No. 2180/2012

Decided On: 19.05.2012

Appellants: **Surya Prakash**
**Vs.**
Respondent: **State of Rajasthan & Others**
[Alongwith S.B. Civil Writ Petition No. 2205/2012]

**Hon'ble Judges/Coram:**
Hon'ble Mr. Justice Gopal Krishan Vyas

**ORDER**

**Hon'ble Mr. Justice Gopal Krishan Vyas**

BY THE COURT :

1. In the above writ petitions and the writ petitions mentioned in the Schedule appended to this judgment, common dispute and question of law is involved with regard to seeking direction to the respondent State for considering the candidature of those candidates who possess academic degree of graduation with B.Ed and have cleared Phase-I of the Rajasthan TET for the level Classes I to V for appointment on the posts of Teacher Grade-III of Level - I. Accordingly, all these writ petitions shall stand disposed of by this common order/judgment. The Central Government enacted the Right of Children to Free and Compulsory Education Act, 2009 (Act No. 35 of 2009), in which, under Section 23 (1) it is provided that minimum qualification shall be laid down by an academic authority authorized by the Central Government. The Central Government authorised the National Council for Teacher Education ("the NCTE" hereinafter) to lay down the minimum qualification for appointment of Teachers. The NCTE, after authorization, laid down the qualifications for Teacher vide notification dated 23.08.2010 (which is subsequently amended vide notification dated 29.07.2011). In para 3 of the above notification those candidates possessing degree of graduation with at least 50% marks and B.Ed. qualification were also held eligible for appointment as Teacher Grade III for level - I for classes I to V up to 01.01.2012 along with the candidates possessing prescribed qualification provided they undergo, after appointment, an NCTE recognized 6 months' special programme in the elementary education.

2. The State Government vide notification dated 11.05.2011 inserted the qualification for appointment of Teacher in Rule 266 of the Rajasthan Panchayat Raj Rules, 1996. The main contention of the petitioners in the writ petitions is that they are possessing the qualification of graduation degree with B.Ed. and they have cleared the RTET 2011, therefore, as per para 3 of the notification dated 23.08.2010 they are eligible to be appointed on the posts of Teacher Grade-III; but, the said qualification has not been prescribed in the advertisements issued by the Zila Parishads of all the districts in the State although the said qualification is incorporated in para 3 of the notification issued by the NCTE.

3. Learned counsel for the petitioners submit that as per the Government stand opportunity for appointment as Teacher Grade-III for the Level-I classes from class I to class V the candidates who possess B.A./B.Sc. with at least 50% marks and B.Ed. qualification was available up to 01.01.2012 provided the candidates undergo, after appointment, NCTE recognized 6 months' special programme in elementary education, therefore, in the advertisement issued by all the Zila Parishads of Rajasthan for recruitment on 24.02.2012, after the date prescribed by the NCTE, the State Government is not treating all those candidates who are possessing B.A./B.Sc. and B.Ed. with TET for the posts of Teacher Grade-III for classes from I to V. As per the petitioners, the denial of consideration is unconstitutional act of the State because the delay in recruitment is caused due to inaction on the part of the State Government only so much so in the State of Rajasthan since the year 2006 no recruitment on the posts of Teacher Grade-III took place and, now, after clubbing all the vacancies occurring hitherto the State Government is going to make recruitment on 40000 posts of Teacher Grade-III through the Zila Parishad of each district of the State and, for that, on 11.05.2011 an amendment was made whereby the qualifications laid down by the NCTE in the notification dated 23.08.2010 and amendment notification dated 29.07.2011 are prescribed. In both the above notifications opportunity for all those candidates who possess B.A./B.Sc. with at least 50% marks and B.Ed. qualification was available up to 01.01.2012, however, rider was incorporation that the candidates shall undergo, after appointment, NCTE recognized 6 months' special programme in elementary education; meaning thereby, after thorough discussion and due deliberation the NCTE itself granted an opportunity to all those candidates who are possessing B.A./B.Sc. and B.Ed. qualification with TET Level-I for appointment as Teacher for classes I to V, however, said opportunity was not granted by the State Government because the State Government did not publish the vacancies and commence recruitment process prior to 01.01.2012. It is urged by the petitioners that if one-time right or benefit is extended to class of qualified candidates by the NCTE, then, it was the duty of the State Government to grant the said opportunity to all those eligible candidates who were given one-time opportunity to compete for appointment; but, in this case, the State Government is responsible for denial of the opportunity due to their own inaction. Therefore, the petitioners and like persons possessing the qualification of graduation with B.Ed. cannot be denied the opportunity to compete for appointment as Teacher Grade-II for class I to class V level.

4. Learned counsel for the petitioners invited attention of this Court that there is relaxation in age has been given in Rule 265 (x) of the Rajasthan Panchayat Raj Rules, 1996 by which a candidate would have been entitled in any year in which such recruitment was not held he/she shall be deemed to be within age-limit in the subsequent recruitment provided such relaxation shall not be for more than 3 years. It is very strange that on the one hand relaxation in age is given for the reason that no such recruitment took place due to inaction on the part of the State but no such relaxation is given to the candidates possessing qualification prescribed in para 3 of the notification dated 23.08.2010 to appear in the selection process for appointment on the posts of Teacher Grade-III for class I to class V level in the present context. It is vehemently argued that on the one hand relaxation is given in age to compete but; at the same time, by denying the opportunity on the basis of qualification the State Government is snatching the right of consideration for the reason that advertisement has been issued after 01.01.2012.

5. Learned counsel for the petitioners invited my attention towards the judgment rendered by the Hon'ble submit that once NCTE which is the expert body authorized under the Right of Children to Free and Compulsory Education Act, 2009 to prescribe qualification under sub-section (1) of Section 23, then, obviously the fruits of said opportunity was to be given on or before 01.01.2012 by the State Government, therefore, candidates who were possessing degree of graduation with at least 50% marks and B.Ed. qualification with TET prior to 01.01.2012 are eligible for recruitment which is going to be held in pursuance of the advertisements issued on 24.02.2012 by the respondents. It is vehemently argued that for last six years no recruitment took place for the posts of Teacher Grade-III and this fact itself speaks that the State Government is playing game with the future of the qualified B.A./B.Sc. and B.Ed. candidates. On the one hand, the State Government gives permission for opening private B.Ed. colleges for acquiring the qualification and, on the other hand, for last six years no vacancy is advertised and, due to said reason, the qualified candidates did not get any opportunity for recruitment. Now, new qualification has been laid down as per the Act of 2009 by the NCTE, in which, an opportunity was granted to the candidates possessing degree of graduation and B.Ed. with TET for appointment up to 01.01.2012 but, that, too, is denied to the candidates in the State of Rajasthan for the reason that no appointments are made by the State before 01.01.2012. Therefore, there is complete inaction and apathetic silence on the part of the State Government for providing opportunity to the qualified candidates for recruitment on the posts of Teacher Grade-III for class I to class V level, therefore, it is a fit case to issue direction to the State Government to grant an opportunity to the candidates possessing degree of graduation with B.Ed. and TET in pursuance of advertisements issued on 24.02.2012 for appointment as Teacher Grade-III for classes I to V level.

6. Learned counsel for the petitioners vehemently submit that as per para 3 of the notification dated 23.08.2010, a decision was taken by the statutory expert body NCTE to grant eligibility to the candidates possessing degree of graduation with at least 50% marks and B.Ed. and TET qualification for appointment on the post of teacher for teaching class I to V up to 01.01.2012, therefore, those qualification holders were allowed by the Board of Secondary Education, Rajasthan, Ajmer to participate in the Rajasthan TET 2011 examination conducted by the Board for Level - I to teach students of Class I to V and, in pursuance of that, all eligible candidates including the petitioners appeared in the Rajasthan TET 2011 for Level - I also and declared successful. The State Government inserted the qualification prescribed by the NCTE by way of amendment in Rule 266 of the Rules of 1996. An opportunity was also given to the petitioners and other qualified eligible candidates to appear in the TET and acquire the said eligibility for appointment. The State Government now denied the opportunity to compete for appointment on the posts of Teacher Grade-III on the ground that date 01.01.2012 provided in para 3 has expired. It is submitted that on the basis of legitimate expectation from the welfare State the petitioners are very much eligible to compete for the posts of Teacher Grade-III (Level - I) to teach students of classes I to V. The petitioners have placed on record the marks-sheet-cum Certificate issued by the Board of Secondary Education, Rajasthan, Ajmer in which they were declared successful in the Level-I TET.

7. Learned counsel for the petitioners invited my attention towards the judgment rendered by the Hon'ble Supreme Court in the case of Chandra Kala Trivedi Vs. State of Rajasthan & Others, reported in: (2012) 3 SCC 129, in which, Hon'ble Supreme Court held that higher qualification which is graduation with B.Ed. can be considered for appointment as Primary School Teacher Grade-III to teach students of class I to class V level. Therefore, all the writ petitions may be allowed and necessary direction may be issued to the respondents to treat the candidates eligible for appointment on the posts of Teacher Grade-III for level I for primary classes on the basis of qualification of graduation with B.Ed. and TET.

8. Per contra, learned Addl. Advocate General Mr. G.R. Punia, appearing on behalf of the State Government, vehemently argued that the Central Government enacted the Act known as Right of Children to Free & Compulsory Education Act, 2009, in which, as per Section 23 the Central Government authorized the NCTE to lay down the qualification for appointment on the posts of Teacher Grade-III and while exercising the power under Section 23 (1) of the Act of 2009 the NCTE prescribed qualification by way of issuing notification on 23.08.2010 and the said notification was further amended on 29.07.2011.

9. It is contended on behalf of the State that in the notification dated 23.08.2010 it was specifically provided that those candidates possessing qualification of B.A./B.Sc. with at least 50% marks and B.Ed. qualification will also be eligible for appointment for class I to class V level up to 01.01.2012 provided they undergo, after appointment, an NCTE recognized special programme in elementary education; but, no recruitment after making available the relaxed provision up to 01.01.2012 has been made in the State of Rajasthan though candidates possessing above qualification were eligible for appointment up to 01.01.2012, therefore, after expiry of 01.01.2012 no such candidate is eligible to compete for appointment as Teacher Grade-III for Level-I. The State Government has amended the rules and prescribed the qualifiation under Rule 266 of the Rajasthan Panchayat Raj Rules, 1996 vide notification dated 11.05.2011 and inserted all those qualifications as provided by the NCTE and, under the said qualification, one time relaxation was granted for appointment to the graduate with B.Ed. degree holders up to 01.01.2012. Therefore, in the recruitment process which is commenced vide advertisements issued on 24.02.2012 the petitioners are not eligible because they become ineligible after 01.01.2012, the date which is prescribed by the NCTE.

10. Learned Addl. Advocate General argued that due to subsistence of eligibility till 01.01.2012 the candidates possessing B.A./B.Sc. or graduation with B.Ed. were granted opportunity to appear in the Rajasthan TET 2011 examination but mere passing the TET does not create any right to get eligibility for appointment on the post of Teacher Grade-III for Level - I meant for classes I to V because the said benefit was extended by the NCTE for appointment up to 01.01.2012; and, here, in this case, the State Government issued notification for recruitment on 24.02.2012, therefore, obviously the petitioners and those persons who were possessing graduation with B.Ed. qualification became ineligible after 01.01.2012 and as such there is no force in the contention of the petitioners that they are eligible for appointment.

11. While opposing the writ petitions on behalf of the State Government, learned Addl. Advocate General contended that the claim of the petitioners is totally unfounded because laying down specific criteria by the NCTE under the Act of 2009 for appointment on the posts of Teacher Grade-III does not mean that the petitioners are being deprived of their any right. The State Government is under obligation to follow the qualifications prescribed by the NCTE and, in the notifications of the NCTE, relaxation was granted for appointment up to 01.01.2012 for the candidates possessing B.A./B.Sc. with B.Ed. and TET, therefore, no case is made out in favour of the petitioners. It is further argued that so far as the upper age limit is concerned, the relaxation is available maximum up to 3 years in case recruitment process does not take place in the preceding years to enable the candidates in the event of crossing upper age limit to compete in the ensuing examination as per provision of law, therefore, it cannot be said that on the one hand age relaxation has been granted and, on the other hand, the State Government has snatched the right of consideration which is in violation of the constitutional right of the petitioners.

12. Learned counsel appearing on behalf of the State further argued that on 10.05.2012 clarification was sought from the NCTE for the grievance raised by the petitioners but it is specifically denied by the NCTE that in the light of the above notifications persons with B.Ed. were eligible only up to 01.01.2012 and, after that, they will not be eligible for class I to class V level. Therefore, all these writ petitions deserve to be dismissed.

13. In support of his arguments Mr. Punia invited attention of the Court towards judgments reported in 2005 WLC (UC) Raj. 138, Kailash Chandra Harijan & Others Vs. State of Rajasthan & Others,   : (2003) 3 SCC 548, Yogesh Kumar & Others Vs. Govt. of NCT, Delhi & Others for the purpose of claim of the petitioners upon qualification and following judgments are cited for not interfering in the policy matters :

1.   : (2011) 6 SCC 597,

2. 2010 (2) WLC (Raj.) 220

3.   : AIR 1993 SC 2285

4.   : (2008) 3 SCC 512

and submits that there is power left with the State Government to prescribe qualification to maintain education standard in the State, therefore, these writ petitions may be dismissed.

14. Learned counsel appearing on behalf of the NCTE reiterated the stand taken by the State Government and submits that the issue of persons possessing graduation with B.Ed. qualification was considered to teach the class I to class V level and after due deliberation by the Council a decision was taken to allow the candidates possessing graduation with B.Ed. qualification as an eligible qualification for appointment as Teacher upto specified time period which is up to 01.01.2012 and this decision was taken as temporary measure. However, in order to ensure that persons with B.Ed. qualification are equipped and prepared to teach in class I to V it is provided that such persons after appointment shall have to undergo a six month special course on elementary education which is expected to provide adequate orientation and preparedness to such teachers to teach in classes I to V. Therefore, one time relaxation was available for appointment up to 01.01.2012 and not thereafter. Therefore, the claim of the petitioners to consider them eligible even after 01.01.2012 is not tenable and, accordingly, these writ petitions may be dismissed.

15. After hearing learned counsel for the parties I have perused entire record of the case and considered the arguments advanced by the parties for deciding this controversy.

16. It is admitted position of the case that post of Teacher Grade-III is governed under the Rajasthan Panchayat Raj Rules, 1996 in which complete process of selection and eligibility qualifications are provided. Before 11.05.2011, B.A. B.Ed. qualification holders were entitled to be appointed as primary teachers or upper primary teachers but, after enactment of the Act of 2009, the Central Government authorized the NCTE being recognized authority to lay down the minimum qualification for the post of Teacher grade-III. The NCTE after due deliberation issued notification dated 23.08.2010 and subsequent amendment notification dated 29.07.2011 which are as follows :

NATIONAL COUNCIL FOR TEACHER EDUCATION
NOTIFICATION
New Delhi, the 23rd August, 2010

F. No. 61-3/20/2010/NCTE/(N&S).-In exercise of the powers conferred by Sub-section (1) of the Section 23 of Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009) and in pursuance of the Notification No. S.O. 750(E) dated 31st March, 2010 issued by the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India, the National Council for Teacher Education (NCTE) hereby lays down the following minimum qualifications for a person to be eligible for appointment as a teacher in class I to VIII in a school referred to in clause (n) of Section 2 of the Right of Children to Free and Compulsory Education Act, 2009, with effect from the date of this Notification :-

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.El.Ed.)

OR

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

(ii) Classes VI-VIII

(a) B.A./B.Sc and 2 - year Diploma in Elementary Education (by whatever name known)

OR

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

OR

B.A./B.Sc. 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.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year BA/B.Sc. Ed or B.A. Ed./BSc.Ed.

OR

B.A./B.Sc. 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 purposes of this Notification, a diploma/degree course in teacher education recognized 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 recognized by the Rehabilitation Council of India (RCI) only shall be considered.

3. Training to be undergone.- A person -

(a) with BA/B.Sc. with at least 50% marks and B.Ed qualification shall also be eligible for appointment for class I to V upto 1st January, 2012, provided he undergoes, after appointment, an NCTE recognized 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 recognized 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 Schools) Regulations, 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 recognized 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. 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.

NATIONAL COUNCIL FOR TEACHER EDUCATION
NOTIFICATION
New Delhi, the 29th July, 2011

F. No. 61-1/2011/NCTE/N&S).-In exercise of the powers conferred by sub-section (1) of the Section 23 of Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009) and in pursuance of the Notification No. S.O. 750(E) dated 31st March, 2010 issued by the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India, the National Council for Teacher Education (NCTE) hereby makes the following amendments to the Notification No. 215 dated 25th August, 2010 published in the Gazette of India, Extraordinary, Part-III, Section-4, vide F. No. 61-1/2011-NCTE (N&S), dated the 23rd August, 2010, laying down the minimum qualifications for a person to be eligible for appointment as a teacher (hereby referred to as the Principal Notification), namely :-

(I) For sub-para (i) of para 1 of the Principal Notification, the following shall be substituted, namely:-

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.El.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 pourpose.

(II) For sub-para (ii) of para 1 of the Principal Notification, the following shall be substituted, namely :-

1 (ii) Classes VI - VIII

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

OR

Graduation with at 50% marks and 1-year Bachelor ion 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.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year B.A./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 Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

(III) For para 3 of the Principal Notification the following shall be substituted, namely: -

(i) 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 to Class I to V up to 1st January, 2012, provided he/she undergoes, after appointment, an NCTE recognized 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 recognized 6-month Special Programme in Elementary Education.

(ii) Reservation Policy :

Relaxation up to 5% in the qualifying marks shall be allowed to the candidates belonging to reserved categories, such as ST/ST/OBC/PH.

(IV) For para 5 of the Principal Notification, the following shall be substituted, namely:-

5. (a) Teacher appointed after the date of this notification in certain cases:-Where an appropriate Government or local authority or a shool 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.

17. Upon perusal of notification dated 23.08.2010, it will be revealed that in the first level of the Teachers, qualification of B.A./B.Sc. and 2 - year Diploma in Elementary Education (by whatever name known) was not prescribed but, later on, in the subsequent notification dated 29.07.2011 the said qualification was included within the minimum qualification for appointment as teacher for the first level classes from I to V. In the notification dated 23.08.2010, following para 3 was inserted :

3.Training to be undergone.- A person - with BA/B.Sc. with at least 50% marks and B.Ed qualification shall also be eligible for appointment for class I to V upto 1st January, 2012, provided he undergoes, after appointment, an NCTE recognized 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 recognized 6-month special programme in Elementary Education.

18. Admittedly, the said qualification prescribed by the NCTE was not inserted in Rule 266 of the Rajasthan Panchayat Raj Rules, 1996 till 11.05.2011. Thereafter, a notification was issued on 11.05.2011 whereby following qualifications were inserted under Rule 266 of the Rules of 1996 :

(3) Primary and Upper Primary School Teacher (100% by direct recruitment)

(a) General Education Level - (i) Classes I to V Qualifications as laid down by National Council for Teacher Education (NCTE) under the provisions of sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No. 35 of 2009) from time to time.

Level - (ii) Classes VI to VIII Qualifications as laid down by National Council for Teacher Education (NCTE) under the provisions of sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No. 35 of 2009) from time to time.

(b) Special Education

Level - (i) Classes I to V Qualifications as laid down by National Council for Teacher Education (NCTE) under the provisions of sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No. 35 of 2009) from time to time.

Level - (ii) Classes VI to VIII

Qualifications as laid down by National Council for Teacher Education (NCTE) under the provisions of sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No. 35 of 2009) from time to time.

Upon perusal of the above qualifications laid down under Rule 266 of the Rules of 1996 for Level - i it is specifically provided that qualification as laid down by the NCTE under the provisions of sub-section (1) of Section 23 of the Right of Children to Free & Compulsory Education Act, 2009 (Act No. 35 of 2009) from time to time shall be applicable. The NCTE after due deliberations inserted para 3 in the notification dated 23.08.2010 but, unfortunately, the said qualification was not inserted in the Rules of 1996 till 11.05.2011, so also, no recruitment took place in the State of Rajasthan for the posts of Teacher Grade-III since the year 2006.

19. Further, after inserting the qualification laid down by the NCTE no process of selection commenced till 24.02.2012 and, during this period, due to apathetic inaction on the part of the State Government in not making recruitment prior to 01.01.2012 all the candidates who were possessing graduation with B.Ed. and TET eligibility became ineligible. In my opinion, although on the one hand, it is found necessary by the NCTE to grant one opportunity to all those candidates who were possessing graduation with B.Ed. and TET eligibility to compete for the Level-I post of Teacher Grade-III by inserting para 3 in the notification but the doleful aspect of the matter is that the opportunity provided by the NCTE is snatched from those candidates in the State of Rajasthan who would have otherwise been eligible had it not been on account of the lethargic attitude for inaction on the part of the State Government for initiating the recruitment process. Therefore, an accrued right of those candidates who are possessing graduation with B.Ed. and TET eligibility, granted under para 3 of the notification dated 23.08.2010, cannot be washed away to waste by the State Government for their own lapses so as to thwart the decision of the NCTE taken after due deliberation.

20. The above position further gathers emphasis by the fact that on the one hand the State Government prescribed the qualification laid down by the NCTE in the Rules of 1996 vide notification dated 11.05.2011 under Rule 266 and granted an opportunity to appear in the Rajasthan TET 2011 for acquiring the eligibility for appointment as Teacher Grade-III Level-I to teach students of classes I to V; but, after acquring the said eligibility, now, the State Government is not allowing the fruits of their qualification acquired during the currency of the eligibility, therefore, once right is given to the candidates to acquire the qualification, then, obviously the said benefit cannot be refused by the State Government while saying that the date mentioned in the notification of the NCTE which is 01.01.2012 has expired. The State Government has failed to perform obligatory duty to conduct the examination before 01.01.2012 for the post of Teacher Grade-III Level-I therefore the stand taken by the State Government that the petitioners and like persons became ineligible is totally baseless and against the basic principles of law.

21. The judgments cited by the learned Addl. Advocate General rendered in the cases of Kailash Chandra Harijan and Yogesh Kumar's cases are not even applicable upon the facts of the present case because NCTE considered appropriate after due deliberation that one opportunity is required to be granted to all those candidates who are possessing B.A./B.Sc. with B.Ed. qualification and TET eligibility, therefore, for deciding the instant controversy both the cited judgments are totally inapplicable.

22. With regard to other judgments cited by learned Addl. Advocate in support of the case of the respondent State that interference of the Court in policy matters would be struck by a lawful bar, in my opinion, those judgments are not applicable in the present case because the agency of the Central Government which is the expert body known as the NCTE decided to grant opportunity to B.A./B.Sc. and B.Ed. qualification with TET eligibility holders to get appointment on the post of Teacher Grade-III Level - I for classes I to V; but, that right has not been made available by the State Government due to their inaction, therefore, the denial of opportunity envisaged after due deliberation by the NCTE as one time measure which was available prior to 01.01.2012 to the candidates possessing B.A./B.Sc. with B.Ed. and TET eligibility against the existing vacancies is totally unconstitutional and against the fundamental right guaranteed by the Constitution of India.

23. I am unable to accept the contention of the Addl. Advocate General that date viz., 01.01.2012 is expired therefore that right of consideration cannot be given to holders of the qualification because it is expected from the welfare State that fruits of certain provision inserted after due deliberation of the facts and circumstances should be made available to the candidates who are possessing qualification as per para 3 of the notification dated 23.08.2010. The state Government, however, in a very casual manner, put forth childish plea that as per the notification the petitioners are not entitled after 01.01.2012 knowing well that no efforts have been made nor occasion is afforded to provide the opportunity envisaged by the statutory body after due deliberation in this State. The entire scenario only pricks the conscience of this Court that fruits of specific provision made available by the NCTE is snatched by the State Government by its own inaction and, now, they are denying the fruits of that measure which is prescribed by the NCTE after due deliberation.

24. In this case, the stand of the State Government is that after enactment of the Act of 2009 the expert body which is the NCTE was authorized to prescribe qualification for the post of Teacher Grade-III under sub-section (1) of Section 23 of the Act of 2009 and State Government issued notification on 11.05.2011 whereby an amendment was made in Rule 266 of the Rules of 1996 and qualification prescribed by the NCTE vide notification dated 23.08.2010 was inserted; meaning thereby, for recruitment on the post of Teacher Grade-III there is complete process in the Rules of 1996 in Chapter-XII. Under Rule 263 of the Rules of 1996 there is provision for determination of the vacancies and vacancies occurred since 2006 were determined and communicated to the Zila Parishads district-wise for recruitment and, in pursuance of that, advertisements have been issued on 24.02.2012 by all the Zila Parishads of the State, in which, age relaxation has been granted as provided under sub-rule (X) of Rule 265, by which, those candidates who would have been entitled in respect of his/her age for direct recruitment in a year, in which, no such recruitment was held they were granted relaxation of 3 years; meaning thereby, the legislature has taken note of the fact that in the event of not filling in the vacancies in a particular year no candidate should be deprived to compete if he was otherwise eligible for the post of Teacher Grade - III. In this case, Admittedly 40000 vacancies are advertised which were determined in the year 2011 of the previous years since 2006 because for last 6 years no recruitment on the posts of Teacher Grade-III took place in the State of Rajasthan.

25. Admittedly, as per the respondents themselves the candidates possessing graduation with B.Ed. and TET qualification were held entitled for appointment up to 01.01.2012; meaning thereby, all the petitioners and those candidates who were possessing graduation with B.Ed. and TET were held eligible for appointment on the posts of Teacher Grade-III Level - I to teach students of classes I to V; but, that right is not made available to the candidates only for the reason that date 01.01.2012 expired.

26. In the Rules there is power of relaxation in any of the rule under Rule 296. Rule 296 of the Rules of 1996 reads as under :

Rule 296. "Power to relax rules."- The State Government on a reference by the Panchayat Samiti/Zila Parishad concerned or on its own motion, in an exceptional case where the Administrative Department is satisfied that the operation of the rules relating to any provision for recruitment, if any, causes undue hardship or where the Government is of the opinion that it is necessary or expedient to relax any of the provisions of these rules may with the concurrence of Department of Personnel, relax the relevant provisions of these rules to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner.

27. I have examined Rule 265 and Rule 296 in which power of relaxation is prescribed. In the advertisement dated 24.02.2012 issued by all the Zila Parishads age relaxation has been granted under sub-rule (X) of Rule 265 of the Rules of 1996, whereby, all those candidates who were eligible in last three years but crossed the age limit are held entitled to compete for recruitment on the posts of Teacher Grade-III. Therefore, if such relaxation in age is provided under sub-rule (X) of Rule 265 by the State to the candidates who become over-age for recruitment in pursuance of advertisements issued on 24.02.2012, but the State Government did not exsercise its power to grant eligibility to the candidates who are possessing qualification of graduation with B.Ed. and TET after 01.01.2012 under Rule 296 of the Rules of 1996, in which, the legislature while conferring power has cast duty upon the State Government in an exceptional case where the Administrative Department is satisfied that the operation of the rules relating to any provision for recruitment, if any, causes undue hardship or where the Government is of the opinion that it is necessary or expedient to relax any of the provisions of these rules may with the concurrence of Department of Personnel, on its own motion, relax the relevant provisions of these rules to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner. The case of the petitioners, therefore, falls under Rule 296 for the reasons that (i) case is an exceptional case, (ii) operation of the provision causes undue hardship, (iii) it is a case in which it is necessary or expedient to relax a provision of the rules, and (iv) it is necessary for dealing with the present case in just and equitable manner. Therefore, for the welfare of largenumber of candidates it is duty of the State legislature to grant, as a one-time measure, an opportunity to those candidates who were held eligible by the NCTE itself for appointment up to 01.01.2012.

28. Admittedly, none of the candidates possessing graduation with B.Ed. and TET qualification was given opportunity for appointment inspite of clear provision inserted by the NCTE up to 01.01.2012. More so, after inserting the said qualification by amendment in the Rules of 1996 vide notification dated 11.05.2011, an opportunity was granted to candidates possessing graduation with B.Ed. qualification to appear in the TET examination by the Board of Secondary Education, Rajasthan, Ajmer and they were given certificate after passing the said examination for Level - I and Level - II, both. Therefore, it is abundantly clear that all those candidates who were possessing the qualification of graduation with B.Ed. and TET were held eligible by the NCTE for appointment on the post of Teacher Grade-III but the said benefit is not made available to those candidates by the State legislature because delay in recruitment is caused due to apathetic and indifferent attitude of the State authorities.

29. In my considered opinion, it is settled law that a particular vacancy arisen in a particular year should be filled in in accordance with the existing rules. Here, in this case, 40000 vacancies were determined up to the year 2011 and, at that time, as per notification dated 23.08.2010, the qualification prescribed by the NCTE was inserted in Rule 266 of the Rules of 1996, in which, para 3 was in existence whereby it was specifically provided that a candidate 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 to Class I to V up to 1st January, 2012, provided he/she undergoes, after appointment, an NCTE recognized 6-month Special Programme in Elementary Education; but, the benefit of the said eligibility is not extended to any of the candidates possessing the said qualification for the reason that the vacancies are advertised on 24.02.2012. In my considered opinion, the right accrued to the candidates as per para 3 of the notification dated 23.08.2010 cannot be snatched merely on the ground that the process of selection for already determined vacancies commenced on 24.02.2012.

30. If such type of action of the State Government is countenanced, then, obviously the scope of selection will be narrowed down and only those candidates will get opportunity for appointment on the posts of Teacher Grade-III Level - I who are possessing qualifications other than the qualification possessed by the petitioners. Therefore, it is the duty of the State to expand the scope of opportunity to the candidates instead of narrowing down the scope of recruitment.

31. As per Articles 14, 16 and 21 of the Constitution of India, the intention of the welfare State must be in favour of the larger number of citizens and it must not be restricted to class of persons. But, here, in this case, the State Government is snatching the right of consideration from the petitioners on hyper-technical ground, that too, due to their own inaction. The State Government is answerable for the reasons why the recruitment on the posts of Teacher Grade-III is not made since 2006 and, now, if they are initiating the process of selection, then, how the State can curtail the right of consideration of those candidates who were held eligible by the NCTE for the simple reason that the State Government did not initiate the process of selection prior to the date 01.01.2012.

32. When there is power left with the State under Rule 296 of the Rules of 1996 to relax any of the provisions of the Rules, then, obviously a proper decision was to be taken to enlarge the scope of selection by granting opportunity to all the candidates who were declared eligible by the NCTE and who were allowed by the Board of Secondary Education, Rajasthan, Ajmer to appear and pass the TET examination even after possessing graduation with B.Ed. qualification. I am unable to understand why the State Government is not extending opportunity to the candidates possessing qualification of graduation with B.Ed. and TET for participating in the selection process for the posts of Teacher Grade-III Level - I to teach students of classes I to V when the NCTE itself gave opinion that as a one-time measure said opportunity should be given to the candidates possessing graduation with B.Ed. and TET with a rider that they shall acquire training after their appointment.

33. It is very important to observe that the NCTE has been authorized by the Central Government to prescribe the qualification but the NCTE cannot compel the State Government to strictly follow their opinion to apply the said qualification up to particular date because under Article 309 of the Constitution of India the State Government has power to frame service rules.

34. In the case of Chandra Kala Trivedi Vs. State of Rajasthan & Others,   : (2012) 3 SCC 129, recently Hon'ble Supreme Court made following adjudication in para 7 and 8 of the judgment while considering similar controversy :

7. In the impugned judgment, the High Court has given a finding that the higher qualification is not the substitute for the qualification of Senior Secondary or Intermediate. In the instant case, we fail to appreciate the reasoning of the High Court to the extent that it does not consider higher qualification as equivalent to the qualification of passing Senior Secondary Examination even in respect of a candidate who was provisionally selected.

8. The word "equivalent" must be given a reasonable meaning. By using the expression "equivalent" one means that there are some degrees of flexibility or adjustment which do not lower the stated requirement. There has to be some difference between what is equivalent and what is exact. Apart from that, after a person is provisionally selected, a certain degree of reasonable expectation of the selection being continued also come into existence.

35. While considering the above adjudication, I once again applied my mind with reference to the present controversy. It emerges from the facts that the expert body which the NCTE expressly inserted para 3 in the notification dated 23.08.2010 and held that graduate with B.Ed. and TET can be treated equivalent and one-time opportunity should be given to them to participate in the selection process for appointment as Teacher Grade-III Level - I to teach students of classes I to V. Therefore, from any angle, it cannot be said that the petitioners were not treated eligible by the NCTE for appointment against the vacancies of Level - I. More so, the NCTE after due deliberation incorporated para 3 in the notification dated 23.08.2010 that those candidates possessing qualification of graduation with B.Ed. will be eligible for appointment on the post of Teacher Grade-III Level - I and, at the time of issuance of notification dated 23.08.2010, it was felt necessary to provide one opportunity to those candidates. Therefore, obviously with a view to granting opportunity the date 01.01.2012 was inserted and it was expected from the State Government to make recruitment while providing opportunity to them; but, it was not provided by the State of Rajasthan even though with open eyes the NCTE held the above qualification holders eligible for appointment.

36. It is also worthwhile to observe that no restriction was imposed by the NCTE, therefore, obviously the power left with the State Government under Rule 296 of the Rules of 1996 to relax any of the provisions of the rules was to be exercised; but, it was not exercised though the same power was exercised in relation to relaxation in upper age-limit. Therefore, the action of the State Government in refusing all those candidates possessing graduation with B.Ed. to compete for appointment on the post of Teacher Grade-III Level - I to teach students of classes I to V is totally unfounded and contrary to the principle of legitimate expectation. The duty of the welfare State is not to curtail the envisaged opportunity for the candidates but to enlarge the scope and opportunity in view of Articles 14, 16 and 21 of the Constitution of India.

37. I have examined para 3 of the notification dated 23.08.2010 from all angles. It emerges from the language used by the NCTE that the date of 01.01.2012 is inserted to grant one opportunity to the candidates who are pursuing B.Ed. and not to put restriction upon the State Government because the NCTE is having jurisdiction to lay down the qualification under the Act of 2009 but cannot put restriction upon the State Government to declare any candidate ineligible for appointment. In these circumstances, the denial of opportunity to the petitioners holding the qualification of graduation with B.Ed. and who acquired TET qualification after issuance of notification dated 23.08.2010 and prior to 01.01.2012 is against the constitutional rights guaranteed to the petitioners under Articles 14, 16 and 21 of the Constitution of India. Therefore, the above writ petitions as well as writ petitions enumerated in the Schedule appended to this judgment are hereby allowed. Respondent State is directed to grant one opportunity to all those candidates who acquired qualification of graduation with B.Ed. and TET qualification before 01.01.2012 in the selection process commenced in pursuance of advertisements issued by the Zila Parishads of all the districts on 24.02.2012 for appointment on the post of Teacher Grade III Level - I.

There shall however be no order as to costs.