**IN THE HIGH COURT OF ORISSA**

W.P. No. 11270 of 2012

Decided On: 08.08.2012

Appellants: **Subrat Das and Ors.**
**Vs.**
Respondent: **State of Orissa and Ors.**

**Hon'ble Judges/Coram:**Kumari Sanju Panda, J.

**ORDER**

**Kumari Sanju Panda, J.**

1. Since the facts involved in these writ petitions are similar, they were heard together and are being disposed of by this common judgment. The petitioners in these writ petitions assail the Notification issued by the Board of Secondary Education, Odisha, Cuttack, opposite party No. 6, on 16.6.2012 to conduct the Teacher Eligibility Test (in short, "TET") as per the syllabus of the Orissa Teacher Eligibility Test.

2. Opposite party No. 15 in order to engage Sikshya Sahayak/Sahayika (hereinafter referred to as "Sikshya Sahayaks") issued an advertisement in respect of different districts in the month of December, 2011, vide Annexure-1 series. Pursuant to the said advertisement, the petitioners along with many candidates offered their candidatures for engagement as Sikshya Sahayaks. The relevant eligibility criteria mentioned in the said advertisement are as follows:--

The candidates must have passed:--

(a) + 2 Science/Arts/Commerce or equivalent qualification recognized by the authority with pass certificate of 7th class in Oriya with C.T. (Recognized by NCTE);

(b) + 2 Science/Arts/Commerce or equivalent recognized qualification recognized by the Rehabilitation Council of India (RCI) in two years Diploma Course in Special Education;

(c) B.Sc./B.A. or equivalent qualification having passed in 10th standard in Oriya (MIL) with B.Ed recognized by NCTE.

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and the candidates must have registered their names in their respective Employment Exchanges.

The applications of the petitioners were duly considered and after following the due procedure as per the Scheme for engagement as Sikshya Sahayaks, the petitioners were duly selected and a merit list was prepared in respect of the petitioners in their respective districts as revealed from Annexure-2 series.

3. While the matter stood thus, the Government of Odisha in the Department of School and Mass Education Department issued a Notification on 29.3.2011 wherein a request was made to all the Collectors of the Districts not to proceed further in the matter of engagement of Sikshya Sahayaks on the ground that TET is mandatory before the recruitment of teachers as stipulated by National Council for Teacher Education (hereinafter referred to as "NCTE") under the provisions of Right of Children to Free and Compulsory Education Act, 2009 (in short, "the Act, 2009"). Since the advertisement for engagement of Sikshya Sahayaks was made in the year 2011, i.e., much prior to the Notification dated 29.3.2012, the said notification has no retrospective effect. The TET is necessary for recruitment of teachers as per the Act, 2009, but nowhere the said Act provides TET before engagement of Sikshya Sahayaks. Accordingly, it is submitted by the learned counsel for the petitioners that the advertisement was published for engagement of Sikshya Sahayaks and the same was not for the purpose of recruitment of teachers. Under the Scheme, a Sikshya Sahayak after completion of five years of service can be recognized as a teacher and since the selection process has already started and merit list has been prepared, the authorities should not have changed the selection criteria by issuing a further advertisement to appear another test. As such, the TET scheduled to be held on 5th August, 2012 conducted by the Board of Secondary Education, Odisha. Cuttack at the headquarters of all Blocks/NACs/Municipalities/Corporation is liable to be quashed being arbitrary, discriminatory and unreasonable. He further submitted that in view of the Act and Notification issued by the Government, a person after engagement as Sikshya Sahayaks can also appear the TET.

4. A counter-affidavit has been filed by opposite party No. 1 taking a stand that NCTE issued a Notification on 23rd August, 2010 prescribing the minimum qualifications for a person to be eligible for appointment as a teacher in Class-I to VIII. The said Notification stipulates that a candidate should pass TET which will be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE. During the process of recruitment in 2010-2011, it was ascertained that required number of trained candidates particularly in Science category and in SC/ST/PH category would not be available for which the Government of India was requested to grant relaxation of qualification under Section 23(2) of the Act, 2009. Accordingly, the Government of India issued a notification on 23rd March, 2011 granting relaxation in the qualification for a period of one year from the date of the Notification. It was admitted that the advertisement was issued for engagement of Sikshya Sahayaks in the year 2011 and final merit list was prepared on 5.4.2012 and the same was published on 20th April, 2012. The condition of TET has not been stipulated in the guidelines for recruitment of Sikshya Sahayaks since by that time, the guidelines for conducting TET was not formulated by the NCTE.

5. While the matter stood thus, the Government of India in the Ministry of H.R.D., Department of School Education and Literacy on 27.3.2012 issued instruction to the Government of Odisha to ensure that TET is conducted by the Government of Odisha, which is binding and mandatory for recruitment/appointment of teachers in elementary schools of the States. Every State Government is statutorily required to comply with that and violation of the same may not stand the test of law. Accordingly, the School and Mass Education Department vide notification dated 2.4.2012 designated the Board of Secondary Education as the professional body for conducting TET examination in the State of Odisha. The detailed guidelines was issued on 4.6.2012 for conducting TET by the Board of Secondary Education and that shall be conducted once in a year or as decided by the Government according to need and only TET pass candidates shall be considered for engagement as Sikshya Sahayaks. It further reveals from the counter-affidavit that the previous relaxation under Section 23(2) of the Act, 2009 by Government of India was for one year and the same expired w.e.f. 22nd March, 2012. Accordingly, the State Government requested the Government of India for grant of relaxation in respect of the minimum teachers qualification norms for a further period of three years beyond 22.3.2012. In reply to the same, the Government of India communicated their approval for relaxation in respect of the minimum teachers qualification norms notified by the NCTE for Classes-I to VIII up to 31st March, 2013 subject to certain conditions wherein it has been stipulated that the State Government shall conduct TET in accordance with the guidelines dated 11.2.2011. In view of the above facts and circumstances, all the Collectors-cum-Chief Executive Officers, Zilla Parishads were requested not to proceed with the engagement of Sikshya Sahayaks and directed to conduct the TET before engagement. Accordingly, the Board of Secondary Education, Odisha. Cuttack issued a Notification for such test being the professional body to conduct the test. Therefore, the writ petitions have no merit and are liable to be dismissed.

6. From the record, it appears that TET pass is a minimum qualification for appointment of teachers as per the norms of NCTE. The Central Government relaxed the said norms in respect of the State of Odisha for a period of one year from 23rd March, 2011 exercising the power conferred under Section 23(2) of the Act, 2009 and the Rules made thereunder. The State Government and the other school managements shall ensure that teachers not possessing the minimum academic and professional qualifications laid down in the notification of NCTE shall acquire the same within the time limit specified under Section 23(2) of the Act, 2009. The notification was issued upon the request by the State Government, since the State Government does not have adequate institutions offering courses or training in teacher education, or persons possessing minimum qualifications laid down in the Notification dated 25th August, 2010 of the NCTE. It further reveals that on 18th May, 2012 on the request of the Government of Odisha dated 4th April, 2012 to grant relaxation for further period of three years under Section23(2) of the Act, the Government of India has extended the relaxation period up to 31st March, 2013. There is no dispute that the minimum qualification can be acquired by the candidates after the engagement as stipulated under Section 23(2) of the Act. This minimum qualification has been fixed by the NCTE to maintain and promote the standard of education in the country.

7. In the present case, since the advertisement was published for engagement of Sikshya Sahayaks in the year 2011, applications were called for and selection process was started and the selection list was accordingly prepared for engagement of the same. All of a sudden, in the month of April, the said process was delayed and the additional criteria were fixed to appear TET before engagement of Sikshya Sahayaks. Once the selection process started, the authorities should not have changed the criteria of selection.

8. In a decision reported in   : (2012) 1 SCC 177 : (2011 AIR SCW 6691) Parmender Kumar and others v. State of Haryana and others, the Apex Court considering the evaluation procedure for admission and the conditions invited in the prospectus held that conditions cannot be changed after declaration of the results and preparation of select list as the appellants had already shown their competence in written test and therefore revised eligibility conditions could not be applied to them on the pretext of upholding standard of education. Once the process of selection of candidates for admission to the courses had been commenced on the basis of the prospectus, no change could, thereafter, be effected by Government orders to alter the provisions contained in the prospectus. It is open to the authorities to alter the terms and conditions just a day before counselling was to begin, so as to deny the candidates, who had already been selected.

9. In a decision reported in   : (2000) 9 SCC 115 : (AIR 2000 SC 1476) Rajiv Kapoor and others v. State of Haryana and others, the Apex Court has held that the authorities would do well in future to publish at the beginning of every academic year, even before inviting applications, a compendium of the entire scheme and basis for selection carrying out amendments up-to-date and the prospectus also specifically adopting them as part of the prospectus, to avoid confusion in the matter of selections, every year.

10. In view of Section 23(2) of the Act, 2009, five years relaxation is available to the teachers to clear the TET and one year relaxation has been granted by the Central Government, i.e., till 31.3.2013 and as per the above settled position of law, this Court feels that the action of the authorities is unreasonable, arbitrary and the candidates had no breathing time to prepare themselves for the said TET as additional criteria to be considered for engagement as Sikshya Sahayaks after the selection process was started. Accordingly, this Court quashes the notifications dated 29.3.2012 and 16.6.2012 issued by the Government of Odisha and Board of Secondary, Odisha, Cuttack, vide Annexures-3 and 5 and directs opposite party No. 1 and the Chief Executive Officers of the Districts to issue engagement letters as per the selection list of Sikshya Sahayaks prepared by them forthwith and the candidates who will be engaged as Sikshya Sahayaks to be prepared themselves for OTET shall clear up the test by end of January, 2013.

With the above directions, the writ petitions are disposed of. No costs.