**IN THE HIGH COURT OF ALLAHABAD**

Civil Misc. Writ Petition Nos. 1156 of 2013, 66067, 49509 and 67740 of 2012

Decided On: 16.01.2013

Appellants: **Yajuvendra Singh Chanddel and Another**
**Vs.**
Respondent: **State of U.P. and Others**

**Hon'ble Judges/Coram:**Arun Tandon, J.

**JUDGMENT**

**Arun Tandon, J.**

1. Heard learned Counsel for the parties. The petitioners who are stated to have obtained B.Ed Degree after graduation and have passed TET Examination, seek a writ of Mandamus directing the respondent authorities to provide weightage to the candidates with reference to the marks obtained in TET Examination in the matter of appointment as Trainee Teachers.

2. The case of the petitioners is that under Section 23 of the Right of Children to Free and Compulsory Education Act, 2009, the Central Government was conferred a power to authorize an authority for laying down the minimum qualification for appointment as teachers in the institutions where education imparted to children including institutions with Class 1 to 5.

3. The Central Government in exercise of powers under Section 23 authorized National Counsel for Teachers Training (hereinafter referred to as 'the NCTE') to act as the relevant authority for laying down minimum qualification. The NCTE issued notification on 23rd August, 2010, laying down the minimum qualifications for appointment of teachers in institutions where education is imparted from Class 1 to 5 as also in institutions where education is imparted from Class 6 to 8.

4. This case pertains to the first category of institutions and, therefore, facts pertaining to the first category alone are being stated.

5. The notification dated 23rd August, 2010, provides academic qualification and passing of TET Examination as essential qualification. It has been clarified that TET Examination shall be the one which is held by the State Government as per the guidelines framed by the NCTE.

6. According to the petitioner, guidelines for conducting TET Examinations have been provided under the letter of the Member Secretary, N.C.T.E. dated 11th February, 2011. Clause 9, provides for the minimum marks for qualifying TET Examination as 60%. Clause 9(b) provides that the State or the appointing authority may provide weightage as per the TET Score to the candidates in the recruitment process. It is further stated that the State Government has accepted the guidelines so framed by the NCTE as is apparent from its letter dated 7th September, 2011 and therefore, the State Government has to provide weightage with reference to the TET Score of the candidates.

7. It is his case that the State Government, while publishing the advertisement for recruitment of Trainee Teachers, has completely ignored the Clause 9(b) of the guidelines, by not providing weightage to the TET Scores in the matter of selection of Trainee Teachers. Hence this petition.

8. In order to appreciate the contentions raised on behalf of the petitioners, it is necessary for this Court to examine as to what exact power was conferred upon the NCTE under the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter, referred to as 'the Act of 2009') and for the purpose it is relevant to quote Section 23 of the Act of 2009:

23. Qualifications for appointment and terms and conditions of service of teachers.-

1. Any person possessing such minimum qualifications, as laid down by an academic authority authorised 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 qualification 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.

NOTIFICATION

Ministry of Human Resource Development (Deptt. Of School Education and Literacy), Noti. No. S.O. 750(E), dt. 31.3.2010, published in the Gazette of India, Extra., Part II, Section 3(iii), dt. 5.4.2010.-In exercise of the powers conferred by sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009, the Central Government hereby authorises the National Council for Teacher Education as the academic authority to Jay down the minimum qualifications for a person to be eligible as a teacher.

9. From Clause 1 of Section 23 of the Act of 2009 it is clear that the academic authority, authorized by the Central Government by notification, has been conferred the sole power of laying down the minimum qualifications for appointment of teachers in the institutions, covered by the Act of 2009, and it is with reference to Section 23of the said Act that the Ministry of Human Resource and Development, Central Government, vide notification dated 31.3.2010, declared the NCTE as academic authority to lay down minimum qualifications for the persons to be eligible for appointment as teachers.

10. From the simple reading of Section 23, alongwith the notification dated 31.3.2010, published in official gazette on 5.4.2010, it apparent that power of the-NCTE is limited to laying down minimum qualifications and nothing beyond it. The process of recruitment and the manner of selection as Assistant Teacher in Primary Schools cannot be tinkered with by the NCTE in exercise of power of laying down minimum qualifications as flows from Section 23 of the Act of 2009.

11. In my opinion the NCTE, except for laying down the minimum qualifications cannot direct that any particular marks should be granted weightage or that any particular method of selection should be adopted, inasmuch as it is not within the power of the NCTE to lay down any such condition.

12. Laying down of the minimum qualifications for particular post does not include within its ambit the power to lay down manner of selection and for weightage etc. be provided in respect of particular qualifying examination.

13. This Court may record that the guidelines which have been framed by the NCTE in respect of holding of TET Examination on 11th February 2011 are to be read in that context only.

14. So far as Clause 9 of the Guidelines for conducting Teacher Eligibility Test (TET) are concerned, it is worthwhile to record that Clause 9(b) itself provides that TET is only one of the qualifying criteria for appointment. Clause 9 of the Guidelines reads as follows:

Qualifying marks

9. A person who scores 60% or more in the TET exam will be considered as TET pass. School managements (Government, local bodies, Government aided and unaided)

(a) may consider giving concessions to persons belonging to SC/ST, OBC, differently abled persons, etc., in accordance with their extant reservation policy;

(b) should give weightage to the TET scores in the recruitment process; however, 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.

15. It contemplates that passing of the TET Examination is only one of the eligibility criteria for appointment. The provision has to be read as a whole and in the background of the power conferred.

16. It is always open to the State Government, which is rule framing authority under Section 19 of the Basic Education Act, 1972, in the matter of appointment of teachers in Primary Schools to lay down the method of recruitment of Teachers as well as Trainee Teachers and while laying down such procedure for recruitment of Teachers and Trainee Teachers, the only obligation cast upon the State Governments under the Act of 2009 and the Notification of the NCTE is that the Teachers to be appointed in the institutions concerned must possess prescribed minimum qualifications and nothing beyond it.

17. The method of selection and the manner of selection is within the domain of the State Government the rule framing authority. In the facts of the case, the State Government under the 16th Amendment to the Rules of 1981 has provided for the appointment of Trainee Teachers. The State Government has decided to make selections for the post on the basis of the quality point marks obtained in various academic examinations throughout the career of the applicant concerned. If the State Government has decided not to give any weightage to the TET scores, it cannot be said that it has committed any violation of any statutory provision. The NCTE guidelines do not have any statutory force so as to over reach the power of the State Government as conferred under Section 19 of the Basic Education Act, 1972.

18. In my opinion the Rule framed by the State under Rule 19, having taken care of, the minimum qualifications prescribed by NCTE cannot be said to have violated any of the provisions of Right of Children to Free and Compulsory Education Act, 2009 or the Notification of the NCTE issued there under. There cannot be a direction to the State to adopt a particular method of selection, as has been prayed by the petitioner before this Court. The writ petition lacks merit and is dismissed.