



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 501 of 2022**

Abhishek Kumar Nirmalkar S/o Ramkumar Nirmalkar, Aged About 36 Years
R/o Pathak Para, Takhatpur Ward No. 6, Police Station Station Takhatpur,
District Bilaspur Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh, Through The Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Nawa Raipur Chhattisgarh.
2. The Director, Directorate of Public Instructions, Atal Nagar, New Raipur Chhattisgarh.
3. The District Education Officer, Raipur, District Raipur Chhattisgarh.

---- Respondent**WA No. 505 of 2022**

Satish Kumar Sahu S/o Baijnath Sahu Aged About 34 Years R/o Village Kosla,
Block Pamgarh, District : Janjgir-Champa, Chhattisgarh

---- Appellant**Versus**

1. State of Chhattisgarh, Through The Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Nawa Raipur, District : Raipur, Chhattisgarh
2. The Director, Directorate Of Public Instructions, Atal Nagar, New Raipur, Chhattisgarh
3. The District Education Officer, Raipur, District : Raipur, Chhattisgarh

---- Respondents**WA No. 507 of 2022**

Meena Toppo D/o Shri Babulal Toppo Aged About 27 Years R/o Village
Khedama, Post Lailunga, Tahsil And Thana Lailunga, District Raigarh
Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh, Through The Secretary School Education Department Ministry, Mahanadi Bhawan, PO and PS Rakhi, Nawa Raipur , District Raipur Chhattisgarh.
2. Director, Directorate of Public Instruction Raipur, District Raipur Chhattisgarh.



3. District Education Officer, Raipur, District Raipur Chhattisgarh.

---- Respondents

WA No. 508 of 2022

Onkar Prasad Sahu S/o Harishchandra Sahu Aged About 43 Years R/o Utai, Post Utai, Block Durg, District : Durg, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh, Through The Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Nawa Raipur, District : Raipur, Chhattisgarh
2. The Director, Directorate of Public Instructions, Atal Nagar, New Raipur, District : Raipur, Chhattisgarh
3. The District Education Officer, Raipur, District : Raipur, Chhattisgarh

---- Respondents

WA No. 510 of 2022

Shailesh Kumar Singh S/o Shri Ramdeni Singh Aged About 26 Years R/o Village And Post Chandranagar, Tahsil Ramanujanj, District : Balrampur, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh, Through The Secretary School Education Department Ministry, Mahanadi Bhawan, Post Office And Police Station Rakhi, Nawa Raipur., District : Raipur, Chhattisgarh
2. Director, Directorate of Public Instruction Raipur., District : Raipur, Chhattisgarh
3. District Education Officer, Raipur., District : Raipur, Chhattisgarh

---- Respondents

WA No. 511 of 2022

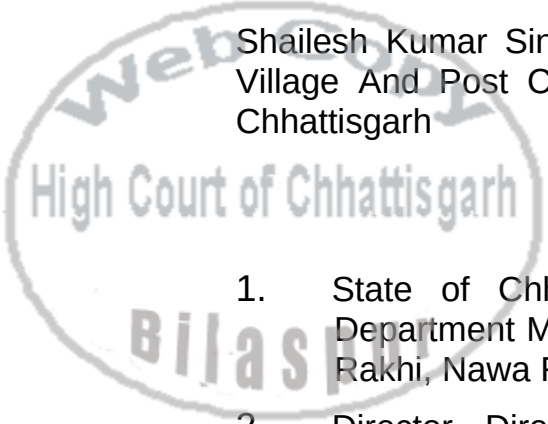
Anita Markam S/o Shri Sukhi Ram Markam Aged About 28 Years R/o Village Dandbachhali, Post Tenganmada, Tahsil Belgahna, Thana Kota, District : Bilaspur, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh, Through The Secretary School Education Department Ministry, Mahanadi Bhawan, Post Office and Police Station Rakhi, Nawa Raipur, District : Raipur, Chhattisgarh
2. Director, Directorate of Public Instruction Raipur, District : Raipur, Chhattisgarh
3. District Education Officer, Raipur, District : Raipur, Chhattisgarh

---- Respondents



**WA No. 512 of 2022**

Preetam Lal Padoti S/o Late Shri Ramratan Padoti, Aged About 43 Years R/o Village Patheshri, Post Tumdibod, Tahsil Dongargaon, District : Rajnandgaon, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh, Through The Secretary School Education Department Ministry, Mahanadi Bhawan, PO and PS Rakhi, Nawa Raipur, District : Raipur, Chhattisgarh
2. Director, Directorate of Public Instruction Raipur, District : Raipur, Chhattisgarh
3. District Education Officer, Raipur, District : Raipur, Chhattisgarh

---- Respondents

WA No. 513 of 2022

Sukhdev Prasad Lahre S/o Narad Lal Lahre Aged About 37 Years R/o Village Lohrakot, Block Jaijaipur, District : Janjgir-Champa, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh, Through The Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District : Raipur, Chhattisgarh
2. The Director, Directorate of Public Instructions, Atal Nagar, New Raipur, District : Raipur, Chhattisgarh
3. The District Education Officer, Raipur, District : Raipur, Chhattisgarh

---- Respondent

WA No. 514 of 2022

Vikas Kumar S/o Shri Jugal Singh Aged About 33 Years R/o Village Ghumanidand, Post Jatga, Tahsil Pondi Uprora, Thana Bango, District : Korba, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh, Through The Secretary, School Education Department Ministry, Mahanadi Bhawan, P.O. and P.S. Rakhi, Nawa Raipur, District : Raipur, Chhattisgarh
2. Director, Directorate of Public Instruction Raipur, District : Raipur, Chhattisgarh
3. District Education Officer, Rajnandgaon, District : Rajnandgaon,



Chhattisgarh

---- Respondents

WA No. 515 of 2022

Buddheshwar Prasad Patel S/o Shri Shankar Lal Patel Aged About 37 Years R/o Village Sarra, Post Deosundra, Tahsil Pallari, District - Balodabazar (C.G.) (Petitioner Name Wrongly Mention In Impugned Order As Buddheshwar Prasad Patel)

---- Appellant

Versus

1. State of Chhattisgarh, Through The Secretary School Education Department Ministry, Mahanadi Bhawan, PO and PS Rakhi, Nawa Raipur, District : Raipur, Chhattisgarh
2. Director, Directorate of Public Instruction Raipur, District : Raipur, Chhattisgarh
3. District Education Officer, Raipur, District : Raipur, Chhattisgarh

---- Respondents

WA No. 518 of 2022

Shailendra Kumar Verma S/o Shri Aatma Ram Aged About 37 Years R/o Village Kurlu, Post Parpodi, Tahsil Saja, District : Bemetara, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh, Through The Secretary School Education Department Ministry, Mahanadi Bhawan, PO and PS Rakhi, Nawa Raipur, District : Raipur, Chhattisgarh
2. Director, Directorate of Public Instruction Raipur, District : Raipur, Chhattisgarh
3. District Education Officer, Raipur, District : Raipur, Chhattisgarh

---- Respondents

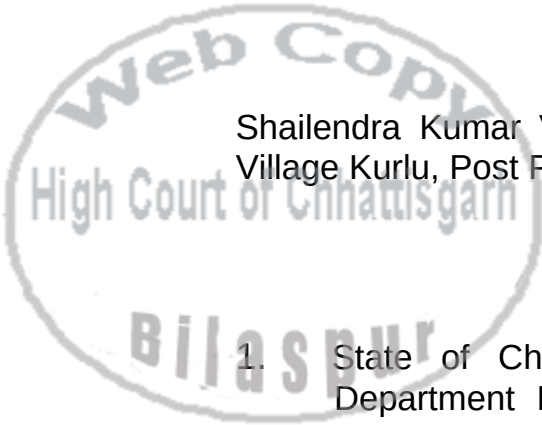
WA No. 519 of 2022

Kundan Singh S/o Shri Bisalik Ram Aged About 29 Years R/o Village Gahira-Nawagaon, Post Khertha Bazar, Tahsil Dondi Lohara, District Balod (C.G.)

---- Appellant

Versus

1. State of Chhattisgarh, Through The Secretary School Education Department Ministry, Mahanadi Bhawan, P.O. and P.S. Rakhi, Nawa Raipur, District : Raipur, Chhattisgarh
2. Director, Directorate of Public Instruction Raipur, District : Raipur, Chhattisgarh





3. District Education Officer, Raipur, District : Raipur, Chhattisgarh

---- Respondents

WA No. 522 of 2022

Manees Kumar Meshram S/o Shri Gorelal Meshram Aged About 34 Years R/o Village And Post Kodikasa, Tahsil Ambagarh, Chowki, District Rajnandgaon Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh, Through The Secretary School Education Department Ministry, Mahanadi Bhawan, PO and Police Station Rakhi, Nawa Raipur, District Raipur Chhattisgarh.
2. Director, Directorate of Public Instruction Raipur, District Raipur Chhattisgarh.
3. District Education Officer, Raipur, District Raipur Chhattisgarh.

---- Respondents

WA No. 523 of 2022

Rekhlal S/o Ramnarayan Aged About 35 Years R/o Morid, Post Dundera, Block Patan, District Durg Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh Through The Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Nawa Raipur Chhattisgarh.
2. The Director, Directorate of Public Instructions, Atal Nagar, New Raipur Chhattisgarh.
3. The District Education Officer, Raipur, District Raipur Chhattisgarh.

---- Respondents

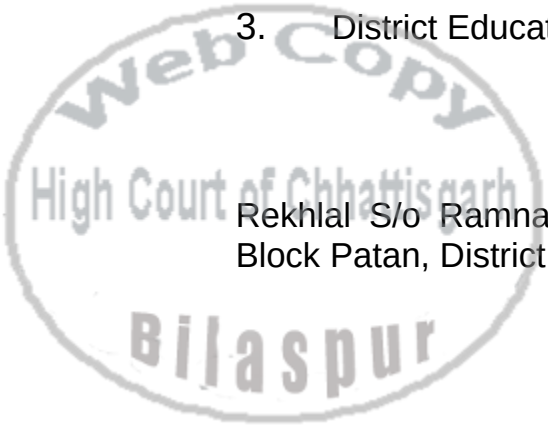
WA No. 524 of 2022

Jai Prakash Sahu S/o Shri Kamlesh Sahu Aged About 30 Years R/o Ajad Chowk, Village And Post Kendri, Block And Tahsil Abhanpur, District : Raipur, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh, Through The Secretary School Education Department Ministry, Mahanadi Bhawan, PO and PS Rakhi, Nawa Raipur, District : Raipur, Chhattisgarh
2. Director, Directorate of Public Instruction Raipur, District : Raipur,





Chhattisgarh

3. District Education Officer, Raipur, District : Raipur, Chhattisgarh

---- Respondents

WA No. 525 of 2022

Sonsai Sahu S/o Shri Ramat Lal Sahu Aged About 35 Years R/o Village Ganesh Khapri, Post Mahrum, Thana Deori Tahsil Dondi Lohara, District Balod Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh, Through The Secretary School Education Department Ministry, Mahanadi Bhawan, PO and PS Rakhi, Nawa Raipur District Raipur Chhattisgarh
2. Director, Directorate of Public Instruction Raipur, District Raipur Chhattisgarh
3. District Education Officer, Raipur, District Raipur Chhattisgarh

---- Respondents

WA No. 538 of 2022

Satishwar Prasad S/o Shri Sonsai Ram Aged About 42 Years R/o Village Bachwar, Post Bachwar (Shankargarh), Tahsil Shankargarh, District Balrampur Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh, Through The Secretary School Education Department Ministry, Mahanadi Bhawan, Po And Ps Rakhi, Nawa Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Director, Directorate of Public Instruction Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. District Education Officer, Raipur, District Raipur Chhattisgarh.

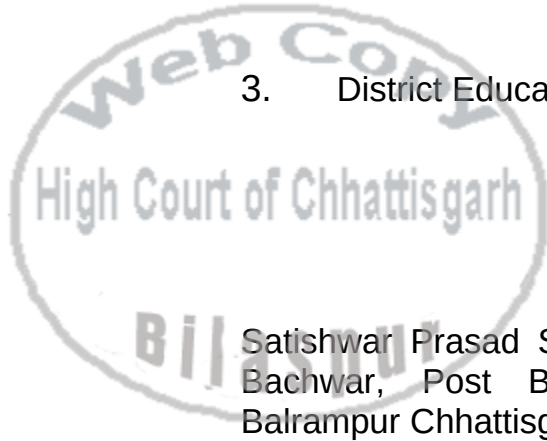
---- Respondents

WA No. 548 of 2022

Premlata Dhruw W/o Durdesh Dhruw Aged About 37 Years R/o Village Barela, Tahsil And District Mungeli, Chhattisgarh.

---- Appellant

Versus





1. State of Chhattisgarh, Through The Secretary, School Education Department, Mahanadi Bhavan, Atal Nagar, Naya Raipur, District : Raipur, Chhattisgarh
2. Director, Public Education Directorate, Indravati Bhavan, Naya Raipur, District : Raipur, Chhattisgarh
3. The District Education Officer, Raipur, District : Raipur, Chhattisgarh
4. The District Education Officer, Jagdalpur, Bastar, Chhattisgarh.
5. The Chhattisgarh Professional Examination Board, Raipur Through Its Secretary, Naya Raipur, Chhattisgarh.

---- Respondents

WA No. 589 of 2022

Bharya Sinha D/o Chova Lal Aged About 28 Years R/o 22, School Para, Hahaladdi, Durgukondal, District : Kanker, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh, Through - The Secretary, Education Department, Mantralaya, Mahanadi Bhawan, Atal Nagar Raipur, District : Raipur, Chhattisgarh
2. Director, Public Instructions, Sanchalnalaya, Indravati Bhawan, Atal Nagar Raipur, District : Raipur, Chhattisgarh
3. Divisional Joint Director Education Division, Bastar, District Bastar, Chhattisgarh.

---- Respondents

WA No. 595 of 2022

Bhanupriya Beck D/o Francis Beck Aged About 29 Years R/o Village Pakhnakot Tahsil Dharamjaigarh, District : Raigarh, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh, Through Secretary, Department Of School Education, Mahanadi Bhawan, Mantralaya, New Raipur, District : Raipur, Chhattisgarh
2. Director, Directorate of Chhattisgarh, Public Instruction Indravati Bhawan, Raipur, District : Raipur, Chhattisgarh
3. District Education Officer, Raipur, District : Raipur, Chhattisgarh

---- Respondents

(Cause-title taken from Case Information System)



For Appellants : Mr. C.J.K.Rao and Mr. Harish Khuntiya {in WA Nos. 501/2022, 505/2022, 508/2022, 513/2022, 523/2022, and 589/2022}

Ms. Naushina Afrin Ali {in WA No. 507/2022}

Mr. Mateen Siddique and Mr. Ghanshyam Kashyap, {in WA Nos. 510/2022, 511/2022, 512/2022, 514/2022, 515/2022, 518/2022, 519/2022, 522/2022, 524/2022, 525/2022, 538/2022}

Mr. Raj Kumar Pali {in WA No. 548/2022}

Mr. Govind Prasad Mathur and Mr. Shashi Kumar Kushwaha, {in WA No. 595/2022}

For Respondents/ State : Mr. Jitendra Pali and Mr. H.S.Ahluwalia, Deputy Advocate General and Ms. Astha Shukla, Government Advocate

For Respondent/ : Dr. Saurabh Kumar Pande, Advocate {in WA No. 548/2022}
Chhattisgarh
Professional
Examination Board

Dates of Hearing : 28.11.2022 & 30.11.2022

Date of Judgment : 10.02.2023

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri Justice Sanjay Agrawal, Judge

CAV Judgment

Per Arup Kumar Goswami, Chief Justice

On 09.03.2019, the Director, Directorate of Public Instructions, Raipur, had issued an advertisement for recruitment and appointment to various posts of teaching staff including Teachers and Assistant Teachers. The minimum



educational qualification for the post of Assistant Teacher (Science) is laid down in clause 2(i)(a) and (b). The minimum educational qualification for the post of Teacher is laid down in clause 2(ii) (a) and (b). They read as follows:

“2. Minimum Educational Qualification -

(i). Assistant Teacher -

(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), Regulation, 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)

OR

Graduation with at least 50% marks and B.Ed. Qualification (Graduate from the institution recognized from NCTE), shall also be eligible for appointment as teacher for classes 1 to 5, Provided





he/she undergoes, after appointment, a NCTE recognized 6 month special programme in Elementary Education.

And

(b) Passed the Teacher Eligibility Test (TET), to be conducted by the appropriate Government, in accordance with the guidelines framed by the NCTE for this purpose.

2. Minimum Educational Qualification -

(ii). Teacher -

(a) Graduation and 2 year Diploma in Elementary Education (by what ever name known)

OR

Graduation with at least 50% marks and 1 year Bachelor in 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

Higher Secondary or its equivalent with at least 50% marks and 4 years B.A./B.Sc.Ed. or B.AEd./B.Sc.Ed.

OR

Graduation with at least 50% marks and 1 years 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. The petitioners in all the writ petitions either belong to Other Backward Class (OBC), Scheduled Caste (SC) or Scheduled Tribe (ST). The common thread, essentially running through all the writ petitions, is that they had participated pursuant to the aforesaid advertisement for appointment as Assistant Teacher and Teacher and were successful in the written examination. However, subsequently, they were declared to be ineligible for the post of Assistant Teacher and Teacher as not meeting the educational eligibility qualification.

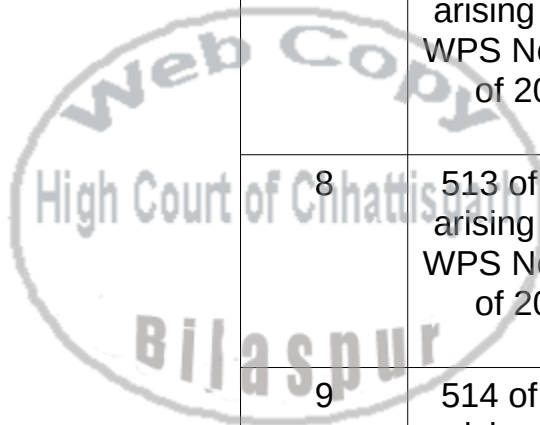
3. The learned Single Judge dismissed the writ petitions negating the challenge made by the petitioners, by holding, amongst others, that the plea raised by the petitioners regarding entitlement of relaxation of 5% marks in academic qualification to be without any merit.

4. A chart is given hereinbelow indicating the status of the petitioners as well as the grounds of rejection in case of each of the writ petitioners.

Sl.No.	Writ Appeal No.	Category	Post Applied	Ground of Rejection
1	501 of 2022 arising out of WPS No.4594 of 2022	OBC	Assistant Teacher	Secured less than 50% marks in graduation.
2	505 of 2022 arising out of WPS No.4683 of 2022	OBC	Assistant Teacher	Secured less than 50% marks in graduation.
3	507 of 2022 arising out of	ST	Assistant Teacher	Secured less than 50% marks in Higher



	WPS No.3884 of 2022		(Science) (E&T Cadre)	Secondary (Class 12)
4	508 of 2022 arising out of WPS No.4597 of 2022	OBC	Assistant Teacher	Secured less than 50% marks in graduation.
5	510 of 2022 arising out of WPS No.4183 of 2022	ST	Assistant Teacher (Science) (E&T Cadre)	Secured less than 50% marks in Higher Secondary (Class 12)
6	511 of 2022 arising out of WPS No.3901 of 2022	ST	Assistant Teacher (Science) (E&T Cadre)	Secured less than 50% marks in Higher Secondary (Class 12)
7	512 of 2022 arising out of WPS No.3931 of 2022	ST	Assistant Teacher (Science) (E&T Cadre)	Secured less than 50% marks in Higher Secondary (Class 12)
8	513 of 2022 arising out of WPS No.4602 of 2022	SC	Assistant Teacher	Secured less than 50% marks in graduation.
9	514 of 2022 arising out of WPS No.2429 of 2022	ST	Assistant Teacher (Science) (E&T Cadre)	Secured less than 50% marks in graduation.
10	515 of 2022 arising out of WPS No.3900 of 2022	OBC	Assistant Teacher (Science) (E&T Cadre)	Secured less than 50% marks in Higher Secondary (Class 12)
11	518 of 2022 arising out of WPS No.3947 of 2022	OBC	Assistant Teacher (Science) (E&T Cadre)	Secured less than 50% marks in graduation.
12	519 of 2022 arising out of WPS No.4340 of 2022	ST	Assistant Teacher (Science) (E&T Cadre)	Secured less than 50% marks in graduation.
13	522 of 2022 arising out of	SC	Assistant Teacher	Secured less than 50% marks in





	WPS No.3933 of 2022		(Science) (E&T Cadre)	graduation.
14	523 of 2022 arising out of WPS No.4606 of 2022	OBC	Assistant Teacher	Secured less than 50% marks in graduation and also did not possess D.Ed certificate.
15	524 of 2022 arising out of WPS No.4027 of 2022	OBC	Assistant Teacher (Science) (E&T Cadre)	Secured less than 50% marks in graduation.
16	525 of 2022 arising out of WPS No.3904 of 2022	OBC	Assistant Teacher (Science) (E&T Cadre)	Secured less than 50% marks in Higher Secondary (Class 12)
17	538 of 2022 arising out of WPS No.3888 of 2022	ST	Assistant Teacher (Science) (E&T Cadre)	Secured less than 50% marks in Higher Secondary (Class 12)
18	548 of 2022 arising out of WPS No.4922 of 2022	SC	Assistant Teacher (Science) (E&T Cadre)	Secured less than 50% marks in Higher Secondary (Class 12)
19	589 of 2022 arising out of WPS No.2084 of 2022	OBC/PH	Teacher (Mathematics)	Secured less than 50% marks in graduation.
20	595 of 2022 arising out of WPS No.5643 of 2022	ST	Assistant Teacher (Science) (E Cadre)	Secured less than 50% marks in Higher Secondary (Class 12)

5. As in these cases, we are concerned with the educational and the other qualifications that are required for appointment of teaching staff, the provisions directly touching upon this aspect is Section 23 of the Right to Children to Free and Compulsory Education Act, 2009 (for short, the RTE Act). Section 23(1) empowers the Central Government to authorize the academic authority to



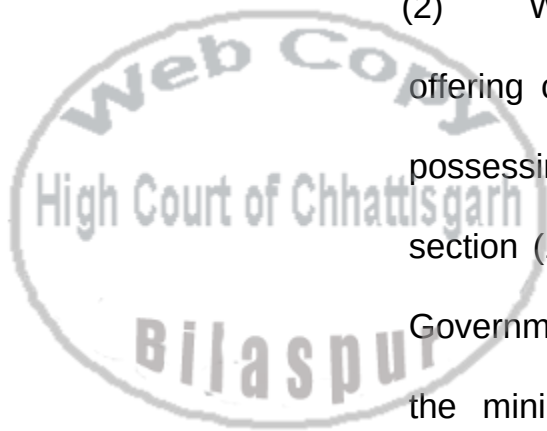
prescribe minimum qualification to be eligible for appointment of teachers. Once the academic authority fixes the minimum qualification, then the relaxation is possible only under Section 23(2) of the RTE Act. Section 23 of the RTE Act reads as under:

“23. Qualification for appointment and terms and conditions of service of teachers. – (1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorized by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualification 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.

Provided further that every teacher appointed or in position as on the 31st March, 2015, who does not possess minimum qualification as laid down under sub-section (1), shall acquire such minimum qualification within a period of four years from





the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017.

(3) The salary and allowances payable to, and the terms and conditions of service of, teacher shall be such as may be prescribed.”

6. Since the minimum qualifications are to be laid down by an academic authority authorized by the Central Government by way of a notification, such an authority which is so authorized by the Central Government is the National Council for Teacher Education, (for short, NCTE). Therefore, NCTE is competent to lay down the minimum qualification which a person needs to possess for making him eligible for appointment as a teacher.

7. NCTE had issued a notification dated 23.08.2010 prescribing minimum qualification for a person to be eligible for appointment as a Teacher in Class I to Class VIII in a school referred to in clause (n) of Section 2 of the RTE Act with effect from the date of the notification. The notification dated 23.08.2010 was amended by notification dated 29.07.2011.

8. At this juncture, it will be appropriate to extract clauses 1, 2 and 3 of the notification dated 23.08.2010. The same reads as under :

“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), Regulation 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

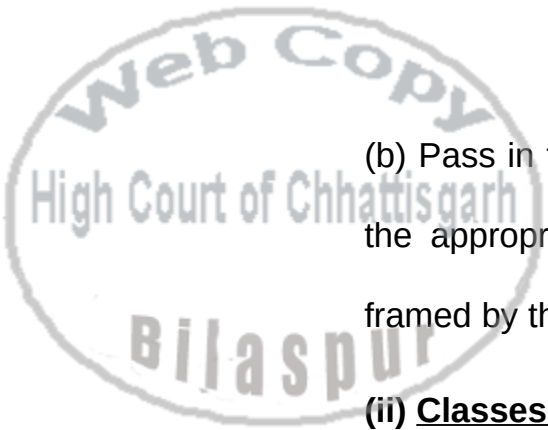
(a) B.A/B.Sc and 2-year Diploma in Elementary Education (by whatever name known)

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





17

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)

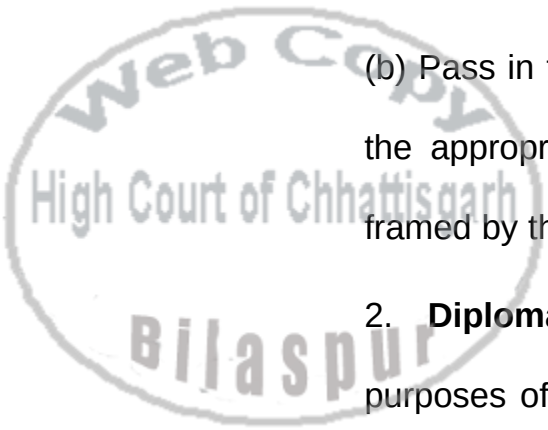
AND

(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.

9. Paragraphs I, II and III of the notification dated 29.07.2011 read as follows:

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

1. Minimum Qualification:-

(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), Regulation, 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 purpose.

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

(ii) Classes VI-VIII

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

OR

Graduation with at least 50% marks and 1-year Bachelor in 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, and 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 SC/ST/OBC/PH.”





10. Another notification dated 13.11.2019 was issued by the NCTE. The same reads as under:

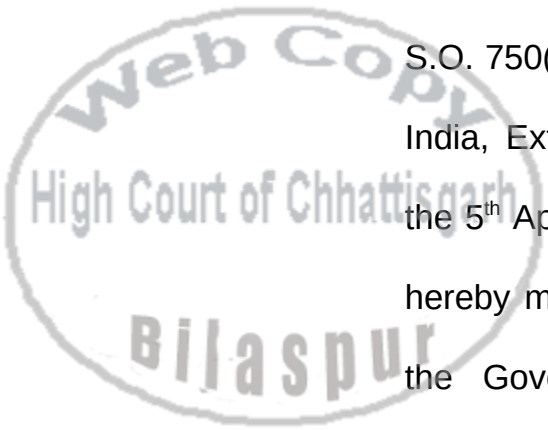
NATIONAL COUNCIL FOR TEACHER EDUCATION
NOTIFICATION

New Delhi, the 13th November, 2019

F.No.NCTE-Reg/012/22/2019-US(Regulation)-HQ.–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 (35 of 2009) and in pursuance of the notification number Government of India in the Ministry of Human Resource Development, Department of School Education and Literacy

S.O. 750(E) dated 31st March 2010 published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii) dated the 5th April, 2010, the National Council for Teacher Education hereby makes the following amendments in the notification of the Government of India, National Council for Teacher Education, vide F. No. 61-3/20/2010-NCTE(N&S) published in the Gazette of India, Part III, Section 4, dated the 23rd August, 2010, namely:-

1. In the said notification in paragraph 1, sub-paragraph (ii), -
 - (A) in clause (a) for the words, figures, brackets and letters “Graduation with at least 50% marks and 1 year Bachelor in Education (B.Ed), the words figure and letters “At least 50% marks either in Graduation or in Post-Graduation and B.Ed.” shall be substituted.
 - (B) After clause (b), at the end, the following proviso shall be inserted, namely:-





“Provided that minimum percentage of marks in graduation shall not be applicable to those incumbents who had already taken admission to the Bachelor of Education or Bachelor of Elementary Education or equivalent course prior to the 29th July, 2011.”

2. This notification shall be deemed to have come into force on the 29th July, 2011.

SANJAY AWASTHI, Member-Secy.

(ADVT.-III/4/Exty./304/19]

Note : The principal notification was published in the Gazette of India, Extraordinary, Part III, Section 4, vide number F.No. 61-3/20/2010-NCTE(N&S) dated the 23rd August, 2010 and was subsequently amended vide number F. No. 61-1/2011-NCTE (N&S) dated the 29th July, 2011.

Explanatory Memorandum

The amendment notification number F.61-1/2011-NCTE (N&S) dated the 29th July, 2011 issued by the National Council for Teacher Education was challenged before the Supreme Court in the case of Neeraj Kumar Rai and others Vs State of U.P. and Others in Civil Appeal No. 9732 of 2017 and the Hon'ble Court vide its order dated the 25th July, 2017 had directed the National Council for Teacher Education to issue a clarification by way of a supplementary notification regarding the percentage of marks specified therein. Necessary amendment is required to be made retrospectively from the date of notification of the said rules. It is certified that none will be





adversely affected by the retrospective effect being given to the amendment rules.”

11. NCTE had issued a Guideline dated 11.02.2021 on the subject of TET. Clause 9 of the NCTE Guideline dated 11.02.2011 reads as follows:

“9. Qualifying marks. – 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.”

12. Clause 2(v) of the Chhattisgarh Teacher Eligibility Examination Direction, 2011, for short, TET Direction, 2011 reads as follows:

“(v) राज्य सेवा परीक्षा के प्रचलित नियमानुसार अनुसूचित जाति, अनुसूचित जनजाति, अन्य पिछड़ा वर्ग के अभ्यर्थियों को 10% की छूट देते हुए इस परीक्षा में पात्रता हेतु 50% न्यूनतम अंक लाना आवश्यक होगा।”

13. In exercise of powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Chhattisgarh, had framed the rules relating to the recruitment to the Chhattisgarh School Education Services



(Educational and Administrative Cadre), styled as Chhattisgarh School Education Services (Educational and Administrative Cadre) Recruitment and Promotion Rules, 2019 (for short, the Rules of 2019) vide notification dated 05.03.2019.

14. We will advert to some of the provisions of the Rules of 2019 at an appropriate place during the course of the judgment. For the present, suffice it to say that the qualification prescribed in the advertisement was in terms of the Rules of 2019.

15. The learned Single Judge, by referring to clause 2(v) of the TET Direction, 2011, held that minimum pass percentage is fixed at 50% and 10% relaxation is granted to the candidates belonging to SC/ST/OBC category and as such, they will have to score minimum 40% marks. The learned Single Judge was not correct in making the aforesaid observation.

16. A perusal of clause 2(v) of TET Direction, 2011 would go to show that 10% relaxation is granted to the SC/ST/OBC candidates and they have to secure minimum 50% marks.

17. In paragraph 25, the learned Single Judge extracted paragraph 17 of the decision rendered by the Hon'ble Supreme Court in the case of **State of Uttar Pradesh v. Shiv Kumar Pathak & Others**, reported in **(2018) 12 SCC 595**. In the said paragraph, the Hon'ble Supreme Court had observed that while the qualifications prescribed by the NCTE are binding, requirement of weightage to TET marks is not a mandatory requirement. The aforesaid aspect does not fall for consideration in the present cases.

18. The learned Single Judge at paragraphs 21, 22 and 26, has observed as follows:



“21. From bare perusal of notifications of 2010 & 2011, it is quite vivid that the relaxation of 10% in qualifying marks was not given for recruitment process, but was granted for passing of TET examination. Thus, the passing of TET and appointment as per Rules, 2019 for appointment on the post of Assistant Teacher/Teacher are completely different and the petitioners cannot club both these things and claimed relaxation. It is quite vivid that so far as relaxation of passing TET is concerned, it was open to the State Government to give relaxation in favour of reserved category as per the policy framed by them from time to time with change in socio economic condition.

22. Learned counsel for the petitioners further submit that when the petitioners were found eligible to pursue B.Ed., they cannot be held ineligible to be considered for appointment by granting relaxation. I am not persuaded by this submission as granting of relaxation in essential qualification will dilute the standard of education.

xxx

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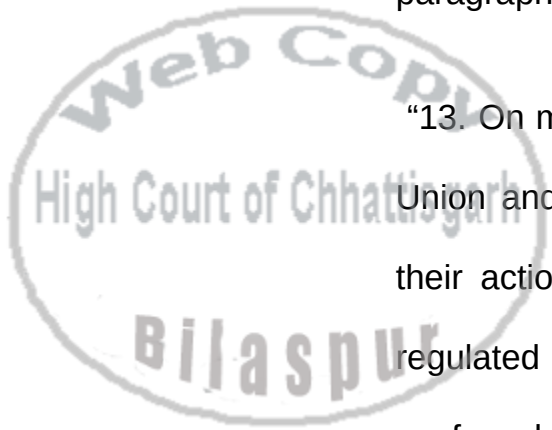
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26. Thus, the qualification prescribed by NCTE is binding and requirement of weightage to TET mark is not requirement for appointment. From bare perusal of Rules, 2019, it is quite vivid that the qualification prescribed in the Rules of 2019 are at par with the qualification prescribed by NCTE and even this judgment does not deal with the relaxation with minimum qualifying marks in the board examination or graduation which is



essential qualification for appointment. The petitioners are trying to mix up the relaxation granted for TET with minimum percentage required under the rules. Both the things cannot be treated as one and the same as the recruitment rules governs Page 33 of 34 the field of recruitment which has been framed under Article 309 of the Constitution of India and is binding force. Hon'ble the Supreme Court in A.K.Bhatnagar & others Vs. Union of India & others [(1991) 1 SCC 544] , has examined the effect of rules made under Article 309 of the Constitution of India that it has binding effect. Hon'ble the Supreme Court has held at paragraph 13 as under:-

“13. On more than one occasion this Court has indicated to the Union and the State Governments that once they frame rules, their action in respect of matters covered by rules should be regulated by the rules. The rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation. Very often government themselves get trapped on account of their own mistakes or actions in excess of what is provided in the rules. We take serious view of these lapses and hope and trust that the government both at the Centre and in the States would take note of this position and refrain from acting in a manner not contemplated by their own rules. There shall be no order as to costs.”

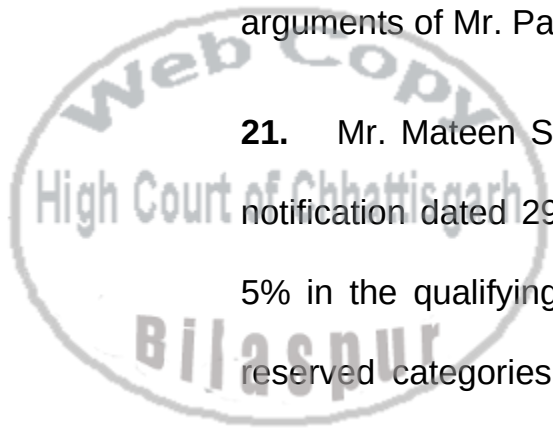




19. WA No. 514/2022 arising out of WPS No. 2429/2022 was presented as a lead case and Mr. Mateen Siddiqui, learned counsel appearing in WA No. 514/2022 had advanced the lead arguments, which was adopted by Mr. C.J.K. Rao, Mr. Harish Khuntiya, Ms. Naushina Afrin Ali, Mr. Ghanshyam Kashyap, Mr. Raj Kumar Pali, Mr. Govind Prasad Mathur and Mr. Sashi Kumar Kushwaha.

20. Lead arguments on behalf of the State-respondent had been advanced by Mr. Jitendra Pali, learned Deputy Advocate General. Mr. H.S. Ahluwalia, learned Deputy Advocate General and Ms. Astha Shukla, learned Government Advocate, who had appeared in some of the cases, had adopted the arguments of Mr. Pali.

21. Mr. Mateen Siddiqui, learned counsel submits that clause III(ii) of the notification dated 29.07.2011 makes it abundantly clear that relaxation up to 5% in the qualifying marks shall be allowed to the candidates belonging to reserved categories such as SC/ST/OBC/PH and when NCTE has granted such relaxation, the State/respondents acted illegally and arbitrarily in holding the petitioners to be disqualified for recruitment to the post of Assistant Teacher/Teacher. In this connection, he has relied on the decision in the case of **Vikas Sankhla & Others v. Vikas Kumar Agrawal & Others**, reported in **(2017) 1 SCC 350**. It is contended by him that the learned Single Judge did not consider Clause III(ii) of the notification dated 29.07.2011. He has drawn attention to the Chhattisgarh Teacher (Panchayat) Cadre (Recruitment and Conditions of Service) Rules, 2012, for short, Panchayat Teacher Rules, 2012, as also to Chhattisgarh Shikshak (Nagriya Nikay) Samvarg (Recruitment and Conditions of Service) Rules, 2013, for short, Nagariya Nikay Teacher Rules, 2013, to contend that relaxation up to 5% in the qualification marks are given





to the candidates belonging to reserved categories such as SC/ST/OBC/PH. Since NCTE had allowed relaxation in respect of qualification and since in similar recruitment rules 5% relaxation is granted in respect of minimum qualification, absence of a specific clause relating to relaxation in the Rules of 2019 will not be of consequence as the appellants had been allowed to participate in the recruitment process. It is submitted that Rules of 2019, however, makes a reference that prescribed qualification would be as per RTE Act. It is contended that if relaxation of 5% marks is given in the recruitment process, the petitioners would be eligible to be appointed. In this connection, he has also drawn attention of the Court to clause 5 of the advertisement to contend that the petitioners are eligible to 5% relaxation in minimum qualifying marks in higher secondary or graduation.

22. Mr. Pali submits that the advertisement did not stipulate that any relaxation is given in respect of the educational qualifications and submission of Mr. Siddiqui that clause 5 of the advertisement provides 5% of relaxation in minimum qualification marks is not correct. It is further contended that Rules of 2019 does not provide any relaxation or for that matter, Paragraph III(ii) of notification dated 29.07.2011 also does not provide relaxation in respect of educational qualifications and that relaxation is given for the purpose of training to be undergone by persons as required under Clause III(i)(a)(b). He has relied on decisions of the Hon'ble Supreme Court in **State of Uttar Pradesh and Others v. Vikas Kumar Singh**, reported in **(2022) 1 SCC 347**, **Vikas Sankhala and others** (supra) and **V. Lavanya & Others v. State of Tamil Nadu, represented by its Principal Secretary & Others**, reported in **(2017) 1 SCC 322**.

23. We have considered the submissions of the learned counsel for the



parties and have perused the materials on record.

24. Clause 5 of the advertisement is on the subject of reservation regarding post. Clause v(1) refers to Chhattisgarh Lok Sewa (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994, for short, Act of 1994. No material has been placed on record demonstrating that under the aforesaid Act of 1994, any relaxation of educational qualifications is granted by way of notification. Therefore, the contention of Mr. Siddiqui in this context is without any merit.

25. Though by the notification dated 29.07.2011, the minimum qualification for Classes I to V and Classes VI to VIII have been substituted, the same is not very relevant for the purpose of this case as the entire thrust of the argument is laid on clause III(ii). To appreciate the above, it will also be necessary to take note of clause III(i). Clause III(i)(a) provides that (a) a person 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 Classes I to V upto 1st January, 2012, provided he/she undergoes, after appointment, an NCTE recognized 6-months Special Programme in Elementary Education and (b) a person with D.Ed (Special Education) or B.Ed (Special Education) qualification shall undergo, after appointment, an NCTE recognized 6-months Special Programme in Elementary Education. Thus, there is no real change in clause 3(b) of the notification dated 28.03.2010 and clause III(i)(b) of the notification dated 29.07.2011.

26. The argument of the learned counsel for the petitioners is that the relaxation upto 5% in the qualifying marks as indicated in clause III(ii) is in



respect of the qualifying marks in the higher secondary or graduation for the purpose of recruitment, while the contention advanced by the learned Deputy Advocate General is that the same relates to relaxation for the purpose of training to be undergone.

27. In **Vikash Sankhla** (supra), the issues to be decided, as recorded in paragraph 38, read as follows:

“38.1.(i) Whether policy of the State as reflected in its letter dated 23.03.2011 deciding to give relaxation ranging from 10% to 20% in TET marks to different reserved categories as mentioned therein is valid in law?

38.2.(ii) Whether NCTE Notification dated 29.07.2011, which amends Para 3 of its earlier Guidelines/Notification dated 11.02.2011, provides 5% relaxation to the reserved category for passing TET? If so, whether it would be applicable to the reserved categories in the State of Rajasthan as well?

38.3.(iii) Whether reserved category candidates, who secured better than general category candidates in recruitment examination, can be denied migration to general seats on the basis that they had availed relaxation in TET?”

The issues at paragraph 38.1(i) and 38.3.(iii) are not relevant for the purpose of these cases and only the issue at paragraph 38.2(ii) is relevant.

28. In **Vikash Sankhla** (supra), relying on paragraph 3 of the Notification dated 11.02.20211 of the NCTE, a contention was advanced by the respondents belonging to the general category as well as those respondents



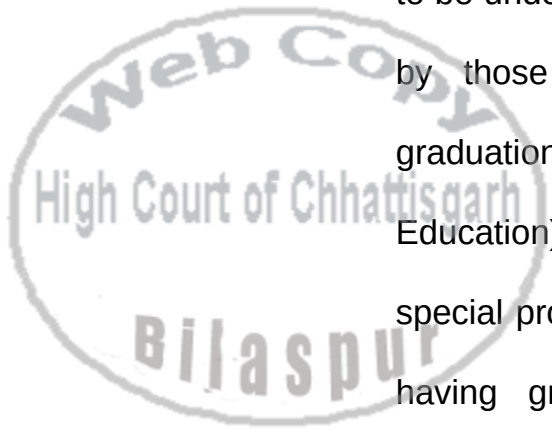
who belonged to reserved category but secured more than 55% marks in TET that NCTE has stipulated 5% relaxation for TET examination, as it pertains to the said examination. As a consequence, the action of the State Government granting relaxation of more than 5% in TET examination is impermissible. The counter argument of the appellants who belonged to reserved category and who were the beneficiaries of the relaxation granted by the State Government was that the relaxation provided in the aforesaid amended paragraph 3 had no relation whatsoever with TET and on the contrary, it related to the qualifying marks in graduation and B.Ed., etc.

29. At paragraph 45 of the aforesaid judgment, the Hon'ble Supreme Court found merit in the contention of the appellants and did not agree with the respondents that the provision for relaxation up to 5% in qualifying marks relates to TET. Reference was made to the qualifying marks as specified in paragraph 9 of the Guidelines dated 11.02.2011 to which there was no amendment. It was laid down that sub-paragraph (ii) of paragraph 3 relating to reservation policy allows relaxation upto 5% in qualifying marks. The relaxation in sub-para (ii) of paragraph 3 under "Reservation Policy" is clearly relatable to marks in graduation and B.Ed qualification meaning thereby insofar as reserved category candidates such as SC/ST/OBC/PH are concerned, they will be treated as qualified to undergo the training in case they pass graduation with minimum 45% marks and B.Ed qualification with minimum 40% marks. For better appreciation, paragraph 45 is extracted herein below:

"45. We find merit in the contention of the appellants and do not agree with the respondents that the provision for relaxation upto 5% in qualifying marks at all relates to TET. In the first instance, it is to be noted that insofar as qualifying marks for



TET are concerned, they are prescribed in para 9 of the guidelines dated February 11, 2011. There is no amendment to the said para. Amendment is incorporated in para 3 of the principal notification dated February 11, 2011 which we have already reproduced above. Original para 3 gives the rationale for including TET as a minimum qualification. Though, it is not understood as to why that para is substituted by the aforesaid amended para vide notification dated July 29, 2011. Be that as it may, a reading of amended para 3 clearly brings out that it incorporates two aspects. First aspect touches upon the training to be undergone by a person and this training can be undergone by those persons who have certain specified marks in graduation and D.Ed. (Special Education) or B.Ed. (Special Education). Training is for 6 months duration i.e. 6 months special programme in elementary education. Insofar as persons having graduation and B.Ed. qualification are concerned, minimum marks in the graduation or B.Ed. are also prescribed. It is stipulated that graduation should be with at least 50% marks and B.Ed. qualification with at least 45% marks. However, those who have done D.Ed. (Special Education) or B.Ed. (Special Education), no minimum marks in obtaining those qualifications are prescribed. What follows is that person who is graduate with B.Ed. qualification, he/she should have minimum 50% marks in graduation and 45% marks in B.Ed. qualification. It is in this context second aspect of the amended provision in sub-para (ii) of para 3 mentions about 'Reservation Policy' and allows relaxation upto 5% in qualifying marks. This relaxation is,





therefore, clearly relatable to marks in graduation and B.Ed. qualification, meaning thereby insofar as reserved category candidates such as SC/ST/OBC/PH are concerned, they will be treated as qualified to undergo the training in case they pass graduation with minimum 45% marks and B.Ed. qualification with minimum 40% marks. We are clear in mind that this relaxation of 5% does not relate to TET at all. Had it been so, this notification dated July 29, 2011 would have amended para 9 and, particularly, sub-para (a) of para 9 which deals with concessions to reserved category candidates that has not happened and is left intact.”

30. The Hon'ble Supreme Court affirmed the view of the High Court of Rajasthan on the specific aspect of amended paragraph 3 which was partly extracted in paragraph 46. At paragraph 46, it was observed as follows:

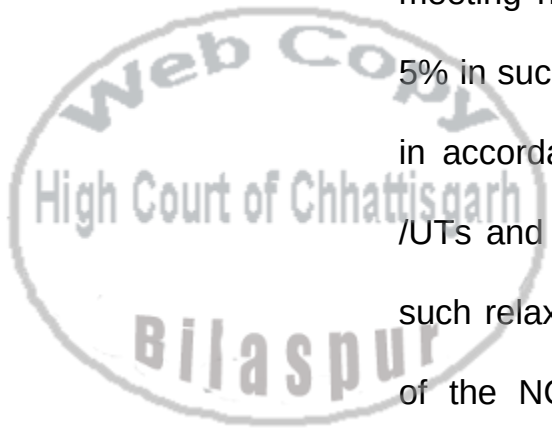
“46. We may mention that High Court in the impugned judgment has also read the said amended para 3 in the same manner we have interpreted. We affirm the view of the High Court on this specific aspect. We would like to reproduce the following discussion from the judgment of the High Court wherein additional reasons for arriving at this particular conclusion are given: (*Vikas Kumar Agrawal case, 2013 SCC OnLine Raj 2043*)”

31. The relevant paragraph of the judgment of the High Court of Rajasthan is extracted herein below:

“...This view is fortified by the letter No. F.No.61-1/2011/NCTE/N&S dated 1.4.2011 of the NCTE



addressed, amongst others, to all Secretaries and Commissioners of the State Governments/UTs clarifying that following the issuance of the notification dated 23.8.2010, it had received representations from the State Government and other stakeholders that in respect of SCs/STs etc. relaxation upto 5% in the qualifying marks should be allowed, since such relaxation is permissible by the NCTE for admission in various teacher education courses. Referring to the minimum marks in the notification dated 23.8.2010, in senior secondary (or its equivalent) or in B.A./B.Sc., it was elucidated that following its meeting held on 16.3.2011 it was decided that relaxation upto 5% in such qualifying marks would be available to SCs/STs etc., in accordance with the extant policy of the State Government /UTs and other school managements. There is no reference of such relaxation to pass marks in the TET. This accommodation of the NCTE, by way of concession of 5% marks qua the academic qualifications, is also evident from the provisions of the National Council for Teacher Education (Recognition Norms & Procedure) Regulations, 2009 (hereinafter referred to as '2009 Regulations') and the norms and standards for various education courses as specified in the Appendices thereto and referred to in the course of arguments on its behalf. The explanation of the NCTE with regard to the nature of the relaxation granted under the caption "reservation policy" traceable to paragraph 3 of the principal notification dated 23.8.2010 with reference amongst others to the 2009 Regulations cannot be ignored or discarded. The pleadings to this effect and the arguments advanced project





its consistent stand on this facet of the debate. Relaxation upto 5% in the qualifying marks in the amended paragraph 3 of the notification dated 23.08.2010, in our comprehension, is thus wholly unrelated to the percentage of pass marks in the TET. The sanction of relaxation of 5% in the qualifying marks, in our comprehension, thus has no nexus with the pass marks in the TET. Any endeavour to relate it to the percentage of marks in the TET, would be doing violence to the tone, tenor and contents of the notification, which is clearly impermissible. The notification dated 29.07.2011 having regard to the scheme and purport thereof has to be essentially co-related with the one dated 23.08.2010, which originally did not contemplate any relaxation. Logically, thus, this notification does not supersede the guidelines dated 11.02.2011 governing the conduct of the TET. The respondents'/writ petitioners' plea of disqualification of reserved category candidates securing less than 55% marks in the TET thus, cannot be sustained."

32. A perusal of the above paragraph goes to show that following the issuance of the notification dated 23.08.2010, NCTE had received representations from the State Governments and other stakeholders that in respect of SCs/STs, etc. relaxation up to 5% in the qualifying marks should be allowed since such relaxation is permissible by NCTE for admission in various teacher education courses. Following the meeting that was held on 16.03.2011, it was decided that relaxation of 5% in qualifying marks in secondary (or its equivalent) or in BA/B.Sc, would be available to SCs/STs, etc. in accordance with the extant policy of the State Government/UTs and other school managements. That this accommodation of NCTE by way of 5%





marks qua the academic qualification, was also stated to be evident from the provisions of the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2009 and the norms and standards for various education courses as specified in the appendices thereto and referred to in the course of argument on that behalf. It was also observed that the explanation of NCTE with regard to the nature of the relaxation granted under the caption “reservation policy” traceable to paragraph 3 of the principal notification dated 23.08.2010 with reference amongst others to the 2009 Regulations, cannot be ignored or discarded. It was categorically laid down that the notification dated 29.07.2011 having regard to the scheme and purport thereof has to be essentially co-related with the one dated 28.03.2010, which originally did not contemplate any relaxation.

33. In *V. Lavanya & Others* (supra), the dispute revolved around relaxation of 5% marks to the reserved category candidates in TET, approved by the State Government, which was contended to be in contravention of the norms embodied in Notification dated 23.08.2010 issued by the NCTE. The NCTE guidelines dated 11.02.2011 prescribed 60% marks to be declared as pass in TET. The guideline No. 9 of the Guidelines dated 11.02.2022 enabled the State Government to grant concessions/relaxations to persons belonging to SCs/STs/OBCs/differently-abled persons, etc. The issues that had fallen for consideration in that case were as follows:

- (i) Whether the State Government has the competence to give relaxation of 5% marks in the TET and whether such relaxation provided by the State Government was legally justified?



(ii) Having regard to the stand of the Government in the earlier round of writ petitions not to relax the qualifying marks for TET, whether the Government is stopped from granting relaxation?

(iii) Whether granting relaxation of 5% marks in TET amounts to change in the criteria of selection of teachers after the selection process commenced?

(iv) Whether prescribing 40% marks as a weightage for the academic performance is arbitrary and does not take into consideration different streams of education and subjects of study?

34. While being entirely in agreement with the judgment in **Vikas Sankhla** (supra), the Hon'ble Supreme Court, with regard to question No. (i) further observed that granting relaxation to SC/ST/OBC/Physically Handicapped and denotified communities is in furtherance of the constitutional obligation of the State to the underprivileged and create an equal level-playing field and therefore, an affirmative action taken by the State Government granting relaxation for TET would not amount to dilution of standards. The issues No. (ii), (iii) and (iv) are not relevant for deciding these cases.

35. In view of the above discussion, the argument of the learned Deputy Advocate General that paragraph III(ii) relates to relaxation for the purpose of training to be undergone, is found to be without any merit.

36. In **Vikas Kumar Singh & Others** (supra) relied on by Mr. Pali, the Hon'ble Supreme Court had observed that relaxation cannot be prayed as a matter of right and if a conscious decision is taken not to grant relaxation, merely because the rule permits relaxation, no writ of mandamus can be



issued directing the competent authority to grant relaxation in qualifying service and that relaxation may be at the discretion of the competent authority. The present is not a case where a writ of mandamus is sought for. The question that has arisen for consideration is whether in view of paragraph III(ii) of Notification dated 29.07.2011 issued by NCTE providing for relaxation of 5% in educational qualification to the SCs/STs/OBCs, candidates had been arbitrarily refused relaxation, although they were permitted to appear in the examination pursuant to the advertisement issued.

37. In Panchayat Teacher Rules, 2012, providing for minimum eligibility for Lecturer (Panchayat), for Teacher (Panchayat) and for Assistant Teacher (Panchayat), a note being Note-1 is given which provides that relaxation up to 5% in the qualification marks shall be given to the candidates belonging to reserved categories such as SC/ST/OBC/PH.

38. In Nagriya Nikay Teacher Rules, 2013, a note being Note-1 is appended after minimum qualification for Lecturer (Municipal), minimum qualification for Teacher (Municipal) and minimum qualification for Assistant Teacher (Municipal), which reads as follows:

“Note-

1. Reservation Policy: - Relaxation upto 5% in the qualification marks shall be given to the candidates belonging to reserved categories such as Scheduled Castes/Scheduled Tribes/Other Backward Classes/Physically Disabled.”

39. The State Council of Educational Research and Training (SCERT) is designated as academic authority in the State under the RTE Act. On



27.01.2022, the Director, SCERT had sent a letter to the Directorate of Public Instructions, Raipur to mention 5% relaxation in the minimum qualification marks to the SC/ST/OBC/PH in the Rules of 2019 as per the reservation policy.

40. At this juncture, it will be appropriate to take note of some provisions of Rules of 2019.

41. Rule 2(j) of the Rules of 2019 reads as follows:

“Lecturer (Panchayat)/Lecturer (Urban Body), Teacher (Panchayat)/Teacher (Urban Body) and Assistant Teacher (Panchayat)/Assistant Teacher (Urban Body)” means the persons appointed for teaching in schools of the department and under the administrative control of District Panchayat, Janpad Panchayat, Municipal Corporation, Municipalities or Nagar Panchayat”.

Rule 2(s) defines ‘Teacher’ as follows:

“Teacher” means the teacher of E-Cadre, T-Cadre, E(L.B.) and T(L.B.), appointed for the purpose of teaching in Government Schools of the State;”

42. Section 4 of the Rules of 2019 under the heading “Constitution of the service” provides that the service shall consist of the following persons, namely: -

“(a) Persons, who at the time of commencement of these rules, are holding substantively or in an officiating capacity, the posts specified in Schedule I;



(b) Persons, recruited to the service before the commencement of these rules;

(c) Persons, recruited to the service in accordance with the provisions of these rules.

(d) Persons, Who were recruited by the provisions of Chhattisgarh Teacher (Panchayat) Cadre (Recruitment and Conditions of Service) Rules, 2012 under the notification of Panchayat and Rural Development Department, dated 17th August 2012 and recruited by the provisions of Chhattisgarh Shikshak (Nagriya Nikay) Samvarg (Recruitment and Conditions of Service) Rules, 2013 under the notification of Urban Administration and Development Department, dated 8th March, 2013 and have completed eight years of service and those have not given the option of continuing in the employer department and have been included in the service through absorption.”

43. Rule 8(II) of the Rules of 2019 is on the subject of educational qualification and experience and the same reads as follows:

“8. Condition of eligibility for direct recruitment.-

xxx

xxx

xxx

(II) Educational qualification and experience -

The candidate must possess the educational qualifications and experience as prescribed for the service as shown in column (5) of Schedule III. For Preliminary education, the prescribed qualification will be applicable as per provisions of Right to Free and Compulsory



Education Act, 2009;”

44. Rule 11(4) of the Rules of 2019 provides that at the time of recruitment in service, the provisions of Act of 1994 and the directions issued under the said Act by the General Administrative Department of the Government from time to time, shall be applicable.

45. Rule 22(2) of the Rules of 2019 provides that nothing in these rules shall affect reservation and other concession provided to the SCs/STs/OBCs in accordance with the orders issued by the State Government, from time to time, in this regard.

46. Section 3(1) of the RTE Act provides that every child of the age of 6 to 14 years shall have the right to free and compulsory education in a neighborhood school till completion of his or her elementary education.

47. Section 2(f) of the RTE Act defines elementary education to mean the education from first class to eighth class.

48. What is preliminary definition as referred to in Rule 8(II) is, however, not spelt out anywhere. It appears that the word ‘preliminary’ occurring in Rule 8(II) is a typographical error and the same should have been printed as ‘elementary’. Rule 8(II) of the Rules of 2019 provides that for ‘preliminary education’(read elementary education), the prescribed qualification will be applicable as per provisions of RTE Act.

49. Column 5 of the Schedule-III of Rules of 2019 shows that minimum educational/technical qualification for Assistant Teacher is as per Annexure-I(i) and that of Teacher as per Annexure-I(iii). For the post of Lecturer, educational qualification/technical qualification is prescribed as per Annexure-I(iii). Actually, in Annexure-I(ii), educational qualification for Teacher is prescribed,



and therefore, we are of the opinion that in Schedule-III, it is wrongly recorded that the qualification prescribed for Teacher is as per Annexure-I(iii). It should have been as per 'Annexure-I(ii)'. It will be necessary, at the cost of repetition to state that the qualification prescribed in the advertisement for the post of Teacher is in terms of Annexure-I(ii).

50. It is seen that a teacher of Panchayat Teacher Rules, 2012 and of Nagriya Nikay Teacher Rules, 2013, after completion of eight years of service, can also become a member of service under the Rules of 2019 through absorption. It is already noticed that under Panchayat Teacher Rules, 2012 as well as Nagriya Nikay Teacher Rules, 2013, relaxation of 5% in the qualification marks are given to the candidates belonging to reserved categories such as SC/ST/OBC/PH. Since there is reference to RTE Act, necessarily, the Rules of 2019 takes within its fold the minimum qualification as prescribed by NCTE.

51. In view of the above discussion, the order of the learned Single Judge is set aside. The writ appeals are allowed holding that the SC/ST/OBC candidates are entitled to 5% relaxation in their academic qualifications and such of the writ petitioners who would consequently fulfil the minimum qualification shall be entitled to be appointed pursuant to the advertisement dated 09.03.2019.

52. No cost.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(Sanjay Agrawal)
Judge