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A.F.R.

Reserved

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 1247 of 2013

Appellant :- Amal Kishore Singh

Respondent :- State Of U.P. Thru' Secretary & 4 Others

Counsel for Appellant :- Siddharth Khare, Ashok Khare

Counsel for Respondent :- C.S.C., J.P.S. Chauhan, Krishan Ji Khare, Raj Kumar Tripathi, Rajeev Mishra, Sanjeev Kumar Yadav

Hon'ble Dilip B. Bhosale, Chief Justice

Hon'ble Manoj Kumar Gupta, J.

Hon'ble Yashwant Varma, J.

(Per Manoj Kumar Gupta, J.)

1. A discordant note was struck by a Division Bench while hearing the instant appeal, unable to agree with an earlier Division Bench in

Vindhyachal Yadav Vs. State of U.P. and others, 2015 (8) ADJ 688.

Consequently, the following questions have been referred to the Full Bench :-

“(i) Whether training qualification B.P.Ed. is equivalent qualification to that of B.Ed., L.T., B.T./C.T. Etc. so as to be covered by the phrase "equivalent qualification" of training degree/diploma as contained by Clause-2 of Appendix-A of Chapter-II of the Regulations framed under the Intermediate Education Act, 1921?

(ii) Whether a teacher possessed of a degree of Post Graduate and training qualification of B.P.Ed. from an institute duly recognized by National Council for Teachers Education is qualified for being considered for appointment as Principal/Headmaster of a recognized High School/Intermediate institution?

(iii) Whether the law laid down by the Division Bench in the case of Vindhyachal Yadav (Supra) is the correct law or not.”

2. The Division Bench in **Vindhyachal Yadav** holds that B.P.Ed. is

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not mentioned or included in Appendix-A to Regulation I of Chapter-II of the Regulations framed under the U.P. Intermediate Education Act, 1921 as a postgraduate training qualification, consequently, a teacher possessing the same is not qualified to be appointed as Headmaster/Principal of a recognized institution. A same line of reasoning was taken by the learned Single Judge in judgement under appeal.

3. Before we delve on the issue, we would like to make a brief reference to the backdrop in which the controversy arose. The order under challenge by the original writ petitioner Harish Chandra dated 15.7.2013 was passed by District Inspector of Schools, Azamgarh attesting the signatures of Amal Kishore Singh, the appellant, as officiating Headmaster of Mishra Uchchattar Mahavidyalaya, Badagaon, Azamgarh. It is a recognised institution under the U.P. Intermediate Education Act, 1921 (for short 'the Act') imparting education upto High School level. The institution is receiving grant-in-aid from the State Government and consequently, the provisions of the U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 are applicable. The original writ petitioner was appointed as TGT grade teacher in Sanskrit on 4.8.2004 pursuant to a letter of District Inspector of Schools dated 20.7.2004. On the other hand, the appellant was recommended for appointment as assistant

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teacher by U.P. Secondary Education Services Selection Board. On 20.7.2004, the District Inspector of Schools issued appointment letter appointing him as teacher in physical education and in pursuance thereof, he joined on 5.8.2004. The Committee of Management treating the appellant as senior to the original writ petitioner forwarded his signature for attestation as Adhoc Headmaster, the post having fallen vacant on 30.6.2013. In pursuance thereof, the District Inspector of Schools passed the order impugned in the writ petition attesting signature of the appellant. One of the ground of attack was that the appellant being a teacher in physical education possessing B.P.Ed. degree was not qualified to be appointed as Headmaster. It was contended that the original writ petitioner, on the other hand, having training qualification of B.Ed. is the only qualified senior most teacher eligible to hold office of Headmaster. The learned Single Judge held that a candidate possessing C.P.Ed., B.P.Ed. or M.P.Ed. degree is ineligible to teach school subjects as per Second Schedule to the National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001. It has been observed that under the said Regulations, teachers trained for teaching school subjects constitute a separate class vis-a-vis teachers who are trained for teaching physical education and the two cannot be equated with each other. In the same vein, it was held that B.P.Ed. degree would

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not be equivalent to the other training qualifications enumerated under Paragraph 2 of Appendix-A to Regulation 1 of Chapter II of the Regulations framed under the Act.

4. The Division Bench hearing the appeal, however, was of the view that B.P.Ed. is also a Post Graduate training qualification and the Act does not make any distinction between a teacher in physical education and a teacher in school subjects. A teacher in physical education is also member of the same cadre and cannot be considered to be different solely on the ground that he teaches physical education and not school subjects. Both of them together form a homogeneous group of teachers from whom ad-hoc appointment on the post of Principal/Headmaster of institution is to be made.

5. Section 16-G of the U.P. Intermediate Education Act, 1921 stipulates that every person employed in a recognized institution shall be governed by such conditions of service as may be prescribed by Regulations. Section 15 empowers the Board to make Regulations for the purpose of carrying into effect the provisions of the Act. In exercise of the said power, the Board has framed Regulations and under Chapter-II thereof, provision relating to appointment of heads of institutions has been laid down. Regulation-I states that the minimum qualifications for appointment of head of institution and teachers in any recognized institution, whether by direct recruitment or otherwise, shall be as given

in Appendix-A. The relevant part of Appendix-A laying down the minimum qualifications for appointment of Headmaster in a private recognised higher secondary school is as under:-

"APPENDIX- A

(In reference to Regulation 1 of Chapter II)

Minimum qualifications for Appointment of Head Master and Teachers in Private Recognised Higher Secondary Schools

1. Degree and diploma in the concerned subject of any University established or regulated by or under any Central Act, Provincial Act or State Act which is considered to be a University under Section 3 of the University Grants Commission Act, 1956, or of any such institution specially empowered by any Act of Parliament shall be recognised for the purpose of minimum qualifications prescribed under it.

2. Under it in reference to prescribed qualifications the word "trained" means post graduate training qualification such as L.T., B.T., B. Ed. S.C. or M. Ed. of any University or institution as specified in the earlier para or any equivalent (Degree or Diploma). It also includes departmental A.T.C. and C.T. with minimum teaching experience of 5 years'. J.T.C./B.T.C. Grade teacher shall also be considered to be. C.T. if he has worked in C.T. Grade at least for 5 years'.

Sl. No.	Name of the Post & Educational Training Experience	Age	Desirable qualifications
1	2	3	4
1.	Head of institution (1) trained M.A. or M.Sc. or M.Com or M.Sc. (Agri) or any equivalent Post-graduate or any other degree which is awarded by corporate body specified in above-mentioned para one and should have at least teaching experience of four years in classes 9-12 in any training institute or in any institution or university specified in above-mentioned para one or in any degree college affiliated to such University or institution, recognized by Board or any institution affiliated from Boards of other States or such other institutions whose examinations recognised by the Board, or should the condition is also that he/ she should not	Minimum 30 years	

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	be below 30 years' of age. or (2) First or second class post-graduate degree along with teaching experience of ten years in Intermediate classes of any recognized institutions or third class post-graduate degree with teaching experience of fifteen years, or (3) Trained post-graduate diploma-holder in science. The condition is that he has passed this diploma course in first or second class and have efficiently worked for 15 or 20 years respectively after passing such diploma course.		
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Notes: (1) Assistant teachers having at least second class postgraduate degree and specified teaching experience of ten years in Intermediate classes of a recognised institution may be exempted from training qualifications, (as per the provisions contained in the Act.)

(2) Teaching experience includes teaching prior to or after teaching or both.

(3) Higher classes means classes from 9 to 12 and experience of teaching these classes is admissible for the post of Head Master of Intermediate college."

6. In the instant case and having regard to the questions referred to us, we are concerned with interpretation of the first clause, according to which the educational qualification required by a person seeking appointment on the post of Head of a recognised institution is trained M.A. or M.Sc. or M.Com. or M.Sc. (Agriculture) or any equivalent post graduate or other degree awarded by a corporate body specified in Paragraph 1 and teaching experience of at least four years in classes IX to XII in any training institute or in any Institution or University

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specified in the same paragraph or in any degree college affiliated to such University or institution recognised by Board or any institution affiliated from Boards of other States or such other institutions, whose examinations are recognised by the Board provided he/she should not be below 30 years of age.

7. The recruitment of Head of the institutions and teachers is made under the U.P. Secondary Education Services Selection Board Act, 1982 (for short, 'the 1982 Act'), which came into force with effect from 14.7.1981. The object of the said Act was to constitute an expert body for the selection of teachers in institutions recognised under the U.P. Intermediate Education Act, 1921. Initially, the said Body was the U.P. Secondary Education Services Commission, but with effect from 20.4.1998, it has been christened as the U.P. Secondary Education Services Selection Board. It is a body corporate as provided by Section 3 of the Act. The composition of the Board is laid down under Section 4. It comprises of a Chairman and 10 members, who are appointed by the State Government. The powers of the Board are given under Section 9 and it *inter alia* comprises of the power to prepare guidelines on matters relating to method of recruitment and promotion of teachers; to conduct examination, where necessary and hold interviews and make selection of candidates for being appointed as teachers; to make recommendations regarding appointment of selected candidates. Section 16, which starts

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with non-obstante clause provides that notwithstanding anything to the contrary contained in the Intermediate Education Act, 1921 or the regulations made thereunder, every appointment of a teacher shall on or after the date of commencement of the U.P. Secondary Education Services Selection Board (Amendment) Act, 2001 be made by the management only on the recommendation of the Board. Any appointment made in contravention of the said provision would be void. Section 18 of the Act as substituted by the U.P. Act No. 5 of 2001 with effect from 30.12.2000 lays down the procedure for appointment of *ad hoc* Principals or Head Masters as follows : -

“18. Ad hoc Principals or Headmasters.- (1) Where the Management has notified a vacancy to the Board in accordance with sub-section (1) of Section 10 and the post of the Principal or the Headmaster actually remained vacant for more than two months, the Management shall fill such vacancy on purely ad hoc basis by promoting the senior most teacher.-

(a) in the lecturer's grade in respect of a vacancy in the post of the Principal;

(b) in the trained graduate's grade in respect of a vacancy in the post of the Headmaster.”

8. Section 32 of the Act postulates that the provisions of the Intermediate Education Act, 1921 and the Regulations made thereunder insofar as they are not inconsistent with the provisions of the Act would continue to be in force for the purposes of selection, appointment, promotion, dismissal, removal, termination or reduction in rank of a teacher. In exercise of rule making power under Section 35, the Governor has made the U.P. Secondary Education Services Selection

Board Rules, 1998. Rule 5 thereof provides as under : -

“5.Academic qualification.- A candidate for appointment to a post of teacher must possess qualifications specified in Regulation 1 of Chapter II of the Regulations made under the Intermediate Education Act, 1921.”

9. Thus, a teacher seeking appointment under the 1982 Act has to possess same qualifications as are specified in Regulation 1 of Chapter II of the Regulations made under the U.P. Intermediate Education Act, 1921. It is well-settled by a series of precedents of this Court and not in dispute before us that even for appointment as an *ad hoc* Principal or Headmaster under Section 18 of the 1982 Act, a teacher has to possess same qualifications as are prescribed for appointment on a regular basis.

10. In the case at hand, the appellant is holding a Post Graduate degree but the issue is whether B.P.Ed., which is claimed to be a training qualification possessed by the appellant, could be treated at par with other training qualifications specified in Paragraph 2 of Appendix A¹, such as L.T., B.T., B.Ed., S.C. or M.Ed. The Division Bench in **Vindhyachal Yadav** has held that B.P.Ed. is not recognised as a training qualification under the Appendix and holder of such a degree could not be treated as 'trained'. However, we are unable to subscribe to the said line of reasoning. It is noteworthy that the definition of the word 'trained' in Paragraph 2 of Appendix A is an illustrative definition and not exhaustive. Thus, not only the degrees specified in Paragraph 2, but even

¹ Regulation I of Ch II of the U.P. Intermediate Education Act

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any other equivalent degree or diploma would qualify as training qualification. According to Paragraph 1 of Appendix A, a degree or diploma granted by any University established or regulated by or under any Central Act, Provincial Act or State Act, which is considered to be a University under Section 3 of the University Grants Commission Act, 1956 or of any such institution specifically empowered by any Act of Parliament are duly recognised.

11. Section 2 (f) of the University Grants Commission Act, 1956 (for short 'UGC Act') defines 'University' to mean a University established or incorporated by or under a Central Act, a Provincial Act or a State Act and includes any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under the Act. Section 3 empowers the Central Government to act on the advice of the Commission and declare by notification in the official gazette that any institution for higher education other than University shall be deemed to be a University for the purposes of the Act and upon such a declaration being made, all the provisions of the Act apply to such institution. The right to confer or grant degrees could be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or any institution deemed to be a University under Section 3 or an institution specifically empowered by an Act of Parliament to

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confer or grant degrees in view of sub-section (1) of Section 22 of the U.G.C. Act. The word 'degree' has been defined under sub-section (3) of Section 22 as follows:-

"(3) For the purposes of this section, "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the official Gazette."

12. By a notification issued on 27.4.1966 in exercise of powers conferred by sub-section (3) of Section 22 of the U.G.C. Act, the following additional degrees were specified for the purposes of the said section:-

"Master's Degree

1. Master of Physical Education (M.P.E.)

Bachelor's Degree

1. Bachelor of Physical Education (B.P.E.)"

Thereafter, by a Gazette notification (May 23 - May 29, 2009) the University Grants Commission with the approval of the Central Government issued in exercise of powers conferred by sub-section (3) of Section 22 of the U.G.C. Act specified, interalia, the following degrees for the purposes of the said section:-

52.	BPed.	Bachelor of Physical Education
53.	BPE	Bachelor of Physical Education
100.	MPE	Master of Physical Education
101	MP Ed.	Master of Physical Education

By a Gazette notification dated 5th July, 2014, the University Grants Commission once again exercising powers under sub-section (3) of

Section 22 of the U.G.C. Act specified the nomenclature of degrees for the purposes of the said section. It, interalia, includes the following degrees under the heading Education/Teachers Training:-

Education/Teachers Training					
	Specified Degrees		Level	Minimum Duration (Years)	Eligibility Qualification
	Abbreviated	Expanded			
24.	B.Ed.	Bachelor of Education	BACHELOR'S	1	BACHELOR'S
25.	B.El.Ed.	Bachelor of Elementary Education	BACHELOR'S	4	10+2
26.	M.Ed.	Master of Education	MASTER'S	1	B.Ed.
27.	BPed	Bachelor of Physical Education	BACHELOR'S	1	BACHELOR'S
28.	MPed	Master of Physical Education	MASTER'S	1	BPed
	BPE	be restructured as BPed			
	MPE	be restructured as MPed			

13. It is clear from the above notifications that B.P.Ed. is a degree duly recognised by University Grants Commission. It is also evident from the notifications referred to above that the degree of Bachelor of Physical Education (B.P.Ed.) was earlier known as B.P.E. but in due course of time, the said degree was restructured as B.P.Ed.

14. We now proceed to examine whether B.P.Ed. which is a degree duly recognised by UGC could be treated at par with other training qualifications specified in Paragraph 2 of Appendix A of the Regulations framed under the Act. As already noted, a degree to be treated at par with other training qualifications specified in Paragraph 2 has to be a training

qualification and that too a Post Graduate training qualification of the kind specified in Paragraph 2.

15. For answering these questions, we proceed to consider the National Council for Teacher Education Act, 1993 (for short 'NCTE Act') which was enacted with a view to achieving planned and coordinated development for the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith. Section 2(l) defines 'teacher education' as programmes of education, research or training of persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools, and includes non-formal education, part-time education, adult education and correspondence education. Section 2 (m) defines 'teacher education qualification' to mean a degree, diploma or certificate in teacher education awarded by a University or examining body in accordance with the provisions of the said Act. Section 12 of the Act enumerates the functions of the Council. The functions enumerated in clause 'c' to 'g' and 'j', which are of relevance to the issue under consideration are as under :-

“(c) coordinate and monitor teacher education and its development in the country;

(d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognised institutions;

(e) lay down norms for any specified category of courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of

candidates, duration of the course, course contents and mode of curriculum;

(f) lay down guidelines for compliance by recognised institutions, for starting new courses or training and for providing physical and instructional facilities, staffing pattern and staff qualifications;

(g) lay down standards in respect of examinations leading to teacher education qualifications, criteria for admission to such examinations and schemes of courses or training;

(j) examine and review periodically the implementation of the norms, guidelines and standards laid down by the Council and to suitably advise the recognised institutions;”

Section 14 stipulates that every Institution offering or intending to offer a course or training in teacher education on or after the appointed day, shall have to obtain recognition by moving application to the Regional Committee concerned in the manner stipulated. Section 32 of the Act invests the Council with power to make regulations for carrying out the provisions of the Act. Clause (d) of sub-section (2) of Section 32 reads thus : -

“32. Power to make regulations.-

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely : -

(d) the norms, guidelines and standards in respect of -

(i) the minimum qualifications for a person to be employed as a teacher under clause (d) of Section 12;

(ii) the specified category of courses or training in teacher education under clause (e) of Section 12;

(iii) starting of new courses or training in recognised institutions under clause (f) of Section 12;

(iv) standards in respect of examinations leading to teacher education qualification referred to in clause (g) of Section 12;

(v) the tuition fees and other fees chargeable by institutions under clause (h) of Section 12;

(vi) the schemes for various levels of teachers education, and identification of institutions for offering teacher development programmes under clause (l) of Section 12.”

16. The scope of the NCTE Act was considered by the Supreme Court in **Basic Education Board, UP vs. Upendra Rai and others, (2008) 3 SCC 432** and it was held that the Act deals with only teachers training institutes and not ordinary educational institutions like primary schools, high schools, intermediate colleges and Universities. The law laid down in **Upendra Rai** was referred for reconsideration by a three Judge Bench in **Irrigineni Venkata Krishna & Government of Andhra Pradesh and others, (2010) 1 UPLBEC 338**. However, before the Reference could be answered, the Parliament intervened and carried out amendments in the Act by enacting the National Council for Teacher Education (Amendment) Act, 2011. The Amending Act specifically took within its ambit even ordinary educational institutions by inserting Section 2(Ka), thereby defining "School" to mean :-

"any recognised school imparting pre-primary, primary, upper primary, secondary or senior secondary education, or a college imparting senior secondary education and includes --

Followed by it, Section 12-A was also inserted conferring power on the Council to determine minimum standards of education of school teachers and it reads thus : -

“12-A. Power of Council to determine minimum standards of education of school teachers. - For the purpose of maintaining standards of education in schools, the Council may, by regulations, determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college by whatever name called, established, run, aided or recognised by the Central Government or a State Government or a local or other authority:

Provided that nothing in this section shall adversely affect the continuance of any person recruited in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate schools or colleges, under any rule, regulation or order made by the Central Government, a State Government, a local or other authority, immediately before the commencement of the National council for Teacher Education (Amendment) Act, 2011 solely on the ground of non-fulfilment of such qualifications

as may be specified by the Council:

Provided further that the minimum qualifications of a teacher referred to in the first proviso shall be acquired within the period specified in this Act or under the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009)."

17. The impact of the above amendments was considered by a Full Bench of this Court in **Ram Surat Yadav and others vs. State of U.P. and others, 2014 (1) ADJ 1 : 2014 (1) ALJ 637** and it has been held thus :-

"28. In view of the amending Act, the Bench of three learned Judges of the Supreme Court while deciding the reference on the correctness of the view in Upendra Rai observed that during the pendency of the appeals, the Amending Act of 2011 had been enacted as a result of which the questions which were referred to a larger Bench by the order dated 9 November 2009 had become academic and did not require any answer. In view of the amendments which have been brought about by Amending Act 18 of 2011 with effect from 12 October 2011, it is clear that the NCTE is empowered by Regulations to determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college which is established, run, aided or recognised by the Central Government or by a State Government or a local or other authority. The first proviso to Section 12A, however, protects the continuance of persons who are recruited immediately prior to the enactment of the amending Act which would not be called into question solely on the ground of non-fulfilment of the qualifications as may be specified by the Council. The second proviso, however, stipulates that the minimum qualifications so prescribed shall be acquired within the specified period. Consequently, in view of the enactment of the Amending Act of 2011, the controversy has been set at rest by Parliament having provided that the NCTE is duly empowered to prescribe the qualifications for persons who are recruited as teachers from the pre-primary to the intermediate school or college level. The provisions of the Act and the Regulations have been held by a Full Bench of this Court in Shiv Kumar Sharma & Ors. Vs. State of U.P. & Ors.¹⁵ to be binding."

18. **Shiv Kumar Sharma vs. State of U.P., 2013 (6) ADJ 310 (FB)**, relied upon by the Full Bench in **Ram Surat Yadav**, also considered the impact of Section 12-A inserted by amendment in NCTE Act, while ruling upon the binding nature of a notification issued by NCTE on 23.8.2010, prescribing TET as essential requisite for selection as teacher in an elementary basic school, by observing thus:-

“85. Thus in addition to the provisions under 2009 Act this fruitful amendment has re-emphasised the authority of the National Council for Teacher Education of fix norms and qualifications that are to be possessed by teachers of all categories of institutions including elementary education.

86. **We fully approve the view of the division bench in Prabhakar Singh's case confirming the authority of the Central Government and the NCTE to prescribe the qualifications as detailed in Para 52 and 53 of the reported judgment. We are also in complete agreement with the division bench that after the coming into force of the 2009 Act and the prescription of qualifications thereunder through the Academic Authority the State is not a free agent as held in Para 51 thereof. The failure of the State Government to timely implement the qualifications prescribed before making any appointment after 23.08.2010 will not dilute or take away the impact of the notification which is mandatory. Every rule of the State Government for qualification has to be abide by the same by virtue of the force of Section 23 (1) of the 2009 Act.”**

(emphasis supplied)

19. NCTE, in exercise of powers conferred by Sub-Section (2) of Section 32 of the NCTE Act has framed Regulations from time to time concerning matters relating to teacher education programmes.

19(a). The Regulation framed thereunder in the year 2007 were called the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 (for short 'Regulations, 2007'). These

were superseded by the National Council for Teacher Education (Recognition Norms and Procedure), Regulations, 2009 (for short 'Regulations, 2009') and again by the National Council for Teacher Education (Recognition Norms and Procedure), Regulations, 2014 (for short 'Regulations, 2014') notified on 20.11.2014. Regulation 3 of Regulations, 2014 defines the extent to which the regulations apply as under :-

“3. Applicability:- These regulations shall be applicable to all matters relating to teacher education programmes for preparing norms and standards and procedures for recognition of institutions, commencement of new programmes and addition to sanctioned intake in the existing programmes including the following, namely:-

- (a) recognition for commencement of new teacher education programmes which shall be offered in composite institutions;
 - (b) permission for introduction of new programmes in existing teacher education institutions duly recognized by the Council;
 - (c) permission for additional intake in the existing teacher education programmes duly recognised by the Council;
 - (d) permission for shifting or relocating of premises of existing teacher education institutions;
 - (e) permission for closure or discontinuation of recognised teacher education programme, or institutions as the case may be:
- Provided that for teacher education programmes offered through open and distance learning, the respective norms and standards for each such learning programme shall be applicable.”

19(b). Regulation 9 specifies various teacher training programmes and in respect of which norms and standards have been laid down under Appendix 1 to 15. It interalia, enumerates B.P.Ed. as one of the teacher education programme and in respect of which the norms and standards were laid down in Appendix 7. The relevant part of it reads thus :-

9. Norms and standards.- Every institution offering the following

programmes shown in the Table shall have to comply with the norms and standards for various teacher education programmes as specified in Appendix 1 to Appendix 15:-

Sl. No.	Norms and Standards	Appendix No.
4.	Bachelor of education programme leading to Bachelor of Education (B.Ed.) degree	Appendix-4
5.	Master of education programme leading to Master of Education (M.Ed.) degree	Appendix-5
7.	Bachelor of physical education programme leading to Bachelor of Physical Education (B.P.Ed.) degree	Appendix-7
8.	Master of physical education programme leading to Master of Physical Education (M.P.Ed.) degree	Appendix-8

19(c). Appendix 7, which lays down norms and standards of physical education programme leading to B.P.Ed. degree in the Preamble provides as under :-

“1. Preamble

The Bachelor of Physical Education (B.P.Ed.) programme is a professional programme meant for preparing teachers for physical education in classes VI-X and for conducting physical education and sports activities in classes XI-XII.”

20. It is patently clear from the above provisions that B.P.Ed. is duly recognised by NCTE as a professional programme meant for preparing teachers for physical education. In other words, it is a duly recognised teacher training qualification and thus, holder of such a degree is undoubtedly a 'trained teacher'.

21. This leads us to the issue as to whether B.P.Ed., though a training qualification, is a post graduate qualification such as L.T. and other degrees specified in Para 2 of the Appendix-A or not. It is noteworthy

that the U.P. Intermediate Education Act, UGC Act and NCTE Act do not define the term 'post graduate training qualification'. However, it is evident from the nomenclature itself, that B.P.Ed. is Bachelor level programme in physical education, whereas M.P.Ed. is Master level programme in physical education. This is also clear from the notifications dated 27.4.1966, May 23-29, 2009 and 5.7.2014 issued by U.G.C. under Section 22 (3) of the U.G.C. Act (quoted in foregoing paragraphs). It is noteworthy that same is the position with B.Ed. qualification. It is also a training programme of graduate level and its corresponding programme at the post graduate level is M.Ed. However, B.Ed. is enumerated as a post graduate training qualification in Para 2 of Appendix-A, meaning thereby that the phrase “post graduate” in Para 2 of Appendix-A has not been used to denote the level of the programme but the stage at which it is acquired. It refers to a training qualification which could be acquired only after a candidate has done graduation. The word “post” which precedes 'graduate' refers to the point of time at which such training course could be pursued i.e. after passing graduation. It does not refer to the level of the course, in the sense used under the U.G.C. Act and N.C.T.E. Act. We, therefore, proceed to ascertain whether B.P.Ed. course could be pursued only after doing graduation or even by one possessing a lower qualification like Intermediate or similar qualification.

22. Sri Ashok Khare, learned senior counsel appearing on behalf of the appellant placed reliance on the eligibility criteria specified under paragraph 3 (2) of Appendix-7 of the Regulations, 2009 in contending that B.P.Ed. is a training qualification, which could only be acquired after passing graduation. Paragraph 3 (2) specifies the eligibility for admission to B.P.Ed. course as follows:-

“(2) *Eligibility -*

Bachelor’s Degree in Physical Education as an elective subject with fifty percent marks; or

Bachelors Degree with Physical Education as an elective subject with forty-five percent marks and participation in National or State or Inter-University competitions in sports or games or athletics recognized by Association of Indian Universities or Indian Olympic Association; or

Bachelor's Degree with per cent marks and having participated in National Or State or Inter-University Sports or games or athletics; or

For deputed in-service candidates (i.e trained physical education teachers / coaches) Graduate with forty five percent marks, and at least three years of teaching experience; or

Provided that the reservation in seats for SC or ST or OBC and other categories shall be as in accordance with the Central Government or State Government rules and relaxation of five per cent in marks in eligibility qualification shall be allowed to candidates belonging to those categories.”

23. *Per contra*, Sri H.N. Singh, learned senior counsel appearing on behalf of respondent contended that Paragraph 3 (2) is misleading inasmuch as a candidate seeking admission to Bachelor in Physical Education could never have Bachelor's Degree in physical education as stipulated therein. He tried to buttress his submission by placing reliance on Item No.54 of Appendix-A to the U.P. Intermediate Education Act, 1921 in contending that for being appointed as a teacher of physical

education at High School level, a candidate need not have passed graduation.

24. Once again, Sri Ashok Khare, learned counsel for the appellant, in opposition, pointed out that Regulations, 2009 had been superseded by fresh set of regulations notified on 28.11.2014 called 'the National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2014. He referred to paragraph 3.1 of Appendix-7 to these regulations in contending that Bachelor's Degree in Physical Education is not the same as B.P.Ed. He submitted that like B.A., B.Sc. and B.Com. a Bachelor's degree in Physical Education is also a bachelor level course and it is not to be confused with B.P.Ed. degree. Relevant part of paragraph 3.1 of the said Regulations, on which reliance has been placed, reads thus:-

“3.1 Eligibility

(a) Bachelor's degree in any discipline with 50% marks and having at least participation in the Inter-College/Inter-Zonal/District/School competition in sports and games as recognized by the AIU/IOA/SGFI/Govt. of India.

Or

(b) Bachelor's degree in physical education with 45% marks.

Or

(c) Bachelor's degree in any discipline with 45% marks and studied physical education as compulsory/elective subject.

Or

(d) Bachelor's degree with 45% marks and having participated in National/Inter University/State competitions or secured 1st, 2nd, or 3rd position in Inter College/Inter-Zonal/District/School competition in sports and games as recognized by the AIU/IOA/SGFI/Govt. of India.

Or

(e) Bachelor's degree with participation in international competitions or secured 1st, 2nd, or 3rd position in National/Inter-University competition in sports and games as recognized by respective federations/AIU/IOA/SGFI/Govt. of India.

Or

(f) Graduation with 45% marks and at least three years of teaching experience (for deputed in service candidates i.e. trained physical education teachers/coaches).”

25. The submission of Sri H.N. Singh is specious and does not merit acceptance. A bare perusal of the eligibility for admission to B.P.Ed. course now prescribed under paragraph 3.1 of Appendix-7 to the Regulations, 2014 clearly demonstrates that one of the eligibility qualification prescribed is a simple Bachelor's degree in any discipline with 50% marks and having at least participation in Inter College/Inter-Zonal/District/School competition in sports and games as recognized by AIU/IOA/SGFI/Govt. of India. Apart from it, a Bachelor's degree in physical education with 45% marks or a Bachelor's degree in any discipline with 45% marks and studied physical education as compulsory/elective subject have also been recognized. Thus, it is very much clear that Bachelor's degree in physical education or Bachelor's degree in any discipline but having studied physical education as compulsory/elective subject has been put at par with a simple graduation degree in any other discipline. A Bachelor's degree in physical education or a Bachelor's degree in any discipline but having studied physical education as compulsory/ elective subject are courses at

graduate level like B.A., B.Sc. and B.Com. and are not to be confused with B.P.Ed. degree. We thus do not find any anomaly in the eligibility prescribed under Regulations, 2014 or those prescribed earlier.

26. Coming to the other limb of the argument based on Entry 54 of Appendix-A of Intermediate Education Act, we find the same fallacy in the contention. Entry 54 is as under:-

"MINI. QUALI. FOR MASTER AND TEACHERS

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-	-	-	-	-
54	शारीरिक शिक्षा अध्यापक— 1 इण्टरमीडिएट (कक्षा 11-12) के लिए	स्नातक तथा 2-राज्य सरकार द्वारा मान्यता प्राप्त व्यायाम शिक्षा में डिप्लोमा अथवा किसी अध्यापक प्रशिक्षण (एल0टी0) महाविद्यालय से व्यायाम शिक्षा में विशेष योग्यता अथवा भारत में विधि द्वारा स्थापित किसी विश्व विद्यालय द्वारा प्रदत्त व्यायाम शिक्षा में उपधि/डिप्लोमा अथवा उसके समकक्ष कोई अन्य योग्यता।		
	हाईस्कूल (कक्षा 9-10) के लिए	माध्यमिक शिक्षा परिषद् उत्तर प्रदेश द्वारा प्रदत्त इण्टरमीडिएट प्रमाणपत्र अथवा उसके समकक्ष कोई अन्य अर्हता एवं राज्य सरकार के शिक्षा विभाग द्वारा प्रदत्त डी0पी0एड0 प्रमाणपत्र अथवा उसके समकक्ष कोई अन्य अर्हता।		

27. Entry 54 prescribes the minimum qualification for appointment on the post of a teacher in physical education in a recognized institution. The first part of Entry 54 prescribes minimum qualification for a teacher of Intermediate level (Classes XI – XII). According to it, a candidate should be a graduate and should have diploma in physical education

recognized by State Government or should have special training in physical education from a L.T. college or a degree/diploma from a University established by any law in the country or an equivalent qualification. For being appointed as teacher at High School level (Standard IX to X) a person should have Intermediate or equivalent qualification and D.P.Ed. certificate or equivalent. No doubt, a teacher of physical education for teaching classes IX – X need not necessarily be a graduate but the said position does not in any manner advance the submission of learned counsel for the respondent. Such a teacher would become entitled for appointment as Head of a recognised institution under first clause of entry at serial no.1 of Appendix-A, only if he is a post graduate. We have no difficulty in holding that B.P.Ed. is a teacher training qualification which under the Regulations framed by NCTE, could only be acquired by a person possessing graduate degree. Now, having regard to the interpretation given by us to the phrase 'post graduate training qualification' as used in Paragraph 2 of Appendix-A to the Act, we also have no hesitation in holding that B.P.Ed. is a post graduate training qualification within the meaning assigned to the said word in Paragraph 2 of Appendix-A to the Act.

28. The next and the most crucial and fundamental issue is whether B.P.Ed., even if a post graduate training qualification, could be equated with other training qualifications like B.Ed., B.T., S.C. or M.Ed.

specified in Paragraph 2. As noted above, the Division Bench in **Vindhyachal Yadav** and learned Single Judge in judgement under appeal have distinguished B.P.Ed. qualification from B.Ed. and other qualifications specified in Paragraph 2 solely on the ground that under Regulations framed on 3.9.2001 by NCTE called 'the National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (for short 'Minimum Qualification Regulations, 2001') a teacher having B.P.Ed. qualification is not qualified to teach school subjects. These regulations have been framed by NCTE in exercise of power under clause (d) (i) of sub-section (2) of Section 32 read with Section 12 (d) of the National Council for Teacher Education Act, 1993. Clause (d) (i) of Section 32 empowers the Council to make regulations laying down the norms, guidelines and standards in respect of the minimum qualification of a person to be employed as a teacher under clause (d) of Section 12. Regulation 3 of these regulations stipulates the qualification for recruitment and reads thus:-

3. Qualifications for Recruitment

- i) The qualifications for recruitment of teachers in educational institutions mentioned in Section 2 above shall be given in the First and Second Schedule to these Regulations. The qualifications prescribed in the First Schedule shall apply for recruitment of teachers for teaching school subjects. The qualifications prescribed in the Second Schedule shall apply for recruitment of teachers for Physical Education.
- ii) For recruitment of teachers for co-curricular activities such as

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work experience, art education, etc., existing qualifications or such other qualifications as may be prescribed by the concerned government shall apply.

l ii) For promotion of teachers from one level to the next level of teaching, minimum qualification as given in the Schedules for the concerned level would be required.”

29. Thus, while laying down the qualifications for recruitment, teachers have been classified under Regulation 3 in three categories; namely (i) teachers for teaching school subjects, the qualification in respect of whom was prescribed in the First Schedule; (ii) teachers for physical education in respect of whom qualifications were prescribed in the Second Schedule; and (iii) teachers for co-curricular activities such as work experience, art education, etc. in respect of whom existing qualifications or such other qualifications as may be prescribed by the concerned government would apply.

30. These regulations were superseded by a notification issued on 12.11.2014 in exercise of power conferred under clause (dd) of sub-section (2) of Section 32 read with Section 12-A of the National Council for Teacher Education Act, 1993 called 'the National Council for Teacher Education (Determination of Minimum Qualifications for Persons to be recruited as Education Teachers and Physical Education Teachers in Pre-Primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014 (for short 'Minimum Qualification Regulations, 2014'). Regulation 4 which

prescribes qualifications for recruitment reads thus:

“4. Qualifications for Recruitment-

(a) The qualifications for recruitment of teachers in any recognized school imparting Pre-Primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges imparting senior secondary education shall be as given in the First and Second Schedule(s) annexed to these Regulations.

(b) For promotion of teachers the relevant minimum qualifications as specified in the First and Second Schedule(s) are applicable for consideration from one level to the next level.”

The relevant part of the First and Second Schedules are as under:-

“First Schedule

The National Council for Teacher Education (Determination of Minimum Qualifications for Persons to be recruited as Education Teachers in Pre-Primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014.

LEVEL	MINIMUM ACADEMIC AND PROFESSIONAL QUALIFICATIONS
4. Secondary/High School (For Classes IX-X)	<p>(a) Graduate/Post Graduate from recognized University with at least 50% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution.</p> <p>Or</p> <p>(b) Graduate/Post Graduate from recognized University with at least 45% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution {in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002 and National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.2007.}</p> <p>Or</p>

	(c) 4-years degree of B.A.Ed./B.Sc.Ed. from any National Council for Teacher Education recognized institution.
5. Senior Secondary/ Intermediate (For Classes XI-XII)	<p>(a) Post Graduate with at least 50% marks (or its equivalent) from recognized University and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution.</p> <p>Or</p> <p>(b) Post Graduate with at least 45% marks (or its equivalent) from recognized University and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution {in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002 and National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.2007.}</p> <p>Or</p> <p>(c) Post Graduate with at least 50% marks (or its equivalent) from recognized University and B.A.Ed./B.Sc.Ed. from any NCTE recognized institution.</p>

Second Schedule

{See Sub-regulation (2) of Regulation (4)}

The National Council for Teacher Education (Determination of Minimum Qualifications for Persons to be recruited as Physical Education Teachers in Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014.

LEVEL	MINIMUM ACADEMIC AND PROFESSIONAL QUALIFICATIONS
2. Secondary/High School (For Classes IX-X)	<p>Bachelor's degree with Physical Education as an elective subject with 50% marks</p> <p>Or</p> <p>Bachelor's degree with Physical Education as an elective subject with 45% marks and participation in National or State or Inter-University competitions in sports or games or athletics recognized by Association of Indian University or India Olympic Association</p> <p>Or</p>

	<p>Bachelor's degree with 45% marks and having participated in National Or State or Inter-University sports or games or athletics</p> <p>Or</p> <p>For deputed in-service candidates (i.e. trained Physical Education Teachers/Coaches)- Graduation with 45% marks and at least 3 years of teaching experience as per National Council for Teacher Education (Recognition Norms & Procedure) Regulations, 2009</p> <p>Or</p> <p>Graduate in Physical Education with 40% marks</p> <p>Or</p> <p>Graduate with Physical Education as an elective subject with 40% marks</p> <p>Or</p> <p>Graduate who participated school, Inter-Collegiate in sports/games or passed NCC 'C' Certificate in accordance with the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.2007}</p> <p>Or</p> <p>Graduate in Physical Education i.e. B.P.Ed. course (or its equivalent) or 3 years duration</p> <p>Or</p> <p>Graduate having represented State/University in sports/games/athletics</p> <p>Or</p> <p>Graduate who has secured 1st, 2nd or 3rd position in Inter-Collegiate sports/games tournaments/possessing NCC 'C' Certificate or passed basic course in Adventure Sports</p> <p>Or</p> <p>Graduate with one year training programme in Sports Science, Sports Management, Sports Coaching, Yoga, Olympic Education, Sports Journalism etc. {in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002}</p> <p>And</p> <p>(b) Bachelor of Physical Education (B.P.Ed.) of at least one year duration (or its equivalent) from any National Council for Teacher Education recognized institution.</p>
3.Senior Secondary/	<p>Bachelor of Physical Education (B.P.Ed.) or Bachelor of Physical Education (B.P.E.) or Bachelor of Science (B.Sc.)</p>

Intermediate (For Classes XI- XII)	<p>in Health and Physical Education and Degree in Sports with at least 55% marks as per National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2009.</p> <p style="text-align: center;">Or</p> <p>At least 50% marks in the B.P.Ed. degree/B.P.Ed. (Integrated) 4 years professional degree in accordance with the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.2007.}</p> <p style="text-align: center;">Or</p> <p>B.P.Ed. with atleast 55% marks or B.P.E. Course (or its equivalent) of 3 years duration with at least 50% marks {in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002}</p> <p style="text-align: center;">And</p> <p>(c) M.P.Ed. of at least 2 years duration from any National Council for Teacher Education recognized institution.</p>
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31. It is noteworthy that Minimum Qualification Regulations, 2014 do not use the word 'teachers for teaching school subjects' and 'teachers for physical education' but instead uses the phrase 'education teachers' and 'physical education teachers' that too in the heading of the Schedules and not in Regulation 4, which is the substantive provision. The U.G.C. Act also does not make any distinction between teachers in school subjects and teachers in physical education but instead uses the phrase 'Education Teachers' and under which both B.Ed. and B.P.Ed. degrees as well as M.Ed. and M.P.Ed. are mentioned. The fundamental issue which thus crops up for consideration is whether the classification made under the earlier Regulations, 2001 between teachers in school subjects and

teachers in physical education, which has now been replaced by 'education teachers' and 'physical education teachers' warrant treating these teachers as separate and distinct from each other; whether the scheme of U.P. Intermediate Education Act, 1921 and U.P. Secondary Education Services Selection Board Act, 1982 recognise such a distinction; and whether such a classification if made, would pass muster of Article 14 of the Constitution.

32. It is well established by a catena of judgements of Supreme Court that Article 14 prohibits class legislation and not reasonable classification. If the Legislature takes care to reasonably classify persons for legislative purposes and if it deals equally with all persons belonging to a 'well defined class', its action would not be open to challenge on the ground of denial of equal protection. In order, however, to pass the muster of reasonable classification twin conditions namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from other left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question must be fulfilled. The classification may be founded on different basis; such as, geographical or according to objects or occupation or some peculiar characteristic running through the class. The classification need not be scientifically accurate or logically complete but at the same time, it

should not result in pronounced inequality otherwise it would fail on the anvil of Article 14. A mini classification where differences between classes or categories are inconsequential and does not seek to achieve the object of the statute would be susceptible to interference by a court. Thus, what is required is that the difference must be real and substantial and not superficial or microscopic having no nexus with the object sought to be achieved by the statute. In **Suraj Mall Vs. Biswanath**, AIR 1953 SC 545, the Supreme Court held that where a classification is challenged as denying equal protection, the question for determination by the Court is not whether it has resulted in inequality, but whether there is some difference which bears a just and reasonable relation to the object of legislation.

33. A Constitution Bench of the Supreme Court in **E.V. Chinnaiah Vs. State of A.P. and other and other connected matters**, 2005 (1) SCC 394, considered the issue as to whether sub division/sub classification of Presidential list under Article 341 is permissible or not in the context of a challenge advanced to the validity of Andhra Pradesh Scheduled Castes (Rationalization of Reservations) Act, 2000. The ordinance which was under challenge divided the castes enumerated in the Presidential list into four groups based on inter-se backwardness and fixed separate quota for reservation for each group. The Constitution Bench, apart from holding that the State Legislature does not have power

to tinker with the list issued under Article 341 also held that it is not open to State to sub-classify the scheduled castes into sub classes, as it would be violative of Article 14. Uniform yardstick must be adopted for giving benefit to members of the scheduled caste for the purpose of Constitution. The Supreme Court placed reliance on the law laid down by it in relation to the concept of sub-classification in **State of J.K. Vs. Triloki Nath Khosa, (1974) 1 SCC 19**. Certain extracts from the said judgement, being relevant for issue under consideration, are reproduced below:-

"29. This argument, as presented, is attractive but it assumes in the Court a right of scrutiny somewhat wider than is generally recognised. Article 16 of the Constitution which ensures to all citizen equality of opportunity in matters relating to employment is but an instance or incident of the guarantee of equality contained in Article 14. The concept of equal opportunity undoubtedly permeates the whole spectrum of an individual's employment from appointment through promotion and termination to the payment of gratuity and pension. But the concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Equality is for equals. That is to say that those who are similarly circumstanced are entitled to an equal treatment.

31. Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints; or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well marked classes characterized by different and distinct attainments. Classification, therefore, must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

51. But we hope that this judgment will not be construed as a charter for making minute and microcosmic classifications. Excellence is, or ought to be, the goal of all good governments and excellence and equality are not friendly bed-fellows. A

pragmatic approach has therefore to be adopted in order to harmonize the requirements of public services with the aspirations of public servants. But let us not evolve, through imperceptible extensions, a theory of classification which may subvert, perhaps submerge, the precious guarantee of equality. The eminent spirit of an ideal society is equality and so we must not be left to ask in wonderment: what after all is the operational residue of equality and equal opportunity?

57. Mini-classifications based on micro- distinctions are false to our egalitarian faith and only substantial and straight-forward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality. If in this case Government had prescribed that only those degree holders who had secured over 70 per cent marks could become Chief Engineers and those with 60 per cent alone be eligible to be Superintending Engineers or that foreign degrees would be preferred we would have unhesitatingly voided it."

(emphasis supplied)

34. The Constitution Bench after considering the law on the subject ruled that sub-classification of castes enumerated under the Presidential Order would be violative of Article 14 as well as other Articles of the Constitution and thus, impermissible, by observing thus:-

“39. Legal constitutional policy adumbrated in a statute must answer the test of Article 14 of the Constitution of India. Classification whether permissible or not must be judged on the touchstone of the object sought to be achieved. If the object of reservation is to take affirmative action in favour of a class which is socially, educationally and economically backward, the State’s jurisdiction while exercising its executive or legislative function is to decide as to what extent reservation should be made for them either in Public Service or for obtaining admission in educational institutions. In our opinion, such a class cannot be sub-divided so as to give more preference to a miniscule proportion of the Scheduled Castes in preference to other members of the same class.

41. The conglomeration of castes given in the Presidential Order, in our opinion, should be considered as representing a class as a whole. The contrary approach of the High Court, in our opinion,

was not correct. The very fact that a legal fiction has been created is itself suggestive of the fact that the Legislature of a State cannot take any action which would be contrary to or inconsistent therewith. *The very idea of placing different castes or tribes or group or part thereof in a State as a conglomeration by way of a deeming definition clearly suggests that they are not to be sub-divided or sub-classified further. If a class within a class of members of the Scheduled Castes is created, the same would amount to tinkering with the List. Such sub-classification would be violative of Article 14 of the Constitution of India. It may be true,* as has been observed by the High Court, that the caste system has got stuck up in the Society but with a view to do away with the evil effect thereof, a legislation which does not answer the constitutional scheme cannot be upheld. It is also difficult to agree with the High Court that for the purpose of identifying backwardness, a further inquiry can be made by appointing a commission as to who amongst the members of the Scheduled Castes is more backward. If benefits of reservation are not percolating to them equitably, measures should be taken to see that they are given such adequate or additional training so as to enable them to compete with the others but the same would not mean that in the process of rationalizing the reservation to the Scheduled Castes the constitutional mandate of Articles 14,15 and 16 could be violated.”

(emphasis supplied)

35. In a recent judgement by the Supreme Court in **Maharashtra Guards of Forests Union Vs. State of Maharashtra and others, (2018) 1 SCC 149** the issue for consideration was whether restriction introduced on basis of educational qualification for participating in a limited departmental competitive examination for recruitment on the post of Forester violates Articles 14 and 16 of the Constitution. Under the relevant rules, 25% of the posts were to be filled up on basis of the said examination. To entitle a candidate to participate in the examination, he should have completed minimum of five years service

as forest guard and should be a graduate. The challenge was limited to the second condition relating to a candidate being a graduate to entitle him to appear in the examination. The challenge was on the ground that all forest guards formed one class and they could not be discriminated for appearing in the competitive examination on basis of educational qualification. For deciding the issue, the Supreme Court placed reliance on Constitution Bench judgement in **Roshan Lal Tandon Vs. Union of India, AIR 1967 SC 1889**, which was a case where direct recruits i.e. apprentice train examiner and promotees i.e. skilled artisans were integrated into one group, but 80% of the vacancies in Group C were to be filled up from apprentice train examiners and remaining 20% from the train examiners on basis of a selection. The said bifurcation was held to be bad on the ground that once the direct recruits and promotees are absorbed in one cadre, they formed one class and cannot be discriminated for the purpose of further promotion to the higher Grade 'C'. The Supreme Court after examining the law on the subject held that the entire lot of forest guards irrespective of seniority but subject to minimum of five years service formed one homogeneous class entitled to participate in the examination. It was noted that there being no quota prescribed on basis of educational qualification, any further sub-classification based on educational qualification would be discriminatory and violative of Articles 14 and 16 tantamounting to creating a class

within a class. The relevant observations made in this regard are as under:-

“17. The challenge is on the further rigor put on the eligibility to appear in the LDCE. The whole purpose of the LDCE is to encourage and facilitate the Forest Guards to get accelerated promotion on the basis of merit. Since seniority is the criterion for promotion to three-fourth of the posts, one-fourth is given a chance to compete in a competitive examination. It is also to be noted that there is no quota prescribed on the basis of higher educational qualification. The situation would have been different if, in the first place, there had been a classification wherein 75 per cent of the posts have to be filled based on seniority and 25 per cent reserved for graduates and again subject to inter-se merit in the competitive examination. That is not the situation in the present case. ***The LDCE is meant for selection for promotion from the entire lot of Forest Guards irrespective of seniority but subject to minimum five years of service. In that situation, introducing an additional restriction of graduation for participation in the LDCE without there being any quota reserved for graduates will be discriminatory and violative of Articles 14 and 16 of the Constitution of India since it creates a class within a class. The merit of the 25 per cent cannot be prejudged by a sub-classification. It violates the equality and equal opportunity guarantees. The Forest Guards, irrespective of educational qualifications, having formed one class for the purpose of participation in the LDCE, a further classification between graduates and non-graduates for participating in the LDCE is unreasonable. It is a case of equals being treated unequally.***”

(emphasis supplied)

36. Having regard to the above principles, we now proceed to examine as to whether the U.P. Intermediate Education Act, 1921 recognises any distinction or makes any classification between a teacher in school subject and a teacher in physical education. Part II Chapter V of the U.P. Intermediate Education Act deals with Committee of Courses. Regulation 6 thereof states that the Board may, in accordance with the

courses as finally approved and sanctioned by it, get the text books and other connected materials, if any, prepared in respect of subject as it may consider necessary; and after being approved by the Committee of Courses concerned and by the Chairman respectively, the Board shall get them published under the authority of the State Government; the Board would then prescribe them as text books. The Regulations specifically envisage a separate Committee for laying down course of physical and moral education since 14.5.1983 when relevant entry in this regard was inserted in Regulation 1. Part II Chapter XIII deals with High School examination. Regulation 1 stipulates that every candidate appearing in High School examination has to give examination in seven subjects, out of which, one is games and physical education. Regulation 3 stipulates that practical work in various subjects would be examined internally on five point scale grading and the grade would be shown in the mark sheet. Regulation 4 stipulates that the performance in moral science, yoga, sports and physical education would be assessed by awarding grades which shall be mentioned in mark sheet-cum-pass certificate. Chapter XIV deals with Intermediate examination and Regulation 5 as substituted on 29.3.2006 provides that Intermediate Examination of each candidate would be held in five subjects. Apart from it, a separate examination would be held internally consisting of 50 marks in sports and physical education. There would be a practical examination of 50

marks which would be conducted by the Head of the institution. Each candidate has to obtain minimum 33% marks in sports and education and same would be reflected in his mark sheet-cum-certificate. Blind and handicapped examinees were exempted from appearing in sports and physical examination subjects. Regulation 5 has been substituted again by notification dated 8.7.2017, which is substantially the same except that it now also includes moral science and yoga apart from sports and physical education within its ambit.

37. It is pertinent to note that in recent years a lot of emphasis is being laid on physical education. The school curriculum is utilized as a vehicle to help students acquire skills in physical education and wellness. The object is to develop in child an appreciation for physical activity as a lifetime pursuit and a means to better health. He is made to understand the benefits of increased physical and mental activities by teaching him anatomy, basic bio-mechanical principles and terminology besides exposing him to variety of physical and mental activities. A teacher of physical education thinks of curriculum as the whole body of courses offered and identified as the course of study. It is in light of ever expanding approach towards physical education that the scope of physical education has been further expanded to incorporate even moral science and yoga as necessary component of the same. The amendments made in the Regulations on 14.5.1983 providing for a separate

Committee of Course for physical education and the amendment made on 29.3.2006 prescribing physical education as one of the subjects in Intermediate Examination evinces a clear intent to incorporate physical education as part of school curriculum.

38. Regulation 3 of Chapter II of the Regulations framed under Part II-A of the Act embodies the principles, according to which, seniority list of teachers is to be prepared. Under it, seniority list is prepared for each grade separately and not on basis of the subjects taught. A teacher in school subject and a teacher in physical education of the same grade are members of the same cadre and thus, a common seniority list is prepared for them. We may gainfully reproduce the relevant part of Regulation 3 of Chapter II of the Regulations framed under the Act to show that no such distinction is envisaged thereunder:-

“3. (1) The Committee of Management of every institution shall cause a seniority list of teachers to be prepared in accordance with the following provisions-

(a) The seniority list shall be prepared separately for each grade or teachers whether permanent or temporary, on any substantive post;

(b) Seniority of teachers in a grade shall be determined on the basis of their substantive appointment in that grade. If two or more teachers were so appointed on the same date, seniority shall be determined on the basis of age;

(bb) Where two or more teachers working in a grade are promoted to the next higher grade on the same date, their seniority inter se shall be determined on the basis of the length of their service to be reckoned from the date of their substantive appointment in the grade from which they are promoted:

Provided that if such length of service is equal, seniority shall be

determined on the basis of age.]

(c) A teacher in a higher grade shall be deemed to be senior to a teacher in the lower grade irrespective of the length of service;

(d) If a teacher who is placed under suspension is reinstated on his original post his original seniority in the grade shall not be affected;

(e) Every dispute about the seniority of the teacher shall be referred to the Committee of Management which shall decide the same giving reasons for the decision;”

39. It is evidently clear from above provisions of the U.P. Intermediate Education Act, 1921 and the Regulation framed thereunder that albeit prescription of different minimum qualifications for appointment as a teacher in different subjects, but once appointed, there is no sub-classification of teachers on the basis of subjects taught. If they are in same grade, they form one class and there is a common seniority list. There is a separate Committee of Courses which prescribes syllabus for physical education, like in other subjects; the Board prescribes text books and other connected materials in respect of the said subject; an examinee is assessed in regard to his performance in physical education by awarding grades which are duly displayed in his mark sheet-cum-certificate; physical education is also taught at Intermediate level and an examinee has to obtain at least 33% marks in physical education to pass the subject. Thus, under the entire Scheme of the Act, no distinction has been made between a teacher in school subject and a teacher in physical education nor any such distinction, if made, would advance any object of

the Act.

40. We now take a look at the Scheme of the Act, 1982. Section 2 (k) defines teacher as a person employed for imparting instruction in an institution and includes a Principal or a Headmaster. Under Rule 10 of the Rules 1998 framed under the said Act, post of Principal of an Intermediate College or Headmaster of a High School is a selection post to be filled by direct recruitment. The procedure for selection by direct recruitment is laid down under Section 10 of 1982 Act as under:-

“[10. Procedure of selection by direct recruitment. - (1)

For the purpose of making appointment of a teacher, by direct recruitment, the management shall determine the number of vacancies existing or likely to fall vacant during the year of recruitment and in the case of a post other than the post of Head of the Institution, also the number of vacancies to be reserved for the candidates belonging to the Scheduled Castes, the Scheduled Tribes and other Backward Classes of citizens in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 and notify the vacancies to the Board in such manner and through such officer or authority as may be prescribed.

(2) The procedure of selection of candidates for direct recruitment to the posts of teachers shall be such as may be prescribed :

Provided that the Board shall, with a view to inviting talented persons, give wide publicity in the State to the vacancies notified under sub-section (1).]”

40(A). Section 11 contemplates that after the vacancy is notified, the Board shall hold examinations where necessary and interview candidates and prepare a panel of those found most suitable for appointment and from which appointments are to be made. Rule 11 stipulates the manner

in which vacancies are to be determined and notified and it provides thus:-

11. Determination and notification of vacancies. - (1) For the purposes of direct recruitment to the post of teacher, the Management shall determine the number of vacancies in accordance with sub-section (1) of Section 10 and notify the vacancies through the Inspector, in the Board in the manner hereinafter provided.

(2) (a) The statement of vacancies for each category of posts to be filled in by direct recruitment including the vacancies that are likely to arise due to retirement on the last day of the year of recruitment, shall be sent in quadruplicate, in the *proforma* given in Appendix 'A' by the Management to the Inspector by July 15 of the year of recruitment and the Inspector shall, after verification from the record of his office, prepare consolidated statement of vacancies of the district subject-wise in respect of the vacancies of lecturer grade, and group-wise in respect of vacancies of Trained graduates grade. The consolidated statement so prepared shall, along with the copies of statement received from the Management, be sent by the Inspector to the Board by July 31, with a copy thereof to the Joint Director :

Provided that if the State Government is satisfied that it is expedient so to do, it may, by order in writing, fix other dates for notification of vacancies to the Board in respect of any particular year of recruitment :

Provided further that in respect of the vacancies existing on the date of the commencement of these rules as well as the vacancies that are likely to arise on June 30, 1998, the Management shall, unless some other dates are fixed under the preceding proviso, send the statement of vacancies by July 20, 1998 to the Inspector and the Inspector shall send the consolidated statement in accordance with this sub-rule to the Board by July 25, 1998.

Explanation.- For the purposes of this sub-rule, the word 'group-wise' in respect of the Trained graduate's grade means in accordance with the following groups, namely :

- | | |
|--------------|---|
| (a) Language | This group consists of the subjects of Hindi, Sanskrit, Urdu, Persian and Arabic; |
| (b) Science | This group consists of the |

45.

subjects of Science and
Mathematics;

(c) Art and Craft

(d) Music

(e) Agriculture

(f) Home Science

(g) Physical Education

(h) General

This group consists of the
subjects not covered in any
of the foregoing groups.

(b) With regard to the post of Principal or Headmaster, the Management shall also forward the names of two seniormost teachers, along with copies of their service records (including character rolls) and such other records or particulars as the Board may require from time to time.

Explanation.- For the purpose of this sub-rule 'senior-most teacher' means the senior-most teacher in the post of the highest grade in the institution, irrespective of total service put in the institution."

40(B) Rule 12, which prescribes the procedure for direct recruit reads thus:-

"12. Procedure for direct recruitment. - (1) The Board shall, in respect of the vacancies to be filled by direct recruitment, advertise the vacancies including those reserved for candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes and other reserved categories as applicable to Government service from time to time in atleast two daily newspapers, having wide circulation in the State, and call for the applications through online or offline (OMR Application form) or both for being considered for selection in the *pro-forma* published in the advertisement. The pro-forma of the application shall be on OMR sheet which shall be sold through Nationalized bank or post office. For the post of Principal of an Intermediate College or the Headmaster of a High School, the name and place of the institution shall also be mentioned in the advertisement and the candidates shall be required to give the choice of not more than three institutions in order of preference and if he wishes to be considered for any particular institution or institutions and for no other institution, he may mention

the fact in his application.

(2)

(3)

(4)

(4) (v) The Board shall in respect to the selection for the post of Head Master and Principals, allot the marks in the following manner :-

(i) 60% marks on the basis of quality points specified in Appendix 'D'.

(ii) 16% marks for having experience more than the required experience in the manner that 1% marks shall be awarded for each year of such experience, subject to a maximum of 16% marks.

(iii) 2% marks for research paper published in reputed journals in the manner that 1/2% marks shall be allotted for each such research paper subject to maximum 2% marks.

(iv) 7% marks for having Doctorate degree or 30% for Master of Education (M.Ed.) provided that only one degree shall be considered under this clause.

Note. - For the purpose of calculating experience the service rendered as Head Master of Junior High Schools or as assistant teacher in a High School/Intermediate College shall be counted in the case of selection of Head Master and for selection of Principal, the service rendered as Head Master of a High School or as a lecturer shall only be counted.

(5) The Board shall hold interview of the candidates and 15% marks shall be allotted for interview. Marks in the interview shall be divided in the following manner :-

(a) 6% marks on the basis of subject/general knowledge;

(b) 4% marks on the basis of personality test;

(c) 5% marks on the basis of ability of expression.”

(8) The Board then, for each category of post, prepare panel of those found most suitable for appointment in order of merit as disclosed by the marks obtained by them after adding the marks obtained under sub-clause (4) or sub-clause (5) above, as the case may be, with the marks obtained in the interview. The panel for the post of Principal or Headmaster shall be prepared institution-wise after giving due regard to the preference given by a candidate, if any, for appointment in a particular institution whereas for the posts in the lecturers and trained graduates grade, it shall be prepared subject-wise and group-wise

respectively. If two or more candidates obtain equal marks, the name of the candidate who has higher quality points shall be placed higher in the panel and if the marks obtained in the quality points are also equal, then the name of the candidate who is older in age shall be placed higher. In the panel for the post of Principal or Headmaster, the number of names shall be three times of the number of the vacancy and for the post of teachers in the Lecturers and Trained graduates grade, it shall be larger (but not larger than twenty-five per cent) than the number of vacancies.

Explanation.- For the purposes of this sub-rule the word 'group-wise' means in accordance with the groups specified in the Explanation to sub-rule (2) of Rule 11.

41. Thus, Rule 11 (2) (b) specifically provides that for the post of Principal or Headmaster, the Management, apart from furnishing other information, shall forward the names of two senior most teachers, alongwith copies of their service record including character rolls. The explanation elaborates the meaning of 'senior most teacher' for purposes of the sub-rule as the senior most teacher in the post of highest grade in the institution, irrespective of the total service put in the institution. The two senior most teachers under the Scheme of the Act and the Rules are entitled to participate in the selection without formally applying for the same. Unequivocally, the definition of senior most teacher given in explanation to sub-rule (2) (b) of Rule 11 read with Regulation 3 of Chapter-II of the U.P. Intermediate Education Act, 1921 demonstrates that it does not make any distinction between a teacher in school subject and a teacher in physical education. The only requirement is that the two senior most teachers should be holding post of highest grade in the

institution. If a teacher in physical education is amongst the two senior most teachers holding post of highest grade, then he would be entitled to participate in the selection subject to his possessing the prescribed minimum qualification. He would not be disqualified from participating in the selection despite being senior most teacher on the ground that he teaches physical education and not school subjects as both of them hold post of the highest grade which alone has relevance.

42. A perusal of sub-rule 8 of Rule 12 reveals that the recommendation of selected candidate for the post of lecturer and trained graduates' grade would be made subject-wise and group-wise, whereas no such categorization has to be made while preparing panel for the post of Principal or Headmaster.

43. From the Scheme of the Act, 1982 and Rules framed thereunder, no sub-classification of teachers in highest grade could be culled out. To the contrary, it has to be held that a teacher in physical education and a teacher in school subject in the highest grade in an institution are members of one homogeneous class in so far as it relates to recruitment to the post of Principal or Head of the institution. A teacher in school subject cannot be given preference over a teacher of physical education in matters relating to recruitment on the post of Head of an institution. In case any distinction is made between them, it would result in invidious discrimination amongst the teachers in the highest grade in the

institution which instead of advancing the object of the two Acts would be contrary to the specific provisions thereof.

44. At this juncture, we would like to revert to the Minimum Qualification Regulations, 2001 framed by NCTE where such a categorization has been made. These Regulations, as noted above, were framed in exercise of power under Clause (d)(i) of sub-section (2) of Section 32 which empowers the Council to provide the norms, guidelines and standards in respect of the minimum qualifications for a person to be employed as a teacher under clause (d) of Section 12. It is noteworthy that the categorization was made only for purposes of prescribing qualification for the above two set of teachers in different tables appended as Schedules. It was more by way of expediency rather than for drawing any real or substantive distinction between the two classes, once appointed. As noted above, in the Minimum Qualification Regulations, 2014, which superseded the Minimum Qualification Regulations, 2001, the use of phraseology 'school subjects' in contradistinction to 'physical education' has been done away with. The Regulations, 2014 use the phrase 'education teacher' for both set of teachers, although the word 'physical' is prefixed to distinguish teachers of physical education, limited to the prescription of qualification for recruitment and nothing more. This is evidently an acknowledgment of the fact that physical education is also now taught as a school subject, by

making it part of the regular curriculum as is evident from the provisions of the U.P. Intermediate Education Act, 1921 discussed in foregoing paragraphs. It is also pertinent to note that under U.P. Intermediate Education Act, 1921, the qualification for teachers in all subjects, including physical education, are prescribed in one and the same table i.e. Appendix-A to Regulation 1 of Chapter-II clearly indicating that the Act does not make any classification between teachers on the basis of subjects taught.

45. We now proceed to examine the stand of the State Government in respect of the controversy in hand. In this regard we would allude to an affidavit filed by Principal Secretary, Secondary Education, U.P. Lucknow dated 18th May, 2017 wherein the State Government has also accepted the position that B.P.Ed. qualification is equivalent to other teaching qualifications enumerated in Paragraph 2 of Appendix-A and it reads thus:-

"8. That in Appendix in reference of Regulation-1 Chapter-II of U.P. Intermediate Education Act, does not refer specifically the B.P.Ed. Course. After the Regulation 2001 came into force. It has been adopted by the State as equivalent to 'trained' for which a necessary amendment is required to be incorporated in the Schedule. As a principal, the B.P.Ed. Degree is treated to be equivalent to a 'trained' as referred in para-2 of Appendix-A.

9. That in view of the above, the B.P.Ed. Course is equivalent to that of B.Ed., L.T., B.T./C.T. It is further clarified that the necessary amendment is to be incorporated in the schedule."

46. In view of the foregoing discussion and having regard to the stand of the State Government on the issue, we are unable to subscribe to the

view taken by Division Bench in **Vindhyachal Yadav** that B.P.Ed. could not be equated with other teaching qualifications prescribed under Appendix-A of Regulation 1 of Chapter-II of the regulations framed under the U.P. Intermediate Education Act, 1921 and accordingly, we overrule the same as well as all other judgements of this Court taking a contrary view.

47. We, thus, answer question (i) in affirmative and question (iii) by holding that **Vindhyachal Yadav** does not lay down the correct law. However, question (ii) has to be answered, subject to certain riders. A B.P.Ed. degree being a post graduate training qualification, would entitle a person to hold post of Headmaster of a recognised High School but not that of Principal of an Intermediate college. The reason is that under Regulations, 2001 as well as under Minimum Qualification Regulations, 2014 framed by NCTE, B.P.Ed. is recognised as eligibility qualification for teaching Classes IX – X (Secondary/ High School) but not for Classes XI – XII (Senior Secondary/Intermediate). For teaching Intermediate classes, the person should possess M.P.Ed. degree of at least two years duration from any National Council for Teacher Education recognised institution. These regulations do not prescribe any separate qualification for Head of institution and thus the qualification prescribed for a teacher of Intermediate classes (Senior-Secondary) would also apply to Head of such an institution. We have already held

above that the qualifications prescribed by NCTE would be binding on the State, therefore, the qualifications prescribed by Minimum Qualification Regulations, 2014 have to be read alongwith Appendix-A and thus, a teacher possessing B.P.Ed. degree, would not be eligible to hold post of Principal of an Intermediate College.

48. We, thus, reply to question (ii) by holding that a teacher in physical education having B.P.Ed. degree is eligible to be appointed as Headmaster of a High School, but not as Principal of an Intermediate college.

49. The Reference is answered accordingly.

50. Let papers be placed before the Regular Bench for deciding appeal in the light of the answer given hereinabove.

Order Date :- 10.10.2018
SL

(Yashwant Varma, J)

(M.K. Gupta, J)

(Dilip B. Bhosale, CJ)