

Reserved on 17.4.2013

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Civil Misc. Writ Petition No. 12908 of 2013

Shiv Kumar Sharma Vs. State of U.P. & others

Connected with:

Civil Misc. Writ Petition No. 12911 of 2013
Yatinder Kumar Tiwari Vs. State of U.P. and others

With

Civil Misc. Writ Petition No. 12915 of 2013
Prit Pal Singh Vs. State of U.P. and others

With

Special Appeal No. 150 of 2013
Navin Srivastava and others Vs. State of U.P. and others

With

Special Appeal No. 149 of 2013
Sujeet Singh and others Vs. State of U.P. and others

With

Special Appeal No. 152 of 2013
Rajeev Kumar Yadav Vs. State of U.P. and others

With

Special Appeal No. 159 of 2013
Anil Kumar and others Vs. State of U.P. and others

With

Special Appeal No. 161 of 2013
Alok Singh and others Vs. State of U.P. and others

With

Special Appeal No. 205 of 2013
Amar Nath Yadav and others Vs. State of U.P. and others

With

Special Appeal No. 206 of 2013
Yajuvendra Singh Chandel & another Vs. State of U.P. & others

With

Special Appeal No. 220 of 2013
Amiteshwari Dubey and others Vs. State of U.P. and others

With

Special Appeal No. 244 of 2012
Dr. Prashant Kumar Dubey Vs. State of U.P. and others

With

Special Appeal No. 246 of 2013
Priyanka Bhaskar and others Vs. State of U.P. and others

With

Special Appeal No. 248 of 2013
Uma Shanker Patel and others Vs. State of U.P. and others

With

Special Appeal No. 249 of 2013
Devesh Kumar and others Vs. State of U.P. and others

With

Special Appeal No. 261 of 2013
Sanjay Kumar and others Vs. State of U.P. and others

With

Special Appeal No. 262 of 2013
Sanjay Kumar and others Vs. State of U.P. and others

With

Special Appeal No. 264 of 2013
Rama Tripathi and others Vs. State of U.P. and others

With

Special Appeal No. 265 of 2013
Nagendra Kumar Yadav and others Vs. State of U.P. and others

With

Special Appeal No. 266 of 2013
Haryendra Singh and others Vs. State of U.P. and others

With

Special Appeal No. 268 of 2013
Rajiv Kumar Srivastava and others Vs. State of U.P. and others

With

Special Appeal No. 307 of 2013
Vineet Kumar Singh and others Vs. State of U.P. and others

With

Special Appeal No. 333 of 2013
Satendra Singh and others Vs. State of U.P. and others

With

Special Appeal Defective No. 200 of 2013
Rajpal Singh and others Vs. State of U.P. and others

With

Special Appeal Defective No. 227 of 2013
Praveen Kumar Vs. State of U.P. and others

With

Special Appeal Defective No. 228 of 2013
Mahendra Kumar Verma and others Vs. State of U.P. and others

With

Special Appeal Defective No. 302 of 2013
Ram Baboo Singh and others Vs. State of U.P. and others

Hon'ble Sunil Ambwani,J.

Hon'ble A.P. Sahi,J.

Hon'ble P.K.S. Baghel,J.

This Full Bench has been called upon to resolve the controversy that has arisen out of a reference made by a learned single Judge doubting the correctness of the judgment in the case

of **Prabhakar Singh and others Vs. State of U.P. and others, 2013 (1) ADJ 651**, relating to the compulsion of passing the Teacher Eligibility Test as prescribed under the Notification dated 23.8.2010 as amended on 29.7.2011 for appointments on the post of an Assistant Teacher for an Elementary Basic School (classes I to V). Even though there are three questions framed by us, the issue which requires a resolution is the binding effect of the aforesaid Notification that has been issued by the National Council for Teacher Education while prescribing a minimum standard to be possessed by a candidate aspiring to become a Teacher of elementary education.

The Division Bench in the case of Prabhakar Singh (supra) was hearing an Appeal against the judgment of a learned single Judge in the case of **Ravi Prakash and others Vs. State of U.P. and others, reported in 2013 (1) ESC 11 : (2013) 1 UPLBEC 478**. The challenge that was raised before the learned Single Judge was two fold, namely that the Teacher Eligibility Test would not be compulsory for such candidates whose process of selections in the Teachers training course of BTC had commenced prior to the issuance of the said Notification, which according to them, amounted to the commencement of the process of appointment. The second prayer of those candidates was to grant appointment as an Assistant Teacher without being compelled to undertake the Teacher Eligibility Test. The learned single Judge held that the process of acquisition of training qualification either of the BTC course or special BTC course would not by itself amount to the commencement of the process of recruitment under the Rules. For this, the learned single Judge relied on the Apex Court decision in the case of **Devendra Singh and others Vs. State of U.P. and others, (2007) 9 SCC 491**, and other judgments to hold that the process of completion of Teachers Training Course does not amount to commencement of the

recruitment process which would begin only with the advertisement under Rule 14 of the U.P. Basic Education Teachers Service Rules, 1981. The argument on behalf of the petitioners was that in view of the past practice and the various communications at the government level and the level of the U.P. Basic Education Board, the process of appointment was complete with the preparation of the list of the successful candidates in the training course. It was argued that with the completion of the training year wise, the candidates were to be placed accordingly as per Rule 17 of the 1981 Rules which did not require any further recruitment process. This argument of the petitioners was turned down by the learned single Judge holding that the process of recruitment would commence with a formal advertisement under Rule 14 and the mere preparation of a list of the trained candidates on the basis of their training qualification does not amount to commencement of the recruitment process.

The learned single Judge also found that Rule 16 of 1981 Rules clearly prescribes that after the advertisements are made, a Selection Committee is constituted where after the selections are finalized and then the letters of appointment are issued. The learned single Judge finally held that all petitions deserve to be dismissed as the minimum qualifications as prescribed in the Notification dated 23.8.2010 have to be possessed before any candidate is appointed as a Teacher. Thus, those candidates, who had merely completed their training qualification prior to the Notification dated 23.8.2010, were not found to be saved by clause 5 of the Notification dated 23.8.2010. Consequently, all the writ petitions were dismissed holding that all petitioners have to necessarily pass the Teacher Eligibility Test before their appointment.

The Division Bench in Prabhakar Singh's case (*supra*), which

heard the Appeal against the said judgment, accepted the first part of the reasoning of the learned single Judge relating to the commencement of the recruitment process and held that the ratio of the decision in the case of Devendra Singh (supra) by the Apex Court was binding and accordingly if the recruitment process, according to Rule 14, had not begun with an advertisement, then in that event, the process of recruitment had not commenced and, as such, the candidates, who were seeking appointment without having undergone the said process, could not succeed. Consequently, this part of the judgment of the learned single Judge was upheld.

However, while proceeding to consider the claim of the candidates covered by clause 3 (a) of the Notification dated 23.8.2010, the Division Bench came to the conclusion that with regard to the candidates, who possessed the qualification of B.A./B.Sc. with at least 50% marks and B. Ed. with training, were not required to undergo the Teacher Eligibility Test at all, as clause 3 of the Notification dated 23.8.2010 did not prescribe any such requirement by the conspicuous absence of this test being prescribed for the said category of candidates. The Division Bench even though proceeded on the reasoning that while interpreting the applicability of a particular clause in a Statute, it has to be read as a whole, but at the same time came to the conclusion that the qualifications prescribed under clause 3 for the aforesaid category of Teachers are independent, and have to be read in isolation. The reasoning given by the Division Bench was primarily two fold; firstly, that clause 3 is a substantive provision which is in addition to the qualifications that are provided in clause 1 and, therefore, it has to be read in a separate manner. The Court relied on certain Apex Court decisions to observe that if there are two provisions in the same Statute then they have to be interpreted in the manner so as to give meaning and purpose to both the

provisions. The Court also observed that a harmonious approach has to be applied and it, therefore, held that clause 3 was an exception to the qualification as provided in clause 1.

It needs to be emphasized that clause 1 clearly requires that Teachers for classes I to V and classes VI to VIII were both required to pass the Teacher Eligibility Test.

The second reasoning given by the Division Bench is that the rule making authority was aware of this separate class of Teachers and consequently provided a 6 months elementary program for training for such class of Teachers. It is for this reason that training to be undergone is the head note of clause 3 without the compulsion of passing the Teacher Eligibility Test.

The Division Bench then further went on to hold that the Central Government has the power to relax the minimum qualifications and consequently when the State Government submitted a proposal on 26.7.2012 to the Central Government for relaxation of minimum qualification under Section 23 (1) of The Right of Children to Free and Compulsory Education Act, 2009, the same was granted vide Notification dated 10.9.2012 extending the relaxation up to 31.3.2014. Considering the said request of the State Government for relaxation of minimum qualification, the Division Bench read the said relaxation also available to the Teachers defined in clause 3 to mean that such candidates were not required to pass the Teacher Eligibility Test. Consequently, the Division Bench came to the conclusion that the State Government had wrongly construed that the Teacher Eligibility Test has to be passed by this category of candidates as well. The Special Appeal was partly allowed and the aforesaid category of candidates mentioned in clause 3 were held to be entitled for appointment on the post of Assistant Teacher for class-I to V without passing the

Teacher Eligibility Test.

It is this second part of the judgment in Prabhakar Singh's case (supra) that was noticed by a learned single Judge in the case of Shiv Kumar Sharma Vs. State of U.P. and others, Civil Misc. Writ Petition No.12908 of 2013, and after recording an opinion doubting the correctness of the judgment of the Division Bench to the aforesaid extent, made a reference vide order dated 8.3.2013 to be answered by a Full Bench in relation to the compulsion of the Teacher Eligibility Test for all classes of Teachers.

The said reference has, therefore, been placed by Hon'ble the Chief Justice to be answered by this Full Bench in the aforesaid background.

To address the issue involved, we had heard the matter and framed 3 questions as follows:-

“(a) What does the phrase “minimum qualifications” occurring in Section 23 (1) of the right of Children to Free and Compulsory Education Act, 2009 (the Act) mean – whether passing the 'Teacher's Eligibility Test', is a qualification for the purposes of Section 23 (1), and its insistence by the NCTE in the Notification dated 23.8.2010 is in consonance with the powers delegated to the NCTE under Section 23 (1) of the Act?

(b) Whether clause 3 (a) of the Notifications dated 23.8.2010 and 29.7.2011 issued by the NCTE under Section 23 (1) of the Act, permits persons coming under the ambit of that clause to not undergo the 'Teacher's Eligibility Test', before they are eligible for appointment as Assistant Teachers? What is the significance of the words “shall also be eligible for appointment for Class-I to V upto 1st January, 2012, provided he undergoes, after appointment an NCTE recognized six months special programme in elementary education”?

(c) Whether the opinion expressed by the Division Bench in Prabhakar Singh and others Vs. State of U.P. and others, 2013 (1) ADJ 651 (DB), is correct in law?"

Basically 4 sets of arguments have been advanced, the first on behalf of those candidates who are covered by clause 3 (a) and who are claiming exemption from appearing in the Teacher Eligibility Test on whose behalf Sri Rahul Agrawal has advanced his submissions; the second set of arguments have been advanced by Sri Ashok Khare, learned Senior Counsel, on behalf of the original petitioners before the learned single Judge in Ravi Prakash's case and similarly situated candidates and his submission is to set aside the entire judgment of the Division Bench and allow the appointment of such candidates as well who had been successful in their training prior to 23.8.2010 and claimed entitlement for appointment under the exemption provided for in the Notification dated 23.8.2010 on the ground that their recruitment process had already commenced; the third set of arguments have been advanced by Sri Arvind Srivastava and Sri Alok Mishra for such candidates who claim that they have also acquired the training qualifications but from outside the State and, therefore, after having succeeded before the Apex Court with regard to the validity of their training qualifications, they were also entitled to be appointed with their colleagues who had completed their training qualifications within the State of U.P. prior to 23.8.2010, which argument is founded on the plea of discrimination by the State on the ground, that the State Government itself has proceeded to make such appointments after 23.8.2010 and before November, 2011, without compelling such candidates to pass the Teacher Eligibility Test; the 4th set of arguments have been advanced by the State, the Union of India and the National Council for Teacher Education, who have jointly urged that the Teacher Eligibility Test is compulsory even for

those candidates who are referred to in clause 3 and there is no ambiguity in the entire rules so as to carve out an exception in their case. The arguments on behalf of the State and the Union have been advanced by Sri C.B. Yadav, Addl. Advocate General of Uttar Pradesh, Sri R.B. Singhal, Assistant Solicitor General of India, assisted by Sri Krishna Agrawal, Sri R.A. Akhtar for the National Council for Teacher Education and Sri B.P. Singh for the Uttar Pradesh Basic Education Board.

The relevant provisions that are under consideration have been extensively extracted in the Division Bench judgment of Prabhakar Singh's case and, therefore, we have not undertaken the exercise to repeat the same.

The fundamental arguments that have been advanced by the learned Counsel representing the respective parties have to be dealt with separately. Sri Rahul Agrawal has defended the interpretation put forth by the Division Bench and has prayed that the reference be turned down. His submission is primarily that the Teacher Eligibility Test is not a minimum qualification and is only a test designed to gauge the eligibility of a candidate. It is, therefore, not a qualification either minimum or essential, required to be possessed by a candidate under clause 3 which specifically omits to mention the test as a qualification. He has gone one step further by contending that it is only the minimum qualification which can be fixed by the Academic Authority under Section 23 of the 2009 Act and, therefore, he contends that the Teacher Eligibility Test not being a qualification, the same could not have been prescribed by the Academic Authority. An Amendment Application has been filed challenging the authority of the National Council for Teacher Education to fix such qualification as being ultra vires to the provisions of Section 23 of the 2009 Act itself.

He then submits that there was a purpose behind in not providing this qualification for the candidates of clause 3 as a separate bridge course has been indicated to be undertaken within a period of 6 months for such candidates who were already possessed of a B.Ed. qualification.

He urges that the very nature of the educational qualifications that are prescribed in clause 3, put these candidates on a higher pedestal as they have acquired these qualifications through an educational process and, therefore, they were rightly found to be qualified enough so as to be exempted from appearing in the Teacher Eligibility Test. Supplementing his arguments, he contends that the relaxation which has been referred to in clause 5 of the Notification dated 23.8.2010 and 29.7.2011 also supports this argument inasmuch as the power of relaxation is in relation to the Teacher Eligibility Test which is not mentioned under clause 3. To challenge the authority of prescribing Teacher Eligibility Test as a minimum qualification, Sri Agrawal has cited decisions to support his arguments which shall be dealt with later on and has referred to Rules 17 to 19 and 15 to 17 of the Central and the State Rules framed under the 2009 Act. He has emphasized that minimum qualification has to be understood in conjunction with these rules and judgements which have been relied upon to interpret that the National Council for Teacher Education has no power to prescribe a test as a minimum qualification. He has also brought on record extensive written arguments to buttress his submissions alongwith a compilation of judgments.

Sri Ashok Khare has, however, taken a slightly different stand namely that Teacher Eligibility Test as prescribed does not give rise to any ground of challenge to any such prescription. He

submits that no challenge was even raised to the vires of the Rules or its applicability for holding future examination or prescribing it as a necessary qualification. He submits that the Teacher Eligibility Test would not apply in relation to such candidates who had passed their training qualification and were eligible for being appointed under the 1981 Rules prior to 23.8.2010. He contends that the State is bound by the past practice of finalising appointments immediately after completion of training without any formal requirement as required under Rule 14 or holding of any selection under Rule 16 of the Rules. He has, therefore, questioned the correctness of the Division Bench judgment on the first aspect as well and has raised the same submissions that were advanced before the learned single Judge in Ravi Prakash's case. He, however, submits that the other aspect which touches this issue and has been incorporated in the written argument submitted by him may also be answered by this Full Bench. He contends that the Division Bench has committed an error by reading Clause 3 of the Notification dated 23.8.2010 in isolation and fails to draw a valid distinction between the compulsion of Teacher Eligibility Test and the relaxation/exemption under the Notification dated 10.9.2012. He submits that the reasoning given by the Division Bench proceeds on an irrelevant consideration and that the exemption/relaxation dated 10.9.2012 cannot be guided or governed by any Notification of clause 3 of the Notification dated 23.8.2010.

He has further contended that the State Government itself was unsure about the date from which the said Notification dated 23.8.2010 would apply. He submits that after the said Notification was issued, the State Government took its own time to amend the Rules incorporating the requirement of Teacher Eligibility Test examination. The said Rules were framed on 29.7.2011 and the amendment in the 1981 rules was brought about on 9.11.2011.

He, therefore, contends that the implementation of the Teacher Eligibility Test examination itself being fixed on different dates referred to herein above, such candidates who had completed their training before 23.8.2010, were entitled to be appointed even after 23.8.2010 and to that extent, he contends that even the first part of the judgment in Prabhakar Singh's case deserves to be overruled.

The third set of arguments advanced by Sri Arvind Srivastava are that the National Council for Teacher Education Regulations of 2001 were enforced prior to the Notification dated 23.8.2010 and since the vacancies that are sought to be filled up which are of prior to the said date, it is the old qualifications which will continue to apply and the appointment should be made in relation to the date of the availability of the vacancies. He has also relied on the letters issued by the Basic Education Board to contend that appointments were to be made as per the past practice without any further advertisement for recruitment and he contends that initiation of the recruitment process had commenced with the advertisement of the training itself. He submits that such candidates had a legitimate expectation and a different treatment given to the candidates represented by him violates Article 14 of the Constitution of India. He contends that the judgment of the Division Bench in Prabhakar Singh's case (supra) creates 2 classes of Teachers and, therefore, it should be overruled with a direction that the candidates, to whom he represents, should be offered appointment. To supplement his submissions on discrimination, he contends that the candidates, who had passed out their training qualification from outside the State, had agitated the matter up to the Apex Court for inclusion of their qualification and the Supreme Court answered it in their favour in October, 2010. Their right was acknowledged in relation to the earlier vacancies alongwith those candidates, who have

passed their training qualification within the State of Uttar Pradesh. This was in relation to the special BTC course of 2007 and 2008 and these candidates were, therefore, entitled to be appointed as the State Government has proceeded to make appointments of such candidates even after 23.8.2010 without compelling them to appear in the Teacher Eligibility Test. He, therefore, contends that since such candidates, who are similarly placed, deserve the same treatment.

The fourth set of arguments have been advanced by the State and Sri C.B. Yadav, learned Addl. Advocate General to contend that the State is bound by the prescription of Teacher Eligibility Test. He has refuted all the submissions raised on behalf of the learned counsel and contends that the Teacher Eligibility Test being compulsory, it has been now incorporated in the Rules of 1981. Thus, the State has abided by the law made by the Central Government and has carried out the test as per the norms fixed by the National Council for Teacher Education.

There is one aspect where Sri C.B. Yadav remained silent namely on the arguments advanced by the other counsel that discrimination has been practised and such teachers, who had acquired the training qualification but had not been appointed, deserved to be appointed. On this ground of challenge and on a specific query raised by the Court, in relation to the candidates, who were appointed after 23.8.2010 without passing the Teacher Eligibility Test, his answer was that the Court may treat the said chapter as closed. This non-committal answer about the fate of such candidates, therefore, remains unanswered. There was no challenge raised in the proceedings that have given rise to this reference and, therefore, we are not entering into the merits of such individual appointments.

Sri R.B. Singhal has supported the reference and has prayed that the judgment of the Division Bench needs a reversal to the extent it carves out an exception in favour of candidates covered by clause 3. Sri R.A. Akhtar for the National Council for Teacher Education has emphasized that the power of the Council is very much available and the argument that it did not have the authority to prescribe the Teacher Eligibility Test as a qualification is unfounded. Sri Singhal and Sri Akhtar, therefore, relied on the guidelines dated 11.2.2011 as well as the Notifications issued from time to time to urge that all the Notifications read together with the Notification dated 23.8.2010 would leave no room for doubt that the Teacher Eligibility Test is compulsory for all classes of Teachers, who are seeking appointment in Schools, imparting elementary education without exception.

With the aforesaid submissions raised, it would be appropriate to refer to the historical background of this litigation. Compulsory education for free citizens was advocated by Plato and Aristotle. Free dissemination of knowledge is a virtue attributed to the personality of a man in our scriptures. Barter of knowledge was prohibited and imparting education for return in terms of wealth was considered a sin except "Gurudakshina", the avowed object and purpose of which was recognition and honour, and not greed for wealth. Basic education also known as elementary education in modern India after the advent of the British Rule commenced with the establishment of Missionary Schools. The East India Company, after having succeeded to power, did not recognize the promotion of education amongst the natives of India. An early attempt by Sir William Wilberforce to add a couple of clauses to the Charter of the East India Company in 1793 for sending out School Masters to India, encountered serious opposition and accordingly such a move was withdrawn. The British Rulers refused to accept responsibility for the

education of Indian people. It was only in 1813 that the Company allocated a sum of Rs. 1 Lac for the cause of education of India. A General Committee of Public Service was constituted at Calcutta in 1823 and the early oriental schools and Colleges were established in Calcutta. This was clearly designed to cater to the Britishers to enable them to learn about India.

Then came the famous Minute on Education by Thomas Babington Macaulay in 1835 whose recommendations were accepted by Lord William Bentinck. He took pride in declaring "Indians in blood and colour, but English in tastes, in opinion, in morals, and in intellect". This led to the foundation of anglicised version of education, even though vernacular education was also attempted by some British rulers with local support. These minuscule efforts were followed by the dispatch in 1844 by Sir Charles Wood for creating a separate education department in each province and also for the founding of University of Calcutta, Bombay and Madras in 1857. The introduction of grant-in-aid was also mentioned in the same dispatch.

Later on, the Indian Education Commission was instituted in 1882 where a very valuable recommendation about the elementary education of masses was made. Nonetheless, no specific efforts were made and then we find one of our greatest Patriots, Mr. Gopal Krishna Gokhale raising his voice in his presidential address to the Indian National Congress in 1910. While moving the resolution in the session, which was held on 18.3.1910, Mr. Gokhale raised a clarion call for free and compulsory elementary education. He introduced a private Member bill on 16.3.1911 in the Imperial Legislative Council but the bill could not succeed passage even though the British government did extend some grants later on.

Thus, even though free and compulsory education had been introduced in England, yet the same was not found feasible in British interest in India and the same situation continued till independence. Some compulsory Education Laws were passed in the other parts of the country in the pre independence period but free and compulsory education was not introduced in its true measure. After the Second World War proposals were mooted for providing free and compulsory basic education for a period of 40 years but the same could not be implemented.

At the national level a debate was going on and a Committee under the Chairmanship of Prof. B.G. Kher recommended the incorporation of Article 45 of the Constitution in the Chapter of Directive principle of State policy which read as under:-

“Article 45-- The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.”

When the Constitution was framed and schedules were incorporated, education was contained in Entry 11 of the State List (List II). The State of U.P. was then being governed by the U.P. Primary Education Act, 1919, the U.P. District Board Primary Education Act, 1926 and the U.P. Municipal Board Educational Establishment Service Rules, 1954. The need, therefore, was for a comprehensive Act and the Uttar Pradesh Basic Education Act, 1972 was brought into force and published in the Gazette on 19.8.1972. It is under this Act that the 1981 Rules have been framed which are under consideration before us.

It appears that the hope expressed in Article 45 as then

existed did not bring about any substantial change and consequently by virtue of the Constitution 42nd Amendment Act, 1976, the subject of Education was withdrawn from Entry 11 (List II) and placed in Entry 25 of List III. Thus, the legislative competence to legislate on the subject was brought under the concurrent list with the Union and the State both having powers to legislate on the subject. In spite of this, no further growth registered in the development of elementary education and it was almost 90 years after the idea was first mooted by Mr. Gokhale, that our Parliament through the Constitution 86th Amendment Act, 2002 introduced the amended Article 45 of the Constitution and added Article 21-A as a fundamental right under Chapter III of the Constitution of India to ensure free and compulsory education for children up to the age of fourteen years.

It is to be noted that this amendment in the Constitution came long after the pronouncement of the Apex Court in the case of *Unni Krishnan, J.P. and others etc. etc. Vs. State of Andhra Pradesh and others, etc. etc., AIR 1993 SC 2178.* The snail's process with which elementary education was dealt with as an important Constitutional obligation has been described by our eminent jurist Mr. F.S. Nariman in the Chapter, 'Have we forgotten the common man?' in his book "the State of the Nation" in the following words "With this new Constitutional provision, the clock has been effectively put back in time"

Article 45 as amended now reads as under:-

"Article 45. **Provision for early childhood care and education to children below the age of six years.**--The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years."

And Article 21-A is quoted herein below:-

“21-A. Right to education.-- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

This Constitutional change heralded the framing of the Right to Free and Compulsory Education for Children Act, 2009. The Central Government has framed Rules thereunder in 2010 and the State of U.P. has framed The Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011. The said Rules have been enforced in exercise of the powers conferred under Section 38 of the 2009 Act w.e.f. 27.7.2011.

Under the aforesaid provisions, the qualifications and the prescription of the norms for possessing qualifications have also been included. Thus, the Central Government has enforced the said Act and has further issued Notifications in this regard. Vide Notification dated 1.4.2010 of the Ministry of Human Resources Development, Government of India (Department of School Education and Literacy), the National Council for Teacher Education was notified as the academic authority for laying down such qualifications. A Notification was issued on 31.3.2010 by the authority and then vide Notification dated 23.8.2010, the minimum qualifications were fixed by the National Council for Teacher Education which is subject matter of consideration before this Full Bench.

At this juncture, it would be relevant to mention that within the province of Uttar Pradesh after the commencement of the U.P. Basic Education Act, 1972, appointment to Schools established by the Board are being governed by the U.P. Basic Education Teachers Service Rules, 1981. The 12th to 16th Amendment to the said Rules, by incorporating the qualifications on account of

introduction of the Notification dated 23.8.2010, bring about the change in the qualifications introducing the Teacher Eligibility Test for appointment as an Assistant Teacher. It is in this historical and legal background that we have to proceed to answer the questions raised before us.

Sri Rahul Agrawal mainly relying on the observations on the case of Preeti Srivastava Vs. State of Madhya Pradesh, 1999 (7) SCC Pg. 120 urged that a distinction has to be made between the word qualification and eligibility. He submits that the power conferred on the National Council for Teacher Education is to fix a minimum qualification. He therefore submits that the teacher eligibility test is neither a qualification nor does the Council have an authority to fix such a qualification. His submission is that the fixing of any eligibility is beyond the purview of Section 23 of the Act. Section 23 of the 2009 Act is quoted herein under:-

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

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.

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

A perusal of the said provision indicates that the words minimum qualification have been used in relation to the appointment as a teacher. A teaching staff of an institution imparting elementary education as defined under the 2009 Act has to be engaged to provide free and compulsory education to every child. Section 8 enjoins the appropriate government with a duty to provide quality education and ensure good quality elementary education conforming to the standards and norms specified in the schedule. It also indicates providing training facility to the teacher. The responsibilities of the institution includes the responsibility of engaging teachers who are qualified and for this the prescription of qualification has been entrusted to the Academic Authority under Section 23.

Sub-Section (2) of Section 23 gives power to the Central Government to relax the minimum qualifications required for appointment as a teacher for a period not exceeding five years, which appears to have been made with the object that such teachers who on the commencement of the Act do not have the minimum qualification, may acquire the same within a period of five years. Relaxation therefore is in a particular contingency subject to the condition where a State does not have adequate institutions offering courses or training in teacher education or unavailability of teachers possessing minimum qualifications.

Sri Rahul Agrawal therefore contends that the words minimum qualifications have to be understood in the said context and has then invited the attention of the court to Rule 17 of the Right of Children to Free and Compulsory Education Rules, 2011, where it is provided that the minimum educational qualifications

for teachers laid down by an authority authorised by the Central Government shall be applicable for every school referred to thereunder. He therefore contends that it is the minimum educational qualification which can be prescribed and therefore the teacher eligibility test, being not a minimum educational qualification, could not have been prescribed by the Academic Authority. He therefore submits that in view of the distinction between eligibility and qualification as indicated in Preeti Srivastava's case (*supra*), which has been followed in a large number of decisions thereafter, leaves no room for doubt that qualification has to be understood only as the minimum educational qualification and not an eligibility criteria. He therefore contends that the very power of the academic authority namely the National Council for Teacher Education is questionable in prescribing the teacher eligibility test as a qualification.

The second limb of the argument is that the TET is not a qualification at all and is only an eligibility test.

Both these arguments have to be answered on the anvil of the status of the teacher eligibility test. As noted above with the constitutional mandate contained in Entry 25 of List 3, there is no doubt that the powers vest with the Union to frame a law. The 2009 Act was brought into force with the object of providing free and compulsory education to children with clear insistence on quality elementary education. Section 8(g) of the Act reads as under:-

8(g). ensure good quality elementary education conforming to the standards and norms specified in the Schedule.

The very purpose therefore is to provide education as per the standard and norms specified in the schedule. Section 24 of

the Act defines the duties of a teacher which includes the duty to conduct and complete the curriculum in accordance with the provisions of Section 29. Curriculum for the child as contained in Section 29 clearly reflects as to what is required of a teacher who is to implement the said curriculum. Thus qualitatively, the teacher has to conform to standards that ensure good quality elementary education. It is correct that eligibility means the minimum criteria for selection but in the instant case the teacher eligibility test is not a minimum criteria fixed for selection. It is an essential integral part, other than the educational and training qualification prescribed, to be possessed by a candidate before he is appointed as a teacher.

Qualification is the state of being qualified which means to possess the necessary qualities or competency to make oneself eligible or suitable. It is therefore a necessary and essential feature to be possessed, and not a mere eligibility criteria. Teacher eligibility test is an additional norm laid down by the Academic Authority which according to the decision of Preeti Srivastava's case serves the definition of qualification. The contention therefore raised by Sri Agrawal that the teacher eligibility test is not a qualification has to be rejected. It is not a part of something which is to be possessed at the minimum. It has to be possessed in addition to the educational and training qualification.

The argument of Sri Agrawal is that the curriculum of B.Ed. and B.T.C. Courses as approved by the National Council for Teacher Education, clearly indicates the inclusion of all such subjects that are named as papers in the Teacher Eligibility Test. He submits that Pedagogy and Child Development, the skills of teachers training and other factors that are required to be possessed by a qualified teacher are already included in the said

curriculum and hence there is no purpose for calling upon a University Graduate with B. Ed. Qualifications to appear in the teacher eligibility test. The submission appears to be that if a candidate is highly qualified and is possessed of such qualifications that can be related to the subject matter of requirement, then it can be safely presumed that the rule making authority had consciously not included the passing of a teacher eligibility test for such candidates as covered under Clause 3 (a).

As observed hereinabove, the teacher eligibility test cannot be taken out of the definition of qualification being an additional norm. If that is so, then the first question stands answered that the National Council for Teacher Education being the Academic Authority is empowered to fix the minimum qualification which includes a Teacher Eligibility Test.

Coming to the second limb of the argument, the purpose of a teacher eligibility test is to ensure that the candidate claiming himself to be possessed of such attributes and abilities, has actually acquired his academic and training qualifications genuinely. The capacity of a candidate claiming to be possessed of the educational and training qualifications has therefore to be screened to treat him to be qualified and then eligible for being appointed as a teacher. This is in tune with the object of 2009 Act to provide good and quality education at the elementary level with the aid of the best teachers. If the Council, duly authorised by the Central Government, has prescribed this norm which is for the purpose of ensuring the implementation of the Act, then the argument that the prescription is ultra vires to Section 23 of the Act has to be rejected.

Sri Agrawal has also urged that the acquisition of an educational qualification is by the known educational processes.

The teacher eligibility test is not an educational method or a degree or a course that ends up in a qualification. He therefore draws a distinction between a qualification acquired through an educational process of learning, for example a degree of graduation or a B. Ed. Degree, and a mere eligibility test which is not preceded by any pursuit of regular course. This argument also cannot stand the scrutiny of law, inasmuch as, this is akin to the National Eligibility Test that is required to be possessed by teachers aspiring to be appointed in colleges and universities of higher education. The validity of such a test was challenged and was upheld in the case of *University of Delhi Vs. Raj Singh*, 1994 Supplement (3) SCC 516.

There also the word qualification came up for consideration and the apex court after having noticed the requirement came to the conclusion that there has to be a uniform scrutiny of all the candidates as they are possessed of educational and training qualifications from different sources. The eligibility test therefore is to ensure that candidates coming with diverse educational and training qualifications acquired from different sources are assessed uniformly for the purpose of being selected as the best material for being appointed as a teacher. This is another essential ingredient of a eligibility test, which has been designed as in the present case to ensure an even method of selection. It is for this reason that the curriculum of the teacher eligibility test at the national level has been prescribed by the National Council for Teacher Education for it being implemented throughout the country. It is therefore not only to get the best available candidates for teaching but also to ensure a uniform pattern throughout the nation for employing teachers to provide quality education at the elementary level.

To further understand as to why the teacher eligibility test is

a qualification one can refer to the guidelines dated 11th February, 2011 where the background and rationale for conducting the said test has been referred. We may mention at the outset that the said guidelines had totally escaped the notice of the division bench and its ingredients while proceeding to treat the teacher eligibility test to be not necessary for the candidates falling under Clause 3 of the Notification dated 23.8.2010. The guidelines provide that persons to be recruited as teachers should possess the essential aptitude and ability to meet the challenges of teaching at the elementary level. The consequences were explained by the rationale that it would bring about national standards and bench mark of teacher quality in the recruitment process. It would further induce teacher education institutions to improve their performance standards and a positive signal to all stake holders that the Government lays special emphasis on teacher quality. This rationale therefore justifies the teacher eligibility test as an additional norm apart from the educational and training qualifications.

This is fortified by Clause 5 of the guidelines dated 11.2.2011 which says that a person who has acquired the academic and professional qualification under the notification dated 23.8.2010 shall be eligible for appearing in the teacher eligibility test. This Clause leaves no room for doubt that all classes of candidates possessing the academic and professional qualifications would be eligible to appear in the teacher eligibility test and therefore it is a norm which is compulsory for all classes of teachers including those who fall within Clause 3 of the notification dated 23.8.2010.

The next is the structure and content of the test which has five sections in relation to examination for Classes 1 to 5 with which we are presently concerned. These five sections are Child

Development and Pedagogy, Language 1 – focussing on proficiency relating to medium of instruction, Language 2- an optional language, Mathematics and Environmental Studies. The test items for the last two subjects should be correlated with concepts of problem solving ability and pedagogical understanding of the subject.

The scheme of the said examination therefore is not limited to one particular course of study like an individual subject or a B. Ed. Course. The argument of Sri Agrawal was to compare the curriculum of the higher educational qualifications possessed by a candidate under Clause 3 of the Notification dated 23.8.2010 to indicate that it is inclusive of everything that may be required of a teacher and which qualification has been acquired by a due process, recognised in law. Having perused the curriculum as enumerated hereinabove, we have no doubt that the structure and content of the teacher eligibility test is of a comprehensive character not narrowed down to any individual subject but relates to the overall performance of a candidate to test his capacity and attribute as a teacher. The curriculum therefore cannot be compressed so as to be compared with the claim of possession of a higher qualification of graduation or a B. Ed. Degree.

At this stage the importance of Child Development and Pedagogy deserves to be emphasised in the backdrop of the social environment that requires a mention when the province is facing not only a shortage of numbers, but an acute shortage of duly qualified and educated teachers at the primary level.

Our court is fully aware of the huge problems that are being faced in this branch of elementary education with the influx of temporary methods of providing instruction through teachers like Shiksha Mitra and Preraks. In this background, the emphasis of

quality teachers attains more importance.

The subject of Child Development and Pedagogy assumes importance and consequently a teacher eligibility test no longer remains a mere eligibility test but becomes the most essential qualification to be possessed for being appointed as a teacher. The word Pedagogy is derived from the word Pedagogue. It originates from the combination of two Greek words, *Piados* which means Boy and *Agogos* which means leading or guiding. In ancient times a Greek Slave who was charged with the care of his master's child in his youth with a job to escort the child, to and fro, from school, was known as a pedagogue. Slowly with the passage of time the said word came to be adopted as a synonym for a person who taught in a class room, and was a tutor as he was supposed to lead or guide a child. Thus Pedagogy came to be acknowledged as a science that related to the skill of teaching. It became a scientific art and was developed for the very purpose and aim of Child Development.

In our province the dwindling number of students being admitted to primary schools run by the Board or by the Government is alarming. It would not be inappropriate to comment that a teacher of a primary school used to be a school teacher but has no class now. The apathy and the non-cooperating attitude of guardians is largely due to inefficient handling of their children in such schools. This in turn has led to mushrooming of innumerable private elementary schools that are also sought to be curtailed by strict enforcement of 2009 Act. One of the reasons is also the change in social conditions as parents these days have to obey their children and not vice versa. It is in this context that the teachers have also lost their directions even though "teaching is not a lost art, but the regard for it is a lost tradition.". (Jacques Barzun). It should not be forgotten that a

school is a building that has four walls – with tomorrow inside.

Children these days are at times sent away by parents to school as if they are an unnecessary strain on them. Children with this background, if not treated properly at school, visualise it as a torture house. A school is not an outlet for parents. It is an institution where the blacksmith and goldsmith of education sit together and chisel the best of human products. Children are the poor man's riches and the rich man's asset. In both cases a good man dies when a child goes wrong. It is for this reason that elementary education is the best paying investment for future life. The training of a child, that is an integral part of child development, is essential for his grooming, as a human mind, without proper training is like a horse without a bridle difficult to ride. Children in their cradle of life with the help of teachers can mould their lives for higher ambitions in their manhood. To assess and mould children with these ideals is the job of a skilled teacher and the art of such skill is pedagogy. Teachers have to serve the larger interest of the society as they are building the future. Henry Brooks Adams said, "A teacher affects eternity; he can never tell where his influence stops" and more appropriately Christa McAuliffe said " I touch the future. I teach". This requires the possession of virtues like sacrifice and honour which in turn brings respect to the status of a teacher and infuses confidence in the pupil.

Many children are victims of apathy and wrongly motivated parental treatment. Their emotional and skilful assessment, and proper treatment, has to be handled within the clinic of an elementary school where the sole physician is none else than a trained teacher. A candidate possessing a mere educational or a training qualification without any genuine attribute may not necessarily be a good teacher.

It is in this background that one may remember those who have contributed to this skilful art of pedagogy. In the modern world the great philosopher and Educationist Rousseau, followed by the Swiss Predecessor of his German Pupils, Pestalozzi, are worth remembering. They were followed by the famous Germans Herbart and Froebel. The English with Lancaster and Bell followed suit and in the modern world it would be improper to forget the great contributions of Maria Montessori.

We do not wish to pile up names but this is only to emphasize that a great scientific contribution has been made to this skilful art of pedagogy. If one goes through the works of these great people, one can understand that child development and teaching children is no easy task and cannot be confined with the acquisition of a couple of degrees as a supplement to the complete attribute required of a teacher. The narrow meaning of qualification therefore that was being pressed into service by Sri Rahul Agrawal cannot be countenanced in view of the vast ocean of understanding that is required of a skilful teacher.

In the instant case the skill of the teacher should be lined with such ingredients that it kindles the spark of a child and balances a group of mentally uneven children. The duty of a good teacher is to bring the student into contact with the learning of fruitful elements that ensue an enduring significance in life, affirmative information of all modes of intellectual, systematical and practical activity that play a major part in the building of human mind and spirit. Their interplay is the exercise that has to be undertaken by a teacher. This exercise, particularly, in a class room of infants should be underlined with methods that are elastic enough to fit the varying needs of different types of children. The cultivation of mental training and discipline is the prime object of

good teaching. We celebrate 5th of September each year as Teachers' Day to commemorate the birth of our late President Dr. S. Radhakrishnan. He defined the good qualities of a teacher as follows:-

“A good teacher must know how to arouse the interest of the pupil in the field of study for which he is responsible,
he must himself be a master in the field and be in touch with the latest developments in his subject,
he must himself be a fellow traveler in the exciting pursuit of knowledge”

It is for this reason that the status of a teacher has been described in our ancient scriptures as follows:

“Guru Brahma Guru Vishnu Guru Devo
Maheshwaraha Guru Saakshat Para Brahma
Tasmai Sree Gurave Namaha”

Describing the role model of teachers, our Former President of India Dr. A.P.J. Abdul Kalam, narrated his experience in his teachers' day speech on 5th September, 2003 and said that a school must have the best of teachers who have the ability to teach, love teaching and build moral qualities.

These are the challenges of teaching which have been referred to in the guidelines dated 11th February, 2011. It is in order to ensure that the candidate is possessed of such attributes. The guidelines further provide that a candidate will be presumed to have succeeded in the test if he scores 60% or more. Some concessions have been given for reduction in the said percentage

in the case of scheduled caste, scheduled tribes, and other backward classes as well as differently abled persons.

The reason for this is that the art of teaching is designed to educate a child. Education is not mere acquisition of qualifications but is an overall development of a child to ensure growth and development. It is the awakening of the inner self and faculty of the child to the ways of the world. The teacher therefore should be possessed such qualities that he satisfies the curiosity of a child that enables him not only to read but to distinguish what is worth reading. The job of a teacher is not to fill the time-table with dull unintelligible tasks. This violates common sense and creativity brutally. Teaching and training cannot be effected in the absence of knowledge about the mind which is to receive them.

It is the systematic and purposeful construction of a personality, so that it leaves an everlasting effect on the mind. The job of a teacher is to get across the confidence in a pupil, that there were good reasons for everything the teacher did. He has to be transparent and he cannot leave a pupil to guess that there are any hidden answers. A good teacher would like the pupil to lead the way. The teacher would follow and let the pupil know that his efforts would be recognised. This confidence would help the child to develop a strength in himself to cope up with his own world by observing and solving problems. The art of teaching should not be confined only to oral transmissions because what one hears one can forget. However, what one sees, one remembers but what one does he understands. This is what should teaching be comprised of. The teacher should therefore be in a position to infuse into a child such attributes that he or she acquires the ability to assume responsibility for himself/herself. A psychological independence that enables him/her to decide at the same time and differentiate right from wrong. This capacity of a child which

lies concealed in him has to be discovered in a way that the child finds this world an interesting place to live in. For this good teaching may be 1/4th preparation and 3/4th performance.

A teacher is like a professional as said by Danny Hillis, "A layman knows he has to kick it; and an amateur knows where to kick it; a professional knows how hard." This quality should be possessed professionally by a teacher as the object of teaching a child is to enable him to get along without a teacher.

The skill of such a performance has to be assessed because teaching is a great art to educate youth to enable him to find out and discover his own peculiar aptitudes or create where none exists. A teacher has to create inclinations in the child which may serve as substitutes. The level of inspiration that has to be infused in a child should be such that he is able to make a mark in life as a complete human being. One should remember that "millions see the apple fall, but Newton was the one to ask why?" The job of a teacher at the primary level is to generate this element of curiosity in a child.

For this teachers have to be attributed with qualities that they are able to handle the weak and the nervous, the mediocre and intelligent with measured skill. This expertise is a onerous task and is a substantial part of pedagogy. To teach a child to become self sufficient is the art which has to be developed with caution so as not to destroy the fragile confidence by using harsh methods. The teacher eligibility test appears to be designed for this purpose.

It is to be remembered that teachers are to impart education to those souls who are between the period of innocence of childhood and the folly of youth. It is this aspect of pedagogy to

educate a child to lead life that attains importance.

The art of dealing with children also involves knowing what not to say, and on the other hand patiently answering the unpredictable questions of an inquisitive child. A teacher should not give answers to children to remember only, but he should be able to give them problems to solve. It is then that the potentiality of the human race is better put to use "because a child is not a vase to be filled but a fire to be lit." (Francois Rebelais). A Chinese Proverb goes a long way to say "give a man a fish and you feed him for a day. Teach a man to fish and you feed him for a lifetime." Teaching is infusing of ideas instead of stuffing the brain with facts. William Arthur Ward a famous educationist said that "The mediocre teacher tells, a Good teacher explains, a Superior teacher demonstrates but the great teacher inspires."

Children come from different backgrounds often being victimised by unwise and wrongly motivated parental treatment. The teacher has to be more careful for he is enjoined with the duty of child development. This therefore is the background in which the teachers role attains immense significance. It is for such reasons that the Union and the State appear to have come up with the necessity of a teacher eligibility test.

The importance of teaching and a teacher's selection should be to find out whether a candidate fulfils and is possessed of such attributes, that is capable of bringing out the best to ensure child development. "The art of teaching is the art of assisting discovery (Mark Van Doran)". This compulsory attribute is therefore to be assessed by the State while judging the capability of a teacher and which therefore is an essential qualification and not only a minimum qualification. The essential nature of this test therefore

leaves no room for doubt that mere possession of educational qualification and a teachers training course is not sufficient to assess the capacity of a teacher.

Sir Winston Churchill while assessing the role of a teacher observed that the Head Masters of elementary schools have powers at their disposal with which even Prime Ministers have never been vested with. The reason is that the school master has to reckon not only with his pupils human tendency to run, but also with the unwisdom of parents in their early dealings with early tendency; elimination of wrong doing, not by plainly repressive methods is also one of the arts that has to be possessed by a skilful teacher.

All this goes to fulfil the objectives with which Article 45 of the Constitution of India was incorporated under the United Nations declaration which says that mankind owes to the child the best it has to give. An infant who does not know how to express himself, enters in an elementary school where he has to be taught his initial alphas and betas. The pronunciation, sentence-forming, elementary grammar and understanding of his first alphabets have to be installed in his mind with expertise. It is for this reason that the curriculum of the TET includes proficiency in the language of the medium of instruction, an optional language for a better understanding with the student, mathematics to assess the investigative strength of the mind and finally environmental studies to gauge the overall awareness of human life and nature. This has to be coupled with moral education and discipline and this entire combination in one performance is the skill of a teacher. He has to handle the weak and the nervous, the mediocre and intelligent, with an adequate measured skill for which a basic attribute with intelligence is required to be possessed by a teacher. A teacher cannot employ methods like

knocking of a child because such methods do not always turn a timid boy into a courageous one nor does it turn a spoilt brat into an angel. Nonetheless it is useful to remember Bishop Fulton J Sheen who said "Every child should have an occasional pat on the back, as long as it is applied low enough and hard enough". For teachers and guardians the proverb "Give a child enough rope, and you will trip" is also a cautionary note. The acquisition of such expertise is what is desired to be assessed and that is what the teacher eligibility test is designed for. It is only to assess these qualities that would qualify a teacher for being appointed as such and therefore the teacher eligibility test is not a mere eligibility criteria but a qualification as prescribed in addition to the academic and training qualifications.

It would be apt to quote Charles Dickens in his famous book "Hard Times" where the quality of a teacher has been expressed from another angle as follows:-

"What I want is facts. Teach these boys and girls nothing but facts. Facts alone are wanted in life. Plant nothing else, and root out everything else."

The role of teaching is therefore of a mediator of learning, a parent substitute, a controller of students' behaviour, an agent of social change and finally a judge of achievement. The teacher who enters a school imparting elementary education has to act like a group leader who can remove the hindrances of doubts in the mind of an infant and generate creative development. Above all he has to instill in the mind of a youngster all virtues of courage and honesty as this part of education is a vital portion of child development. It is in the early years that the importance of education has to be preached so as to achieve what a former U.S. President Garfield said "Next in importance to freedom and justice is education without which the other two cannot be entertained."

Ranjeet Ji Sahani in his Work "Indian Pilgrimage" on elementary education says " in the early years when plasticity is at its peak point it can be moulded to any chosen end. The formative years are of vital importance." The teacher has therefore to create an atmosphere to resolve this struggle of the infant from within. It is not a class of parrotry but is an arena where the overall grooming to get the best out of the child is the objective. It is as Mark Van Doran has said that "the art of teaching is the art of assisting discovery." It is therefore a long list of succession of combined activities which a teacher has to guide, and at times disabled children are also required to be given due attention.

This being the status that is required of a teacher, we do not wish to add any further as it falls within the realm of experts to define what further attributes are required to be comprehended for the image of a skilful teacher for elementary education, but we have given our thoughts a due consideration keeping in view the structure and content of the teacher eligibility examination referred to hereinabove. Thus we are of the firm view with the teacher eligibility test is to make sure that the teacher is qualified in the field which he is about to enter and accordingly is an additional norm and not a mere eligibility criteria.

We would now like to delve on the reasoning given by the division bench to treat Clause 3 in isolation. We may at the very outset observe that the division bench has omitted to consider the declaration in the notification dated 10th September, 2012 itself where Clause 2 leaves no room for doubt that all teachers who are candidates for Classes 1 to 8 have to appear in the teacher eligibility test. Clause 4, of the guidelines issued by the Central Government for relaxation under Section 23(2) dated 8.11.2010

which has been referred to in the division bench judgment, clearly mandates that the Central Government shall not relax the TET qualification. The guidelines dated 11th September, 2012 that have been framed in the exercise of powers under Section 35 of the NCTE Act, 1993 leave no room for doubt that the prescription is for all classes of candidates who want to become a teacher from Classes 1 to 8 uniformly. The test has been bifurcated between lower primary classes and upper primary classes, namely for Classes 1 to 5 and Classes 5 to 8. The said guidelines do not draw any distinction between the candidates possessed of the qualifications under Clause 1 and Clause 3. The exemption notification dated 11th September, 2012 was in response to a request made by the State Government dated 26th July, 2012. We have carefully examined the same and we find that the State Government had not sought any exemption or relaxation in relation to TET for the candidates falling in the category of Clause 3. It was only the extension of the date for acquiring qualifications upto 31st March, 2014 that had been requested for, and was granted by way of relaxation. This was because of the specific prohibition contained in the guideline dated 8.11.2010 that no relaxation is contemplated for TET qualification. The same further fortifies it to be an essential qualification. The Notifications and the guidelines clearly indicate that there shall be no relaxation in the requirement of passing the teacher eligibility test. We therefore fail to find any support in the reasoning of the division bench in Prabhakar Singh's case to read Clause 3 in isolation so as to exempt such candidates from appearing in TET.

The rule of harmonious construction to interpret a statute requires the consideration of the objects and reasons of the provision and all other ancillary material that comes to the aid for implementing the object and purpose of the statute. The division bench in our humble opinion did not adhere to this principle and

did not refer to this ancillary material including the NCTE guidelines dated 11.2.2011 or to Clause 4 of the guideline of the Central Government dated 8.11.2010 to assess the correct applicability of the teacher eligibility test for all candidates uniformly. Merely because the teacher eligibility test was not additionally mentioned in Clause 3 would not dilute the intent and purpose of the test, that is meant for all teachers from Classes 1 to 8.

The relaxation also as explained hereinabove, did not place Clause 3 in isolation on Clause 1. As a matter of fact Clause 3 is in continuation of Clause 1 and it only describes another category of educational and professionally qualified candidates entitled to be considered for being appointed as teachers. This placement of another category of qualifications does not exclude the applicability of the teacher eligibility test clause. If that is taken as a separate clause it would result in discrimination, and that would be contrary to the intent and purpose of the 2009 Act as well as the notifications issued thereunder.

The diversity of certification of the academic and training qualifications is also one of the reasons to test the attribute of a teacher as to whether such qualifications are possessed by him or not. In our opinion, keeping in view the overall impact of the notifications and the final incorporation of the qualification of TET in Rule 8 of the 1981 Rules leaves no room for doubt that the Central and the State Government both have accepted the teacher eligibility test as an essential qualification. In the aforesaid background, the reasoning given by the division bench in Prabhakar Singh's case to exclude the candidates under Clause 3 cannot be supported in law.

From the arguments that were advanced it appears that

there was no challenge to the inclusion of the teacher eligibility test as a qualification but the real challenge was that this qualification has not to be acquired by those candidates who had completed their training qualification prior to the notification dated 23.8.2010. It is no doubt true that such candidates who did possess the qualifications as per the National Council for Teacher Education Regulation, 2001 were entitled to be appointed under the old rules prior to 23.8.2010 and according to the then existing qualifications. However, only such candidates were exempted under the notification whose recruitment process of appointment had begun prior to 23.8.2010. We have already noted hereinabove that mere completion of the process of training qualification of B.T.C. by itself is not the initiation of the recruitment process. In such circumstances, if those candidates who had completed their training qualification, but the posts had not been advertised in accordance with Rule 14, then these candidates would not be saved, and if the recruitment process begins after 23.8.2010, then in that event such candidates do not get exempted and they have to pass the teacher eligibility test.

Another argument has been raised with regard to the unsure status of the qualifications that were prescribed in the notification dated 23.8.2010. It is here that we wish to emphasise that imparting of compulsory and free education is part of a sovereign function after being included as a fundamental right under Article 21-A. Even otherwise its importance does not get diluted and as such the Central Government is under an obligation to provide free and compulsory education. The Central Government therefore in exercise of its competence has brought about a legislation and has conferred powers on the Academic Authority to execute the same. We have further come across the amendment brought about in the National Council for Teacher Education Act, 1993 through Act No. 18 of 2011 enforced on 12th

October, 2011 whereby with regard to qualifications of school teachers Section 12-A has been incorporated as follows:-

“12A. 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.”

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

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 23.8.2010 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.

The legislative competence and the intent therefore lead to the conclusion that the Central Government has authorised the National Council for Teacher Education to make provisions and which have been carefully en-grafted in the Notification dated 23.8.2010. The State Government has followed suit. However, the State Government delayed the incorporation as the Rules were framed by it later on in 2011 and the 1981 Rules were amended much later. The 12th, 13th, 14th, 15th and 16th amendment in the 1981 Rules were brought at a later period. In our opinion, however, merely because the State incorporated these provisions in its rules later on would not take away the impact of the norms prescribed by the National Council for Teacher Education that stood enforced w.e.f. 23.8.2010. The delegated legislation of the State Government was subject to the primary legislation of the Central Government. The framing of rules as a subordinate legislation is subservient to the provisions framed by the Central Government. The notification dated 23.8.2010 therefore has an overriding effect and it could not have been ignored. If the State Government has proceeded to make appointments after 23.8.2010 without complying with the provisions of teacher eligibility test then such appointments would be deficient in such qualification.

It may be emphasised that there is no challenge raised to

such appointments against rules, but the law is certain that appointment de-hors the rules cannot be said to be valid. After the enforcement of the notification dated 23.8.2010 every candidate aspiring to become a teacher of elementary education in any of the institutions defined under the 2009 Act has to be possessed of the qualifications prescribed therein. The intention therefore of the legislature is clear that no teacher without such a qualification can be allowed to continue as a teacher in the institution. We wish to clarify that the binding effect of the notifications and the guidelines is such that the weightage which is contemplated under the guidelines dated 11th February, 2011 cannot be ignored. The minimum score that is required of a candidate is 60% to pass the teacher eligibility test. A concession of 5% has been made in favour of the reserved category candidates including the physically challenged and disabled persons. This norm therefore cannot be diluted. Apart from this, the State Government has to take notice of the fact that weightage has to be given in the recruitment process as well. It is for the State Government to suitably adopt the said guidelines and we do not wish to add anything further at this stage as we are only concerned with the essentiality of the qualification of the teacher eligibility test to be possessed by any candidate aspiring to be appointed as a teacher.

We wish to make it clear that the law has to be followed in the manner in which it has been legislated. It cannot be diluted on account of the inaction of the State. In such circumstances all teachers whose appointment relate to the period after 23.8.2010 have to be possessed of TET.

Coming to the arguments advanced by Sri Ashok Khare, learned Senior Counsel, who contends that the entire judgement should be overruled on both counts, we may make it clear at the

outset that the finding in the first part of the reported judgment contained in paragraph Nos. 34 to 53 thereof relate to the stand of all such candidates, who have acquired the academic and the training qualifications prior to 23.8.2010, to urge that they should be appointed in the same fashion as was being done earlier without any compulsion of passing the Teacher Eligibility Test. They are in essence seeking appointment by virtue of an interpretation of clause 5 of the Notification dated 23.8.2010 to contend that since the Advertisement for the training qualifications had already been issued earlier, and the same amounts to initiation of the recruitment process, and therefore, such candidates should be appointed without undergoing the test. A similar argument has been advanced by Sri Arvind Srivastava and Sri Alok Mishra on this issue.

We are unable to find any error in the reasoning contained in Paras 34 to 53 of the Division Bench in Prabhakar Singh's case on this count for the reasons given hereinabove and hereinafter and we, therefore, approve the judgment to the aforesaid extent.

Sri Khare has then proceeded to expand his argument in relation to the unsure status of the cut off date of the applicability of the Notifications. We are not impressed by this argument inasmuch as we have already concluded herein above that the power under Section 23 (1) of the 2009 Act, overrides the field on this aspect and once the qualifications have been fixed in exercise of such powers, the same cannot be avoided by the State Government by any delay of implementation of such qualifications. The State has no choice but to apply the Notification dated 23.8.2010 with immediate effect.

Sri Khare has then advanced his submissions on some issues more but we do not find it necessary to answer the said

arguments as they do not come squarely within the reference which has to be answered by us. We are, therefore, confining ourselves basically to the questions referred and the correctness of the judgment in Prabhakar Singh's case in relation thereto.

We have heard Sri Arvind Srivastava for those candidates who are seeking impleadment and contend that they were candidates of special BTC course 2007 and 2008 entitled to be appointed as Teachers along with their counterparts, who have been offered appointment without having passed the Teacher Eligibility Test. The Intervener Application has been filed by Prabhakar Singh and another in Writ Petition No.12915 of 2013 filed by Prit Pal Singh, in which the present reference has been made.

The contention of these applicants is that they were already fighting the litigation pertaining to their qualification before the Supreme Court even though they were applicants pursuant to the Advertisements dated 17.7.2007 and 19.1.2008. The judgment of the Apex Court in favour of these candidates in the case of Bhupendra Nath Tripathi was delivered in October 2010 whereby they were also held to be eligible as they were having the training qualification which were acquired from the outside the state.

The candidates of the same batch, whose qualifications were not doubtful, had already been appointed and were also appointed after the Notification dated 23.8.2010. In the aforesaid circumstances, the interveners cannot be discriminated and they were also entitled for being appointed without having passed the Teacher Eligibility Test.

To justify their stand the first argument raised by Sri Srivastava is that such applicants, who had applied against the

vacancies of 2007, would continue to be considered for appointment as Assistant Teacher under the Rules that were existing then. The qualifications have, therefore, to be seen on the date of advertisement that was then issued for the purpose of inviting candidates for training of special BTC course. They, therefore, insist that the advertisement that was made prior to 23.8.2010 for imparting the special BTC Training course would govern the process of appointment of such candidates including the petitioners as the vacancies were existing then.

The argument, therefore, appears to be that if the vacancy relates to the advertisement for training prior to 23.8.2010 then the said vacancy will have to be filled up under the old rules and the method of recruitment as was then existing and not by the qualifications now prescribed under the Notification dated 23.8.2010.

We are unable to agree with this proposition inasmuch as the process of recruitment would begin from the date of advertisement under Rule 14 of 1981 Rules. The advertisement for imparting special BTC training is not an advertisement for selection and appointment as an Assistant Teacher. This aspect is already covered by the first part of the judgment in Prabhakar Singh's case which has followed the ratio in the case of Devendra Singh (supra) where the Apex Court has clearly indicated that the process of recruitment would begun with the advertisement under Rule 14. In the circumstances, the vacancies were yet to be advertised for recruitment and, therefore, no appointment process had commenced so as to be saved under the provisions of Clause 5 of the Notification dated 23.8.2010. The employer has a right to alter it's rules of recruitment and in the instant case it is by a statutory intervention that the qualifications have been prescribed afresh w.e.f. 23.8.2010 apart from the existing qualifications in

the 1981 Rules. It has been held by the Apex Court in the case of Mohd. Sartaj and another Vs. State of U.P. and others, (2006) 2 SCC 315, that the qualifications have to be seen at the time of recruitment which ratio also appears to be on similar lines in the case of Rajasthan Public Service Commissioner Vs. Kaila Kumar Paliwal and another, AIR 2007 SC 1746. The Notification dated 23.8.2010, therefore, alters the status of these candidates as they were not under the process of recruitment as defined under Rule 14. The argument of Sri Srivastava that clause 5 of the Notification dated 23.8.2010 saves the interveners from appearing in the Teacher Eligibility Test, therefore, cannot be accepted.

The next contention is that candidates who have not passed the Teacher Eligibility Test, have been appointed even after 23.8.2010. As already indicated by us, if the process had not begun by any advertisement as required under Rule 14, the petitioners cannot claim parity with such candidates. They will, therefore, have to undertake the Teacher Eligibility Test as, in fact, they have not entered the recruitment process or appointment as yet. The allegation that the State cannot adopt two yardsticks is not the issue inasmuch as the point to be resolved is as to whether the Teacher Eligibility Test is a necessary qualification or eligibility condition for the appointment of an Assistant Teacher in an elementary School after the Notification dated 23.8.2010 or not. If the State has proceeded to act contrary to rules, then the same cannot be a ground for claiming equality under Article 14 of the Constitution of India. The action of the State which is not in accordance with law or was an action under the transitory phase of the issuance of the rules and adoption of the Notification dated 23.8.2010 cannot enure any advantage to the interveners. The contention that rights had accrued in their favour prior to 23.8.2010, therefore, cannot be supported in law in the light of the observations made herein

above.

The contention of Sri Srivastava that the candidates have a legitimate expectation also cannot be accepted as the legitimacy of an expectation has to be founded on the basis of some right. The letters of the Secretary of the Board, which have been relied upon by the learned counsel for the petitioners, are administrative communications which cannot override the effect of Rule 14. If a promise was made by the State that the appointment will be made as soon as the training is completed, the same would not mean that rule 14 has not to be complied with. The letter issued by the Basic Education Board or by the Secretary or the Director cannot be treated to be either an executive instructions or Government Order that may be enforced as a matter of law over and above Rule 14.

Sri Srivastava then proceeded to give another turn to the argument by contending that the Notification dated 23.8.2010 issued by the National Council for Teacher Education was unauthorised and did not have the force in law inasmuch as the Central Government issued the authorisation on 1.4.2010 whereby the National Council for Teacher Education was empowered to lay down the minimum qualification as the academic authority.

The National Council for Teacher Education had issued the norms of minimum qualification on 31.3.2010 which was prior to the authorisation under the Notification dated 1.4.2010. Sri Srivastava, therefore, submits that if the Notification for fixing the minimum qualification had arrived one day earlier to the authorisation under the Act itself, the same has no legal force. The argument at first flush appears to be attractive but on a perusal of Section 22 of the General Clauses Act, 1901, the said

argument has to be rejected outright. The authorisation had come on 1.4.2010 but the process of authorising the National Council for Teacher Education had commenced and it was issued one day earlier i.e. on 31.3.2010. The same was, however, published on 5.4.2010 i.e. after the authorisation had been issued by the Central Government. The norms laying down minimum qualifications, therefore, would come into effect from 5.4.2010 and not from 31.3.2010. It stands saved under Section 22 of the General Clauses Act as referred to herein above. This aspect is also supported by a couple of judgments of the Apex Court cited by the learned Counsel for the Central Government and the State reference whereof has been noticed in connection with Section 23-A of the U.P. General Clauses Act in the Division Bench judgment, State of U.P. Vs. Mahesh Narain, 2008 (71) ALR 926.

The next contention raised that the minimum qualifications fixed in addition to Rule 8 of the 1981 Rules do not in any way take away the impact of the existing qualification under Rule 8 and, therefore, such candidates, who possess the qualification as prescribed under Rule 8, cannot be excluded. Needless to mention that the Rules have already been amended and the Teacher Eligibility Test also forms part of the amended Rules under the 1981 Rules relied upon by the learned counsel. Even prior to the amendment of Rule 8, the contention that there is no prohibition of considering the candidates without the Teacher Eligibility Test is a misconceived argument. The rules, which had not been amended, were obviously not in accordance with the norms prescribed by the Central Government under the 2009 Act. Thus, the State Government cannot afford to ignore the said Rule or make appointment of candidates, who were not possessed of such qualifications. The argument that the word "minimum" does not mean only, is a misconceived argument inasmuch as, minimum means the least that has to be possessed. It does not mean that

other qualifications cannot be prescribed or if prescribed cannot be read in addition to minimum qualification. The argument, therefore, raised by Sri Srivastava also does not come to his aid and in our opinion the Teacher Eligibility Test has to be passed by a candidate before he seeks appointment of Assistant Teacher after the promulgation of the Notification dated 23.8.2010.

Another argument advanced is that the State Government framed Rules under Section 38 of the 2009 Act on 27.7.2011 which indicates that there was a requirement to frame Rules in view of the provisions contained under Section 23 of the Act or else they would have been automatically covered. This argument is also misconceived inasmuch as the definition of the word "Institution" in the 2009 Act has been lost sight of by the learned counsel which includes all the Institutions as are indicated under the 2009 Act.

Sri Srivastava then contends that the judgment in the case of Prabhakar Singh causes discrimination between the candidates who have the special BTC training course and those who are having only BA and B.Ed. qualifications by exempting the latter class from appearing in the Teacher Eligibility Test. We have already indicated above that this part of the judgment in Prabhakar Singh's case deserves to be overruled as no such exemption has been granted by the provisions under the Notification dated 23.8.2010 as amended later on. In the aforesaid circumstances, this argument also deserves to be rejected.

One of the crucial arguments on the anvil of Article 14 of the Constitution that has been advanced is that the judgment under reference creates two classes of Teachers and the State Government has also discriminated one category of candidates

namely those who were entitled to be appointed even prior to that. This argument has been advanced on the strength of the admitted position that candidates without having passed the Teacher Eligibility Test appointed even after 23.8.2010 belong to the category of special BTC course of 2007 and 2008 and also compassionate appointees.

The response of the State Government is that some appointments have been cancelled but so far as those teachers who have already been appointed and have been working even though they have not passed the Teacher Eligibility Test, their chapter should be treated as closed. Sri C.B. Yadav, learned Addl. Advocate General, has categorically stated this on instructions from the State Government. Thus, there exist a certain class of Teachers, who have been appointed after 23.8.2010 and do not possess the Teacher Eligibility Test qualification. They have also been appointed under the old prevalent practice of not facing any fresh selection after advertisement under Rule 14 and have been appointed immediately after training. They were appointed against the vacancies which were far above than the available number of candidates and, therefore, their appointment was almost a foregone conclusion.

Since this issue has been advanced time and again and has been canvassed by both the sides, we may put on record that the issue of law as referred has been categorically laid down by us and the appointments have to be made only in accordance with the aforesaid position of law. We do not wish to add anything further leaving the question raised above open to be debated and decided in appropriate cases as this is not a point of reference.

The questions that have been therefore framed by us are answered as follows:-

1. The teacher eligibility test is an essential qualification that has to be possessed by every candidate who seeks appointment as a teacher of elementary education in Classes 1 to 5 as per the notification dated 23.8.2010 which notification is within the powers of the NCTE under Section 23(1) of the 2009 Act.

2. Clause 3(a) of the notification dated 23.8.2010 is an integral part of the notification and cannot be read in isolation so as to exempt such candidates who are described in the said clause to be possessed of qualifications from the teacher eligibility test.

3. We approve of the judgment of the division bench in Prabhakar Singh's case to the extent of laying down the interpretation of the commencement of recruitment process under Clause 5 of the notification dated 23.8.2010 but we disapprove and overrule the ratio of the said decision in relation to grant of exemption and relaxation from teacher eligibility test to the candidates referred to in Clause 3 (a) of the notification dated 23.8.2010, and consequently, hold that the teacher eligibility test is compulsory for all candidates referred to in Clause 1 and Clause 3 (a).

Let the judgement be accordingly placed before the respective benches for appropriate orders.

Order Date: 31.05.2013
Irshad