

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Chief Justice's Court

Case :- SPECIAL APPEAL DEFECTIVE No. - 130 of 2014

Appellants :- Harsh Kumar And Another

Respondents :- State Of U.P. And 4 Ors.

Counsel for Appellants :- Satyendra Chandra Tripathi, Radha Kant Ojha

Counsel for Respondents :- C.S.C., R.P. Singh

AND

Case :- SPECIAL APPEAL No. - 131 of 2014

Appellants :- Devendra Narayan Pandey And 11 Others

Respondents :- State Of U.P. And 2 Ors.

Counsel for Appellants :- Satyendra Chandra Tripathi, Radha Kant Ojha

Counsel for Respondents :- C.S.C., A.K. Yadav

Hon'ble Dr. Dhananjaya Yeshwant Chandrachud, Chief Justice Hon'ble Dilip Gupta, J.

Both these special appeals arise from a judgment and order of the learned Single Judge dated 14 November 2013 by which the petitions filed by the appellants under [Article 226](#) of the Constitution have been dismissed.

2. **The appellants claim that all of them have acquired the qualification of a Diploma in Education (Special Education) (DEd) and have successfully cleared the Teachers Eligibility Test (TET) and are eligible for appointment to the post of Assistant Teachers in primary schools. On 15 October 2013, the State Government issued a Government Order in regard to the selection/appointment of Assistant Teachers in the Primary Schools run by the Basic Shiksha Parishad as part of a special drive for the recruitment of ten thousand teachers.** The minimum educational qualifications prescribed in the Government Order for the appointment of Assistant Teachers in Primary Schools, are:

- (i) A Bachelor's Degree from a University established by law in India;
- (ii) A two years BTC Training or a two years BTC Training (Urdu) or a Special BTC Training; and
- (iii) The passing of any Teacher Eligibility Test to be conducted by the State Government or by the Central Government.

3. The appellants challenged the Government Order dated 15 October 2013 as well as an advertisement that was issued by the District Basic Education Officer in terms of the said Government Order and sought a mandamus permitting them to apply for appointment on the post of Assistant Teachers in primary schools.

4. The contention of the appellants was that in view of notifications that were issued by the National Council for Teacher Education (NCTE) on 23 August 2010 and 29 July 2011, the minimum qualifications have been prescribed by the NCTE for appointment of Assistant Teachers in primary schools for Classes I to V. Consequently, it was submitted that in view of the notifications which have been issued by the NCTE under the legislation enacted by Parliament, the qualifications, as prescribed therein must prevail and, hence, it was not open to the State Government to exclude persons, such as the **appellants who hold the Diploma in Education (Special Education), which is otherwise recognized as an eligible qualification for appointment as Assistant Teachers in primary schools for**

teaching Classes I to V. In this regard, reliance was placed on a judgment of a Full Bench of this Court in **Shiv Kumar Sharma Vs. State of U.P. & Ors.1**, in which it was held that the notification dated 23 August 2010 of the NCTE would have an overriding effect and could not have been ignored.

5. The learned Single Judge declined to accept the contention and by the judgment which is called in question in this appeal, held that the advertisement in question was in pursuance of a special drive that was initiated by the State Government for the recruitment of BTC qualified teachers who could not be given appointments as Assistant Teachers despite having completed the training, whether before or after 23 August 2010, on account of the fact that after the enactment of the Right of Children to Free and Compulsory Education Act, 2009 (in short 'the Act of 2009'), and the qualifications prescribed by the NCTE in its notification dated 23 August 2010 it was mandatory to pass the TET. Hence, according to the learned Single Judge, since a special drive was initiated for filling up the ten thousand vacant posts with a view to adjust such BTC qualified candidates who could not be recruited for want of TET qualification, the appellants could have no legitimate grievance. According to the learned Single Judge, the appellants could not be treated at par with candidates who are BTC qualified and for whom the special drive was initiated and there was no unreasonableness on the part of the Government in prescribing the qualification as set out in the Government Order which was challenged.

6. Assailing the judgment of the learned Single Judge, it has been urged on behalf of the appellants that upon the enactment of the National Council for [Teacher Education \(Amendment\) Act](#), 2011 which came into force on 1 June 2012, the minimum educational qualifications prescribed for the recruitment of Assistant Teachers in primary schools in the notifications dated 23 August 2010 and 29 July 2011 issued by the NCTE are binding and persons who hold a qualification, which is recognized under the said notifications issued by the NCTE, cannot be excluded from consideration even if the recruitment is in pursuance of a

special drive. It has, therefore, been submitted that confining the zone of eligibility only to the BTC qualified candidates would be clearly contrary to the notifications which have been issued by the NCTE and the learned Single Judge was in error in ignoring the judgment of the Full Bench of this Court in Shiv Kumar Sharma (supra).

7. On the other hand, it has been urged on behalf of the respondents that in the State of Uttar Pradesh, Rule 8 (ii) of the Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 prescribes the essential qualifications of candidates for appointment as Assistant Teachers in Junior Basic School (which means a Basic School where instructions are imparted from Class I to V) and there was no challenge to the validity of Rule 8. Moreover, it was submitted that in the present case, a special drive was conducted by the State Government since those BTC qualified candidates who had completed the training, whether before or after 23 August 2010, were unable to be appointed. Finally, it was urged that the DED qualification cannot be regarded as a qualification which is at par with the BTC qualification.

8. On 23 August 2010, the NCTE prescribed the minimum qualifications for a person to be eligible for appointment as a teacher for Classes I to VIII in a school referred to in Section 2 (n) of the Act of 2009 with effect from the date of notification. This notification was amended by the notification dated 29 July 2011. As per the amended notification, the minimum qualifications which have been prescribed for appointment of an Assistant Teacher for teaching students from Classes I to V are now as follows:

(i) Classes I-V.

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Elementary Education (by whatever name known)

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2-year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure) Regulations, 2002

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor of Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Education (Special Education)

OR

Graduate and two year Diploma in Elementary Education (by whatever name known)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose."

9. At this stage, it may also be necessary to note that the Parliament enacted the National Council for [Teacher Education \(Amendment\) Act](#), 2011 to provide that the Act shall apply, inter-alia, to schools imparting pre-primary, primary, upper primary, secondary or senior secondary education and to colleges providing senior secondary or intermediate education and to teachers of such schools and colleges. Similarly, the expression 'school' was defined in [Section 2\(ka\)](#) to mean any recognised school imparting pre-primary, primary, upper primary, secondary or senior secondary education, or a college imparting senior secondary education. [Section 12A](#) was inserted into the principal legislation to empower the NCTE to determine the qualifications of persons to be 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 by a State Government or a local or other authority. The provisions of the Act and Regulations have been held to be binding by a Full Bench of this Court in Shiv Kumar Sharma (supra). Prior to the enforcement of the amending Act, the Supreme Court had referred for consideration by a larger Bench of three Hon'ble Judges, an earlier view taken in Basic Education Board, U.P. Vs. Upendra Rai & Ors.² in which it had been held that the NCTE Act does not deal with ordinary educational institutions like primary schools, high schools, intermediate colleges or universities and would, consequently, not override the U.P. Basic Education Act and the Rules made thereunder. In view of the amending Act, a Bench of three learned Judges of the Supreme Court, while deciding the reference on the correctness of the view in Upendra Rai (supra), observed that during the pendency of the appeals, the [Amending Act](#) had rendered the issues for consideration referred to the larger Bench as academic. These developments have been taken due note of in a recent judgment of a Full Bench of this Court in Ram Surat Yadav & Ors. Vs. State of U.P. & Ors.³

10. Thus, the point to be noted is that after the enforcement of the Act of 2009 and the issuance of the notification of 23 August 2010, the qualifications which have been prescribed for appointment of primary teachers must necessarily be those that are stipulated in the notification dated 23 August 2010, as amended by the notification dated 27 August 2011.

11. Undoubtedly, the Rules of 1981 do prescribe the essential qualification for appointment of Assistant Teachers in Junior Basic Schools where education is imparted from Classes I to V. The relevant qualifications which are prescribed in Rule 8 are as follows:

<p>"(ii) Assistant Master and Assistant Mistress of Junior Basic School</p>	<p>A Bachelor's Degree from a University established by law in India or a Degree recognised by the Government as equivalent thereto together with the training qualification consisting of a</p>
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	<p>Basic Teacher's Certificate, Vishist Basic Teachers Certificate (B.T.C.) two years BTC Urdu Special Training Course, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of Teaching or any other training training course recognised by the Government as equivalent there: Provided that the essential qualification for a candidate who has passed the required training course shall be the same which was prescribed for admission to the said training course."</p>
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12. The qualifications, which have been prescribed by the NCTE in the notification dated 29 July 2011 include Senior Secondary with at least 50% marks together with a 2-year Diploma in Education (Special Education). Once, these qualifications have been prescribed by the NCTE, this would necessarily be binding and it is not open to the State Government to exclude (from the zone of eligibility) the persons who are otherwise qualified in terms of the notification dated 23 August 2010 as amended on 29 July 2011.

13. In this view of the matter, we are of the opinion that the learned Single Judge was in error in coming to the conclusion that since the recruitment was in pursuance of a special drive, the Government was justified in confining the eligibility qualifications only to those who held the BTC qualifications for the reason that such candidates could not be adjusted earlier for want of TET qualification. The passing of the TET was introduced as a mandatory requirement by the notification dated 23 August 2010 issued by the NCTE. Persons who did not fulfill the eligibility conditions prescribed in the notification dated 23 August 2010, as amended on 29 July 2011, were not qualified for consideration for appointment as primary school teachers. Hence, there was no occasion for the State to contend or for that matter the learned Single Judge to accept the submission that in order to adjust such BTC qualified candidates, the present advertisement had been issued. The learned Single Judge held that the appellants could not claim equivalence with

those candidates who possess BTC qualification. This, in our view, begs the question because once the Diploma in Education (Special Education) is held to be a qualification which is recognised for appointment of Assistant Teachers for teaching Classes I to V, it would be impermissible for the State Government to exclude them from being considered for appointment. In a special drive or otherwise, it is not open to the State Government to exclude one class of teachers who fulfill the qualifications for eligibility prescribed by the NCTE. Any such action would be impermissible for the simple reason that the exclusive power to prescribe eligibility qualifications for such teachers is vested in the NCTE. Once the NCTE has spoken on the subject, as it has through its notification, those qualifications must govern the eligibility requirement. Jurisdiction and power of the NCTE to do so is now settled beyond any doubt, as noted by the Supreme Court.

14. In the circumstances, the special appeals would have to be allowed and are, accordingly, allowed. The impugned judgment and order of the learned Single Judge dated 14 November 2013 is set aside. A mandamus would, accordingly, issue directing the State to permit the appellants and such other persons who claim to be holding the qualifications which are within the purview of the notification issued by the NCTE on 23 August 2010, as amended on 29 July 2011, to apply for the post of Assistant Teachers for Classes I to V which was the subject matter of the advertisement in question.

15. Since the Court is informed that the process of counseling is still to commence, we direct the State Government to act in accordance with the aforesaid direction in processing and completing the selection process.

16. We clarify that the issue as to whether the appellants hold the qualifications strictly in accordance with the notification issued by the NCTE has not been decided by us since that is a matter of verification by the authority concerned.

February 5, 2014

AHA

(Dilip Gupta, J.) (Dr. D.Y. Chandrachud, C.J.)

Chief Justice's Court

C.M. Delay Condonation Application No. 47441 of 2014

In re:

Case :- SPECIAL APPEAL DEFECTIVE No. - 130 of 2014

Appellants :- Harsh Kumar And Another

Respondents :- State Of U.P. And 4 Ors.

Counsel for Appellants :- Satyendra Chandra Tripathi, Radha Kant Ojha

Counsel for Respondents :- C.S.C., R.P. Singh

Hon'ble Dr. Dhananjaya Yeshwant Chandrachud, Chief Justice Hon'ble Dilip Gupta, J.

This is an application seeking condonation of delay in filing the special appeal.

Since sufficient cause has been shown in the affidavit filed in support of the application, the delay in filing the appeal is condoned.

The application is, accordingly, allowed.

February 5, 2014

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(Dilip Gupta, J.) (Dr. D.Y. Chandrachud, C.J.)