
(2013) 10 CAL CK 0060

In the Calcutta High Court

Case No : Writ Petition No. 2852 (W) of 2012 and CAN 8593 of 2012

All B.Ed. Degree Holders Welfare Association and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 03-10-2013

Acts Referred:

Citation : (2013) 4 CALLT 621

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Saktinath Mukherjee, Mr. Arjun Kr. Samanta and Mr. Uddalak Bhattacharya, for the Appellant; Bimal Kr. Chatterjee, Ld. A.G., Mr. Tapan Kr. Mukherjee, R.N. Dutta for the State, Mr. Bimal Kr. Chatterjee, Ld. Advocate General, Mr. Abhijit Gangopadhyay, K.K. Bandyopadhyay, Ms. Supriya Dubey for the SSC, Mr. Uttam Kr. Mazumder for the Respondent Nos. 4 and 7 and Mrs. Asha G. Gutgutia for the NCTE, for the Respondent

Final Decision : Dismissed

Judgement

Debasish Kar Gupta, J.—This writ application is directed against the Notification No. F. No. 61-03/20/2010/NCTE/(N & S) dated August 23, 2010 (published in Official Gazette on August 25, 2010) issued by the National Council for Teacher Education and Notification No. S.O. 1352(E) dated June 1, 2011 issued by the Government of India, Ministry of Human Resource Development (Department of School Education and Literacy). The petitioner No. 1 is an Association registered under the West Bengal Society Registration Act possessing Certificate of Registration of Societies No. S/1L/80824 of 2011-2012 issued by the Registrar of Firms, Societies & Non-Trading Corporations, West Bengal. Petitioner Nos. 2 to 10 are office bearers of the petitioner No. 1 and according to them, all of them possess Master degree and/or Bachelor degree from recognised universities as well as degree of Bachelor of Education or its equivalent. The Notification No. F. No. 61-03/20/2010/NCTE/(N & S) dated August 23, 2010 (published in Official Gazette on August 25, 2010) (hereinafter referred to as the impugned Notification dated August 23, 2010) was issued by the National Council for

Teacher Education in exercise of the powers conferred by Sub-section (1) of section 23 of the Right of Children to Free and Compulsory Education Act, 2009 and in pursuance of Notification No. S.O. 750 (E) dated March 31, 2010 issued by the Government of India, Ministry of Human Resource Development (Department of School Education and Literacy), for the purpose of laying down the minimum qualifications for a person to be eligible for appointment as a teacher in class I to VIII in a school referred to in clause (n) of section 2 of the Right of Children to Free and Compulsory Education Act, 2009.

2. The Notification No. S.O. 1352(E) dated June 1, 2011 (hereinafter referred to as the impugned Notification dated June 1, 2011) was issued by the Government of India, Ministry of Human Resource Development, (Department of School Education and Literacy), in exercise of the powers conferred by Subsection (2) of section 23 of the Right of Children to Free and Compulsory Education Act, 2009 granting relaxation to the State of West Bengal in respect of the minimum teacher qualification norms notified by the National Council for Teacher Education under the impugned Notification dated August 23, 2010 issued by the NCTE, in so far as they relate to classes I-VIII.

3. The National Council for Teacher Education Act, 1993 (hereinafter referred to as the said Act, 1993) was enacted by the Parliament to provide for establishment of a National Council for Teachers Education with a view to achieve planned and coordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in teacher education system and for matters enacted therewith. The provision of section 12 of the said Act of 1993 empowers the National Council for Teachers Education (hereinafter referred to as the NCTE) to take steps for the purpose of ensuring planned and coordinated development of teacher education and for determination and maintenance of standards for teacher education including laying down all guidelines in respect of minimum qualification for a person to be employed as a teacher in schools or in recognized institutions.

4. The Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the said Act, 2009) was enacted by the Parliament to provide for free and compulsory education to all children of the age of 6 to 14 years. The said Act, 2009 came into force with effect from April 1, 2010, section 23 of the said Act, 2009, prescribes qualifications for appointment and terms and conditions of service of teachers as follows:-

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, teacher shall be such as may be prescribed.

5. The Government of India, Ministry of Human Resource Development, (Department of School Education and Literacy), issued Notification in exercise of the powers conferred by Sub-section (1) of section 23 of the said Act, 2009 authorizing NCTE to lay down minimum qualifications for a person to be eligible for appointment as a teacher in class I to VIII.

6. In exercise of the powers conferred by Sub-section (1) of section 23 of the said Act, 2009 as also in pursuance of Notification No. S.O. 750(E), dated March 31, 2010 issued by Government of India, the Ministry of Human Resource Development, (Department of School Education and Literacy), the NCTE laid down minimum qualifications for a person to be eligible for appointment as a teacher in class I to VIII in a school referred to in Clause (n) of Sub-section 2 of the said Act, 2009 under the impugned Notification dated August 23, 2010 as follows:-

1. Minimum Qualifications.

(I) Classes I-V

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

OR

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

AND

(b) Pass in the Teacher Eligibility Test (VET) to be conducted by the appropriate

Government in accordance with the Guidelines framed by the NCTE for the purpose.

(ii) Classes VI-VIII

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

OR

B.A./B.Sc. with at least 50% marks and 1 -year Bachelor in Education (B.Ed.)

OR

B.A./B.Sc. with at least 45% marks and 1 - year Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard.

OR

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

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 - year B.A./B.Sc. Ed. or B.A. Ed./B.Sc. Ed.

OR

B.A./B.Sc. with at least 50% marks and 1 - year B. Ed. (Special Education)

AND

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

7. It is necessary to point out here that in West Bengal, educational structure in primary and secondary stage was a big different from the educational structures prevailing in other States of the Country. In West Bengal, primary schools covered class I to IV and high schools impart lessons from class V to X. This system had been prevailing in whole of the West Bengal for about last 50 years. Since no water tight compartments could be maintained for appointment of teachers in respect of classes VI to VIII and classes IX onwards separately in high schools, the minimum qualifications prescribed under the impugned Notification dated August 23, 2010 by the NCTE were applicable for appointment of teachers in high schools in West Bengal.

8. By a communication issued under Memo No. 62-SE (Pry)/10M-6/2009 dated February 1, 2011, the Government of West Bengal, School Education Department, Primary Branch sent a report as per prescribed format seeking

relaxation under the provisions of Sub-section (2) of section 23 of the said Act, 2009 for relaxing the minimum qualifications required for appointment of a teacher. By a communication issued under Memo No. F. 1Q-17/2010-EE. 4/10589 dated February 19/22, 2011, the Government of India, Ministry of Human Resource Development (Department of School Education and Literacy), requested the Government of West Bengal (School Education Department) to resubmit the proposal for relaxation of the minimum qualification for appointment as a teacher containing details as follows:-

(a) The nature of and the time period for which relaxation is sought under Sub-section (2) of section 23 of the said Act, 2009;

(b) Approved and actual intake capacity in the NCTE recognized D.Ed. and B.Ed. institutions; and

(c) Availability of trained manpower (persons with NCTE recognized degree/diploma in D.Ed. and B.Ed.)

9. In reply to the above communication, the Government of West Bengal, School Education Department, Primary Branch, resubmitted the above proposal to the Department of School Education and Literacy under Memo No. 235-SE (S)/10M-6/2009 dated April 6, 2011.

10. In exercise of the powers conferred by sub-section (2) of section 23 of the said Act, 2009, the Central Government issued the impugned Notification dated June 1, 2011 granting relaxation to the State Government of West Bengal in respect of the minimum teacher qualification norms prescribed under impugned Notification dated August 23, 2010 (published in the Official Gazette on August 25, 2010). The contents of Paragraph 6 of the impugned Notification dated June 1, 2011 issued by the Central Government are quoted below:-

6. Now, therefore, in exercise of the powers conferred by sub-section (2) of section 23 of the RTE Act, the Central Government hereby grants relaxation to the State Government of West Bengal in respect of the minimum teacher qualification norms notified by the NCTE as published in the Gazette of India vide No. 215 dated the 25th August, 2010, in so far as they relate to classes I-VIII, is under:-

(a) 2-year Diploma in Elementary Education (by whatever name known) for appointment of a teacher in classes I-V; and

(b) 1-Year Bachelors in Education (B.Ed.) for appointment of a teacher in classes VI to VIII.

Note: 1. The aforementioned relaxation shall be valid up to 31st March, 2014 and shall be subject to the following conditions, namely:-

(i) as specified in the aforementioned Notification of the NCTE, the State Government of West Bengal shall conduct the Teacher Eligibility Test (hereinafter referred to as TET) in accordance with the Guidelines dated the 11th February,

2011 issued by the NCTE and only those persons who pass the TET can be considered for appointment as a teacher in elementary classes;

(ii) the State Government and other school managements shall amend the Recruitment Rules to correspond with the minimum qualification norms laid down by the aforementioned notification of the NCTE;

(iii) in the matter of appointment, the State Government shall give priority to those eligible candidates who possess the minimum qualifications specified in the NCTE's notification dated the 25th August, 2010, and only thereafter, consider the eligible candidates with the relaxed qualifications specified in this notification;

(iv) advertisement for appointment of teachers should be given wide publicity, including outside the State;

(v) the state Government and other school managements shall ensure that teachers not possessing the minimum academic and professional qualifications laid down in the aforementioned notification of the NCTE shall acquire the same within the time limit specified under sub-section (2) of section 23 of the RTE Act;

(vi) the State Government and other school managements shall ensure that teachers who are appointed under the relaxed qualification norms acquire the minimum qualification specified in the NCTE notification within a period of two years from the year of appointment:

(vii) the relaxation specified in this notification shall be one-time and no further relaxation under sub-section (2) of section 23 shall be granted to the State Government.

2. In accordance with sub-para (iii) of para 5 of the TET Guidelines issued by the NCTE vide its letter dated the 11th February, 2011, the following persons shall also be eligible for appearing in the TET conducted by the State Government of West Bengal in respect of teacher appointments made in the State up to the 31st March, 2014:

(i) for classes I to V - Senior Secondary (or equivalent) with at least 50% marks;

(ii) for classes VI to VIII - Graduation with at least 50% marks.

11. It is submitted by Mr. Shaktinath Mukherjee, learned Senior Advocate appearing on behalf of the petitioners, that due to fixation of minimum qualifying marks in general academic qualification for recruitment of teachers for classes VI to VIII of the school under the impugned Notification dated August 23, 2010, the candidates who had received special training for the job of teachers by way of obtaining B.Ed. degree were deprived. According to Mr. Mukherjee, the fallibility of the impugned Notification dated August 23, 2010 wherein 50 per cent marks in B.A./B.Sc. have been asked for as minimum qualification for recruitment as teacher for classes VI to VIII resulted in a situation where those who were somehow incapable of securing 50 per cent marks in graduation but were capable of securing 50 per cent marks or more in post-graduation and thus could

after being eligible for admission in B.Ed. course could achieve the expertise and necessary training of becoming a teacher, would be deprived of the opportunity to be appointed as a teacher. It is further submitted by him that energy spent by them and expenditures incurred for obtaining the statutory right would be wasted and as such, those provisions are wholly arbitrary, unfair and unreasonable and thus violative of Articles 14 and 16 of the Constitution of India.

12. It is submitted by Mr. Mukherjee that the relaxation of minimum qualification required for appointment as a teacher could be granted under the provisions of Sub-section (2) of section 23 of the said Act, 2009 only upon fulfillment of two statutory conditions, namely, (i) where a State does not have adequate institutions offering courses of training in teacher education; (ii) where teachers possessing minimum qualifications as laid down under Sub-section (1) of section 23 of the said Act, 2009 were not available in sufficient numbers. According to Mr. Mukherjee, the Central Government was under obligation to take into consideration existence of either of the above grounds at the stage of allowing the relaxation as also to indicate in the impugned order dated June 1, 2011, the factual existence of those grounds. Drawing the attention of this Court towards the communication issued by the Government of India, Ministry of Human Resource Development (Department of School Education and Literacy) issued under Memo No. F. 1Q-17/2010-EE. 4/10589 dated February 19/22, 2011, it is submitted by Mr. Mukherjee that there was a request to the Government of West Bengal, School Education Department, to resubmit the proposal for relaxation of minimum qualification for appointment as a teacher containing details, amongst others, approved and actual intake capacity in NCTE recognised D.Ed. and B.Ed. institutions as also availability of trained manpower (persons with NCTE recognized degree/diploma in D.Ed. and B.Ed.). According to Mr. Mukherjee, the reply of the Government of West Bengal, School Education Department, Primary Branch, under Memo No. 235-SE (S)/10M-6/2009 dated April 6, 2011 did not contain adequate informations in respect of the aforesaid queries of the Central Government. Informations with regard to "teacher demand" for class I to IV and class V to VIII were incomplete inasmuch as the informations with regard to sanctioned strength, actual strength, vacancy and requirement of additional teacher in the light of the said Act, 2009 in aided and unaided schools were not furnished in the above reply. According to Mr. Mukherjee, the claim of the petitioners as indicated in the pleading of this writ application in respect of existence of about 130 B.Ed. training colleges and availability of about 40,000 candidates possessing eligibility criteria for appointment to the post of teachers in different educational institutions in the State remain uncontroverted. It is further submitted by Mr. Mukherjee that in view of the aforesaid facts and circumstances, the impugned Notification issued by the Central Government is an outcome of colourable exercise of power in making unlawful discrimination between the petitioners who are qualified for appointment to the post of teachers and those who did not have the necessary qualification and/or training for appointment in the posts under reference.

13. It is submitted by Mr. Mukherjee that the impugned Notification dated June 1, 2011, suffered from non-application of mind on the ground that a teacher who had passed Senior Secondary Examination or Graduation with less than required percentage of marks cannot go back to improve the percentage to avail of the opportunity of relaxation as prescribed in Clause (v) of Note 1 of Paragraph 6 of the impugned Notification dated June 1, 2011.

14. It is submitted by the learned Advocate General that the claim of the petitioners of availability of 40,000 trained teachers in the State is based on no evidence. It is submitted by him that the guideline for submitting an application in a prescribed format for obtaining relaxation was introduced on November 8, 2010. But prior to the introduction of the same, the Government of West Bengal, School Education Department, had informed the Central Government of the number of training institutions available in the State and the dearth of trained teachers for aided and unaided schools in the State. He referred to the communication issued by the Government of West Bengal, School Education Department, under Memo No. 749- (P)10M-6/09 dated September 27, 2010. The learned Advocate General further referred to communications issued by the Government of West Bengal, School Education Department, Primary Branch, under Memo Nos. 62-SE (Pry)/10M-6/2009 dated February 1, 2011 and 235-SE (S)/10M-6/2009 dated April 6, 2011 to submit that informations available to the State Government with regard to the quantitative informations were submitted to the Government of India, Ministry of Human Resource Development (Department of School Education and Literacy).

15. The learned Advocate General draws the attention of this Court towards another aspect of the matter that petitioner Nos. 2, 4, 6, 7, 8 and 9 appeared in the Teacher Eligibility Test, 2011 conducted by the West Bengal School Service Commission. According to him, this writ application is adventures and suffers from suppression of material facts of participation of the petitioner Nos. 2 to 9 in the selection process for appointment of teachers in different aided and unaided schools.

16. The learned Advocate General relies upon the decisions of Prof. A.K. Sanyal Vs. Dr. Chitta Ranjan Basistha and Others, and The Chancellor and Another Vs. Dr Bijayananda Kar and Others, to submit that the writ petitioners must come with clean hands.

17. Relying upon the affidavit-in-opposition submitted on behalf of the respondent Nos. 4 and 7, it is submitted by Mr. Uttam Kr. Mazumder, learned Advocate appearing on behalf of the Union of India, that the impugned Notification dated June 1, 2011 was issued by the Government of India, Ministry of Human Resource Development (Department of School Education & Literacy) for relaxation of qualification required for appointment of a teacher in aided and unaided schools after considering the materials supplied by the Government of West Bengal in accordance with the provisions of sub-section (2) of section 23 of the said Act, 2009.

18. It is submitted by Mrs. Asha G. Gutgutia, learned Advocate appearing on behalf of the respondent No. 5, that the decision-making process of the Central Government in relaxing the minimum qualifications required for appointment of teacher in aided and unaided schools depends upon the informations disclosed by the Government of India, Ministry of Human Resource Development (Department of School Education & Literacy) as also those of the State Government in this regard.

19. I have heard the learned Counsel appearing for the respective parties and I have given my anxious consideration to the facts and circumstances of this case. The challenges thrown in this writ application centre round the following grounds:-

(i) Due to fixation of minimum qualifying marks in respect of general academic qualification for recruitment of teachers in Secondary/Higher Secondary schools under the impugned Notification dated August 23, 2010, the candidates who had received special training for the job of teachers by way of obtaining degree were deprived of participating in above selection process due to scoring lesser percentage of marks in general academic examinations;

(ii) The Central Government did not examine the existence of two grounds indicated in Sub-section (2) of section 23 of the said Act, 2009 at the stage of allowing in relaxation as also did not indicate the factual existence in the impugned Notification dated June 1, 2011;

(iii) Impugned Notification dated June 1, 2011, suffered from non-application of mind on the ground that a teacher who had passed Senior Secondary Examination or Graduation with percentage of marks less than the required level, cannot go back to improve the percentage to avail of the opportunity of relaxation as prescribed in Clause (v) of Note. 1 of Paragraph 6 of the impugned Notification dated June 1, 2011.

20. The present-day corpus of the administrative law is organised around three fold classification of functions of the administration. Those are (i) legislative, (ii) administrative, and (iii) quasi-judicial function. Each of these three types of functions has its own incidents which differentiate one from the other.

21. The scope and method of judicial review of the impugned Notifications dated August 23, 2010 and June 1, 2011 depends upon the identification of the nature of functions performed by the NCTE and the Central Government respectively in the light of classifications indicated hereinabove.

22. Though there is no clear cut line of distinction between these three classes of functions, an order is recognised as legislative when it has general applicability. It is normally directed towards the formulation of requirements having a general application to all members of a broadly identifiable class and it prescribes a future pattern in determining liability and/or eligibility on the basis of past or present fact. From the above view point, the fixation of minimum academic and

other qualifications by the NCTE by issuing the impugned Notification dated August 23, 2010 for appointment of teachers in Secondary/Higher Secondary Schools comes within the purview of legislative function of an academic authority having delegation from the Central Government in exercise of powers conferred in it by the provisions of Sub-section (1) of section 23 of the said Act, 2009.

23. It is now well settled that it is open to the appointing authority to lay down minimum requisite qualification for recruitment to various public services in exercise of delegated powers as it pertains to the domain of policy. Though the Court is experts of all experts, it should not forget its self imposed restrictions. In the instant case, laying down of appropriate educational and intelligibly relevant qualifications were required to ensure the suitability of candidates for the post of school teacher for performing the task of teaching minor students having their skills and curiosities. It must not be confused with eligibility. It is a matter involving expertise which should be left to be handled by expert body. Reference may be made to the decision of the Post Graduate Institute and Others Vs. Dr J.S. Dilawari and Others, and the relevant portion of the above decision are quoted below:

8. Specialisation is the order of the day. About half a century back, a general medical practitioner was in a position to attend to all human ailments in accordance with the then known methods of treatment. Today for the purpose of medical attention the human body has been divided into several parts and expertise with regard to these has so developed that specialisation has become the order of the day. Though the Court, it is stated, is the expert of experts, it is proper to take note of its limitations. Realization of this situation has led to a series of pronouncements where this Court has reiterated the position that matters involving expertise should be left to be handled by expert bodies.

(Emphasis supplied)

24. That apart, equality of opportunity need not be confused with absolute equality as such. Article 16(1) and (2) of the Constitution of India does not prohibit the prescription of reasonable rules for selection of any employment or appointment to any office or post. Reference may be made to the decision of V.K. Sood Vs. Secretary, Civil Aviation and others, and the relevant portion of the above decision are quoted below:

5. In General Manager, S. Rly. V. Rangachari another Constitution Bench held that equality of opportunity need not be confused with absolute equality as such. What is guaranteed is the equality of opportunity and nothing more. Article 16(1) or 16(2) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office or post. Any provision as to the qualifications for the employment or appointment to an office or post reasonably fixed and applicable to all citizens would certainly be consistent with the doctrine of the equality of opportunity. In State of Mysore v. P. Narasing Rao this Court held that the provisions of Article 14 or Article 16 do not exclude the laying down

of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for such service as such. The same was the view in another Constitution Bench decision reported in *State of J & K v. Triloki Nath Khosa*. In *State of Orissa v. N.N. Swamy*, this Court held that the eligibility must not be confused with the suitability of the candidate for appointment.

6. Thus it would be clear that, in the exercise of the rule-making power, the President or authorized person is entitled to prescribe method of recruitment, qualifications both educational as well as technical for appointment or conditions of service to an office or a post under the State. The rules thus having been made in exercise of the power under proviso to Article 309 of the Constitution, being statutory, cannot be impeached on the ground that the authorities have prescribed tailor made qualifications to suit the stated individuals whose names have been mentioned in the appeal. Suffice to state that it is settled law that no motives can be attributed to the Legislature in making the law. The rules prescribed qualifications for eligibility and the suitability of the appellant would be tested by the Union Public Service Commission.

(Emphasis supplied)

25. Therefore, the settled proposition of law as indicated hereinabove does not permit this Court to review the propriety of fixation of minimum qualifying marks in general academic qualification for recruitment of school teachers by NCTE under the impugned Notification dated August 23, 2010 in the context of the facts and circumstances of this case.

26. An exemption order of a general nature is also held to legislative in nature. Reference may be made to the decision of *Bakul Cashew Co. and Others Vs. Sales Tax Officer Quilon and Another*, and the relevant portion of the above decision is quoted below:

8. As regards the power of government to cancel the notification which had been issued earlier, the High Court has upheld the power of the government to do so. We think that the High Court was right in taking that view. The liability to pay sales tax arose at the point of time when the purchases were made. The power of exemption in the instant case was exercised through a retrospective notification which was a piece of subordinate legislation. It has been held by this Court that an authority which has the power to make subordinate legislation cannot make it with retrospective effect unless it is so authorised by the legislature which has conferred that power on it.

(Emphasis supplied)

27. After perusing the materials-on-record, I find that on receipt of a report in prescribed format from the Government of West Bengal, School Education Department, Primary Branch, under Memo No. 62-SE(Pry)/10M-6/2009 dated

February 1, 2011 seeking relaxation under the provisions of Sub-section (2) of section 23 of the said Act, 2009 for relaxing the minimum qualifications required for appointment of a teacher, the Government of India, Ministry of Human Resource Development (Department of School Education and Literacy), requested the Government of West Bengal, School Education Department, to resubmit the above proposal containing details on three aspects as follows:

(a) The nature and the time period for which relaxation is sought under sub-section (2) of section 23 of the said Act, 2009;

(b) Approved and actual intake capacity in the NCTE recognized D.Ed. and B.Ed. institutions; and

(c) Availability of trained manpower (persons with NCTE recognized degree/diploma in D.Ed. and B.Ed.)

28. After considering the reply of the Government of West Bengal, School Education Department as communicated under Memo No. 235-SE(S)/10M6/2009 dated April 6, 2011, I find that there was prayer for relaxation for a period of five years.

29. It was further stated in the above communication that normal D.El.Ed. Courses had been resumed in 85 NCTE recognised Institutions having total intake capacity of 4520 (approx) only and the intake capacity of existing 135 B.Ed. institutions was 13,337.

30. With regard to availability of manpower it was stated that the first batch of candidates would come out in the middle of 2011. Number of candidates pursuing Bridge Course was 8017 only who would be available for appointment to the post of primary teacher on the last part of 2011. It was also stated that besides extreme shortage of trained personnel for future recruitment of both Primary and Upper Primary Teachers, there having a slew of 82,229 primary and 18,670 untrained upper primary teachers. As a result of which there was a serious shortage in availability of trained teachers in the State.

31. A thumbnail sketch on the above informations brings out the fact of furnishing adequate particulars with regard to teachers possessing minimum qualification laid down under Sub-section (1) of section 23 read with the impugned Notification dated August 23, 2010 vis-a-vis the shortage of trained teachers coupled with slew of untrained primary and upper primary teachers. I am not inclined to hold that the decision-making process of the Central Government in issuing the impugned Notification dated June 1, 2011, was erroneous or incorrect.

32. The claim of the petitioners of availability of about 40,000 trained eligible candidates cannot be accepted in view of the first ground of challenging the fixation of minimum general academic qualification for the post under reference as prescribed under the impugned Notification dated August 23, 2010. It is sufficient indication of non-fulfillment of such requirement of minimum general

academic qualification by a portion of the aforesaid 40,000 candidates in absence of bringing adequate materials-on-record.

33. The indication of factual existence of grounds mentioned in sub-section (2) of section 23 of the said Act, 2009, in the impugned Notification dated June 1, 2011 was not necessary in view of the settled proposition of law that rule conferring power of relaxation must be construed liberally since the same was beneficial in nature. Reference may be made to the decision of J.C. Yadav and others Vs. State of Haryana and others, and the relevant portions of the above decision are quoted below:

10. On a careful scrutiny of the Rules in its various aspects we do not agree with the observations made in Jit Singh case. Though Rule 22 is not happily worded, as apparently it gives an impression that no general relaxation can be granted by the State Government, but on a close scrutiny of the scope of the power we find that a narrow construction of the rules would nullify the government's power of relaxing rules to meet a particular situation. Rule 22 is beneficial in nature it must be construed in a liberal manner and it should not be interpreted in a manner to defeat the very object and purpose of such power. Power to grant relaxation may be exercised in case of an individual to remove hardship being caused to him or to a number of individuals who all may be similarly placed. This power may also be exercised to meet a particular situation where on account of the operation of the Rules hardship is being caused to a set of individual officers....

(Emphasis supplied)

34. Regarding the other ground of challenge that the provisions of Clause (v) of Note 1 of Paragraph 6 of the impugned Notification dated June 1, 2011 was an outcome of non-application of mind, I find that the above provision was incorporated for the purpose of extending the benefit of relaxation of the existing school teachers. It is not the case of the petitioners that above provision affected them legally, i.e., by curtailing their right to be considered for appointment to the post of school teachers. I agree with the view made in the case of *Amon v. Raphael Tuck & Sons Ltd.*, reported in (1956) 1 All E.R. 273 (at page 281) and the relevant portions of the above decision are quoted below:

The remaining class of those enumerated in the ANNUAL PRACTICE, 1955, p. 232, is that of the representative action where the intervener says that he is not truly represented. The order made in the action will not merely affect the intervener's rights but may settle them conclusively. This type of case is, therefore, in accordance with the principle which I have been considering, and is, indeed, a fortiori, so that I need not do more than allude to it.

If this is the line of authority that is the correct one to apply, then I think the test is: "May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights?". It is not, on this view, enough that the plaintiff's rights and the rights which the intervener wishes to assert should be

connected with the same subject-matter.

(Emphasis supplied)

35. Therefore, the above ground does not require consideration applying the above proposition of law in the facts and circumstances of this case.

36. As a result of the discussions and observations made hereinabove, this writ application is dismissed.

37. The application bearing CAN No. 8593 of 2012 is also disposed of accordingly. There will be, however, no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

Debasish Kar Gupta, J.