
(2011) 11 JH CK 0048

In the Jharkhand High Court

Case No : Writ Petition (S) No's. 3099, 6592 of 2011 and W.P. (PIL) No. 6495 of 2011

Anjuman Taraqqi-e-Urdu Jharkhand, Md. Manzer Hussain and
Md. Mojahid Alam

APPELLANT

Vs

The State of Jharkhand, The Director, Primary Education,
Govt. of Jharkhand, The Jharkhand Academic Council and
The Secretary, Jharkhand Academic Council
 Krishna
Murari Prasad Vs State of Jharkhand, The Director, Primary
Education, Govt. of Jharkhand and The Jharkhand Academic
Council
 Balmiki Choubey Vs The State of Jharkhand
and Others

RESPONDENT

Date of Decision : 22-11-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21A, 309
Jharkhand Primary Schools Appointment Rules, 2002 — Rule 3, 8

Citation : (2011) 11 JH CK 0048

Hon'ble Judges : Prakash Tatia, J; P.P. Bhatt, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioners, learned counsel for the State as well as learned counsel for the Interveners.
2. The petitioners are challenging the entire selection process initiated vide advertisement No. 27/2011 dated 26th March, 2011 by which the respondents want to select and appoint about 18,000 primary teachers in Primary Schools run by the State Government.
3. The recruitment of the primary school teachers in the State of Jharkhand is regulated by the Jharkhand Primary School Appointment Rules, 2002, which has been framed by exercising the power under Article 309 of the Constitution of India. Rule (8) provides for holding two tests, one Preliminary Test and another Final Test, which are required to be cleared before any appointment on the post

of teacher for primary classes i.e., for Class of I to Class V in Government Schools can be given. These Rules were amended time to time, which included the amendment made vide notification dated 26th December, 2006 then vide notification dated 14th August, 2007 and vide notification dated 16th September, 2009. Yet another amendment came vide notification dated 23rd October, 2009 and the petitioner has challenged the validity of Clause (III) of Sub-Rule (Ka) of Rule 8 and also proviso to Clause (VI) of Sub-Rule (Ka) of Rule 8 to the extent whereby it has been provided that obtaining of 35 % marks in the case of general category and 30 % marks in tribal language and regional language in the case of Scheduled Castes and Scheduled Tribes respectively, shall be compulsory to qualify for main examination for Primary School Teachers appointment in the State of Jharkhand. The petitioner also sought relief to declare Rule 8 (Kha) of Jharkhand Primary School Appointment Rules, 2002 as brought by Rule 3 of Jharkhand Primary School (second amendment) Appointment Rule ultra vires and consequently sought the relief of quashing the Advertisement No. 27 of 2011 published on 26th March, 2011.

4. Facts of the case are that the advertisement, Annexure-7, which is advertisement no. 27 of 2011 was issued to fill up post of 4401 Urdu Assistant Teachers and also for filling up 13,807 posts of Assistant Teacher of other than Urdu Assistant Teachers. The total bifurcation of the seats district-wise and reservation of seats have also been given in detail in the advertisement. The last date for submitting the application form of this selection process was 15.4.2011. The advertisement also contains that in preliminary test, there will be two papers; one of General Knowledge of 50 marks and second will be the paper of Regional/Tribal language of 50 marks. Thereafter, a schedule has been given in the advertisement showing which tribal and regional language will be for a particular district." It is clearly mentioned as a condition that the applicant, who is applying for vacant post in a particular district, shall have to take examination for the languages given against the column of that district. In Clause 5 of the advertisement, it is provided that, for appearing the main examination the candidate shall be required to obtain 35 % marks in General Knowledge and Tribal/Regional language for general category and. 30% marks for reserved category. Then the separate examination of 300 marks has been prescribed in the advertisement which consists of examination which is as under :-

1. Language

100 marks

(Ka)General Teacher-Hindi and English (Kha)Urdu Teacher-Urdu and English

2. Social Science

100 marks

3. General Science

100 marks 300 marks

5. After advertising these posts and expiry of last date for submitting applications for appointment on the post of primary school teachers in Urdu and General category, on 19.5.2011, another advertisement no. 45 of 2011 was issued whereby the examination which was scheduled to be held on 29.5.2011 was postponed and it was notified that new date will be notified afterwards. Then on 25.5.2011 another notification no. 46 of 2011 was published in the newspaper, whereby it has been declared that the primary teachers test which was initiated by the advertisement no. 27 of 2011 dated 26.3.2011 shall be treated to be at par with the Teachers Eligibility Test (in short TET), which is a test required for getting any appointment on the post of teacher in view of the guidelines issued by the National Council for Teachers Education (in short NCTE) which mandatorily require that only a person who has obtained a TET certificate shall be eligible for appointment on the post of Primary School Teacher. According to the State, to make the selection and appointment of the teachers in the State of Jharkhand in consonance with the national policy, new criteria was prescribed by advertisement no. 46 of 2011. By this advertisement, not only the Primary Teachers Eligibility Test has been made combined test for Primary Teachers Eligibility Test cum TET but entire pattern of test and marking criteria have been changed. The changed pattern and marking are as under :-

1. General Knowledge/Environmental Studies

30 marks

2. Mathematics:

30 marks

3. Language: (Ka) Tribal/Regional language:

30 marks

4. Language: (Kha) Hindi (For Hindi Teachers)

Urdu (For Urdu Teachers):

30 marks

5. Child Development and Education :

30 marks

Total marks

150 marks

The examination shall be of two hours and minimum pass marks shall be 60 % for general category candidates and for candidates of Scheduled Castes and Scheduled Tribes minimum pass marks shall be 50 %. In this advertisement no. 46 of 2011 dated 25.5.2011 again it has been repeated that those candidates who will secure 60% and 50% in general category and SC/ST category

respectively will be eligible to appear in the main examination. In this very advertisement it is also mentioned that rest of the conditions mentioned in the original advertisement shall remain as it is. Meaning thereby, requirement of obtaining 35% and 30% marks in tribal language and regional language and upon passing this examination, the candidate will have to face Final Test for appointment.

6. Thereafter, another advertisement no. 55 of 2011 was issued by the State by which the date for examination and the centres for examination were notified. The date for examination was fixed as 20.7.2011. The writ petitioner, even before issuance of the advertisement no. 46 of 2011 dated 25.5.2011 approached this Court by filing this Writ Petition on 18.5.2011 and sought the relief as we have already referred above. On 13.09.2011, this Court passed an interim order that the result of the examination shall be subject to the outcome of the instant writ petition. On 14.11.2011, after hearing the parties at length passed the interim order that the State Government shall not issue any appointment orders in the present process of selection.

7. Learned counsel for the petitioner vehemently submitted that the process of selection for appointment once started, it is required to be completed according to the Rules which were in existence and in the present process of selection and appointment everything, i.e., subjects, marking pattern and even the purpose of the examination has been changed after the expiry of last date of submission of application form. Now it has been made a certificate course of TET under the guidelines of the NCTE and then to give appointment without any final test.

8. Learned counsel for the petitioner also submitted that the prescribing of 35% and 30% marks in the regional and tribal language violates the Articles 14 and 16 of the Constitution of India and further, such marks have been prescribed without there being any nexus and for any object which can be achieved. Learned counsel for the petitioner vehemently submitted that by this, virtually all posts have been reserved for the members of the Scheduled Castes and Scheduled Tribes ignoring the fact that 74% of the population in the State of Jharkhand are not belonging to the tribal community and the percentage of the members of tribal community is only 26%. Learned counsel for the petitioner further submitted that the subsequent amendments made by issuing various notifications i.e., notifications dated 14.5.2011, 23.5.2011 are also absolutely illegal and even if not illegal, these notifications are prospective and in fact notification dated 23.5.2011 changing entire examination pattern is not by amending the Rules of 2002 but has been done by an executive order, therefore, change in examination pattern is contrary to Rules of 2002 and therefore, illegal. It is submitted that a process which was started for taking the preliminary test and main examination, has been converted into not only a process of giving appointment by one examination dispensing with the second examination and that too without amending or deleting the relevant Rules which provide for final examination after preliminary test and furthermore, the required minimum

marks have been increased from 50% to 60% by executive order. In sum and substance, according to learned counsel for the petitioner, the process of selection and appointment can be completed only according to the Rule which was in existence and none of the subsequent decision can change the procedure so as to detrimental to the interest of the eligible candidates.

9. It will be worthwhile to note here that after the advertisement (Annexure-7) i.e., Advertisement No. 27 of 2011 dated 26.03.2011 no opportunity was given to any of the candidate or person in the State of Jharkhand to apply for the TET if the State Government could have completed this process of selection and appointment on the post of teacher to a certificate course for the TET. Learned counsel for the petitioner also relied upon the judgement of the Hon"ble Supreme Court wherein keeping the regional language as mandatory requirement has not been approved by the Hon"ble Supreme Court. Learned counsel for the petitioner relied upon the judgement of the Supreme Court delivered in the case of Hindi Hitrakshak Samiti and others Vs. Union of India and others, , Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, and judgement in the case of Dahiben and others Vs. Vasanji Kevalbhai (dead) and others, which we shall be considering hereinafter.

10. The State has come up with the case that after the enactment of the Right of Children to Free and Compulsory Education Act, 2009, the Government has recognized the right of children to have education, rather say, the children's education has been made compulsory and that is in consonance with the Article 21A of the Constitution of India. In view of the above, large number of teachers are required to be appointed to fulfill the aims and object of the Act of 2009 of free and compulsory education to children in the State. It is also submitted that State of Jharkhand has its peculiar situation as it is dominantly habitated by the members of the Scheduled Tribes and members of the Scheduled Castes and that too in remote village places where children are required to have primary education in their own language i.e., regional and tribal language. It is submitted by learned counsel for the State that the State could not have given any appointment to a person who has not cleared the TET and the State came to know about the guidelines issued by the NCTE on 06.04.2011 i.e., after issuance of Advertisement No. 27 of 2011 dated 26.3.2011, though those guidelines were issued prior, on 11.02.2011. Therefore, when the State came to know about these guidelines, immediately and without any delay, to make this selection process in consonance with the guidelines of the NCTE, in exceptional circumstances, a decision was taken as one time measure, to have one combined test in place to having separate TET and Teachers Appointment Test. It is submitted that, so has been done as one time measure which is apparent and very clear from the decision of the Government dated 14.05.2011 and that has been notified in the newspaper and was given full publicity. It is submitted that even if such step would not have been taken by the State, then even after the examination under the original advertisement, the State would not have been in a position to give any appointment because of the condition of the NCTE

requiring the TET. The subjects have also been changed and marking pattern also have been changed only because of the reason that everything should have been in consonance with the guidelines of the NCTE. It is submitted that no prejudice has been caused to any of the candidates.

11. Learned counsel for the State vehemently submitted that in fact what has been argued by the learned counsel for the petitioners before this Court is beyond what the petitioners have pleaded in his writ petition. Their grievance was confined only to the prescribing minimum pass marks for the two examinations i.e., tribal language and regional language. At the most, it may be said that the petitioners may have grievance of prescribing particular language for a particular district but in writ petition it is not the case of the writ petitioners that the subsequent amendments made by the State are, in any manner, illegal. In view of the above, learned counsel for the State vehemently submitted that this Court should not examine other issues which may be attractive and the arguments advanced by the learned counsel for the petitioner as well as counsel supporting the petitioner who were permitted to argue because they also have preferred separate writ petitions one in the form of Public Interest Litigation i.e., W.P.(PIL) No. 6495 of 2011 and another W.P.(S) No. 6592 of 2011, are liable to be ignored.

12. Learned counsel for the State further submitted that after filing of W.P. (S) No. 3099 of 2011, both these petitioners themselves appeared in the examination conducted by the State and therefore, by their conduct they themselves have accepted all the changed conditions prescribed for the examination. In W.P.(S) No. 6592 of 2011 the writ petitioner appeared in the examination and has failed then preferred this petition, which is clear from the fact that he has filed the writ petition on 16.11.2011. It is submitted that in view of the above, this writ petition is not maintainable because, if the petitioner would have succeeded in the examination, he would not have challenged the selection process.

13. Learned senior counsel for the State also submitted that large number of vacancies are there in the State of Jharkhand of the teachers and if the selection is quashed and set aside then it will be against the interest of the children of the State of Jharkhand.

14. Learned counsel for the Jharkhand Academic Council, who was entrusted with the task of conducting the examination, submitted that the Jharkhand Academic Council has conducted the examination in view of the direction given by the State Government and in accordance with the Rules of 2002 and they have published the result. It is submitted that about 1,31,000 candidates appeared in the examination.

15. Learned Counsel Sri Delip Jerath, supporting State's decisions, vehemently submitted that the scope of the Courts in the matter where policy decisions are involved is very limited. He heavily relied upon Hon''ble Supreme Court's

judgement delivered in the case of Transport and Dock Workers Union and Others Vs. Mumbai Port Trust and Another, and also relied upon another judgement delivered in the case of Nand Kishore Ojha Vs. Anjani Kumar Singh reported in (2010) 6 SCC 648 wherein the question of taking one time measure has been considered and according to learned counsel Sri Jerath, the State Government has taken a decision to meet with the specific contingency and took the decision to meet with urgent requirement of appointment. It is also submitted that it is nowhere provided that the two examinations could not have been clubbed together so as to have an examination for the TET along with the examination for giving appointment on the post of primary school teachers. It is also submitted that if a classification has been made by creating two classes then that also is justified if it has been done on the basis of the rationale classification.

16. Learned counsel Sri R. Krishna, who appeared as an intervener, submitted that "examination" is not a "selection process for appointment". It is submitted that process of appointment starts only after the eligibility test and, therefore, during this period if any amendment has been made, it is not violative to any of the law. Learned counsel Sri R. Krishna relied upon judgement of the Hon'ble Supreme Court delivered in the case of State of Rajasthan Vs. R. Dayal and Others, wherein Hon'ble Supreme Court held that the procedure which was in force at the time of initiation of process of selection shall be the process and according to learned counsel Sri R. Krishna if any change is made prior to date of start of process of selection for appointment then that is legal and valid and cannot take away any vested right of any of the persons.

17. At this juncture, it will be relevant to mention here that according to learned counsel for the State, a writ petition was preferred before the Hon'ble Supreme Court being Civil Writ (C) No. 173 of 2011 to challenge this selection process and therein one Interlocutory Application being I.A. No. 203 of 2011 was also filed but that was dismissed on 9th September, 2011 and thereafter, the present result has been declared on 15.10.2011.

18. We have considered the submissions of the learned counsel for the parties and perused the facts of the case. It is not in dispute that vide advertisement No. 27 of 2011 dated 26.03.2011, the process of selection and appointment on the post of teachers in the subject of Urdu as well as for general subjects was started and this process was started under the Rules of 2002. The eligibility criteria was fixed as has been given in the Rules of 2002. It is clearly provided in the Rules of 2002 as well as in the said advertisement dated 26.03.2011 that there will be two examinations - one shall be preliminary examination and second will be the main examination. Any candidate of general category who will secure 35% marks in the subject i.e., General Knowledge and in Tribal and Regional Language and any candidate of Scheduled Caste and Scheduled Tribe category who secure 30% marks in the same way shall be eligible to appear in the main examination. The last date for submitting the application was 25.04.2011. It is not in dispute that by subsequent notification dated 14.5.2011 and by executive order dated

23.5.2011 (without amending the relevant Rule), the preliminary eligibility test has been converted into altogether new test leaving nothing original to be done under original advertisement, neither examination remained preliminary test nor papers remained same, nor maximum marks for papers remained same, nor minimum pass marks remained same. It is very pertinent that notification dated 14.5.2011 is notification to amend Rules of 2002 but in fact nothing has been added and nothing has been deleted or amended in Clause 8 (Ka) of the Rules of 2002 and this notification is, without amending relevant Rules, only made declaration that rule 8 (Ka) is amended and as one time measure, preliminary test shall be at par with Teachers Eligibility Test (TET). Therefore, even after notification dated 14.5.2011, the Rule 8 (Ka) remained as it is and even the government also understood, so which is clear from advertisement dated 24-25.5.2011 wherein even after notification dated 14.5.2011, in the advertisement dated 24-25.5.2011 it is again declared that there shall be main examination after this preliminary cum TET (test). It appears that state "issued notification and passed one after another order, that too after expiry of last date for submitting applications under the original advertisement but neither marking pattern has been changed in the Rules of 2002 nor Rules of 2002 have been amended to make the examination in question as final selection and appointment examination. Therefore, the examination and declaration of results on the basis of preliminary examination is illegal being contrary to Rule 8 (ka) of Rules of 2002.

19. None of the any persons in the state had knowledge that the State is going to conduct TET, therefore, any person who was aspirant for Teachers Eligibility Test had no opportunity to apply for this test. Even the persons who applied under impugned advertisement had no knowledge that they are applying for TET cum preliminary Teachers Selection Test. It appears that State had impression that, since they have power to issue order as well as right to enact, therefore, the State can do anything, can pass any order or amend Rules any time and in any manner and that too, not only after inviting applications under specific rules for appointment of teachers but even after last date for submitting the application can change the entire process as well purpose for which such applications invited. This is, therefore, glaring example of colourable exercise of power which amounts to malafide in law as it has deprived all candidates from competing on the basis of marks prescribed not only in the advertisement but as prescribed in the Rules of 2002 and denied opportunity to all eligible candidates to apply for Teachers Eligibility Test (TET) from entire State of Jharkhand and which is sought to be converted into from eligibility test to test for appointment.

20. The contention of the State is that the amendment and specifically the amendment made in the marking pattern and subjects vide advertisement dated 25.05.2011 were made because of the reason that on 26.04.2011 i.e., after publication of the advertisement on 26.03.2011, they came to know that it is mandatory condition prescribed by the NCTE that appointment on the post of teacher can be given only to those persons who possess the TET certificate and

since it came to their knowledge only in April, 2011, they decided to prescribe all the norms of TET in the same process of selection and appointment so as to avoid further delay in the matter of appointment on the post of teachers in the State of Jharkhand for primary level schools. However, we are of the considered opinion that the plea taken by the State appears to be, if not false, it is wrong, because of the reason that the condition of having TET certificate as mandatory condition for appointment on the post of teacher was prescribed by the NCTE much earlier, on 23.08.2010 and not in the year 2011. Faced with this situation, learned counsel for" the State submitted that though notification was issued on 23.08.2010 (Annexure-B submitted along with the supplementary counter affidavit by the State itself) but no guidelines were issued under the said notification and, therefore, the TET could not have been conducted. The plea taken by the State is no justification for State's action rather, if it is so, then it is more serious matter. If the State had knowingly, and in fact had knowledge that State cannot give appointment to teacher without qualifying TET then the State should not have proceeded to invite applications of the candidates from entire State of Jharkhand. The stand of the State is self contradictory as well as cannot be said to be justified stand. It is not expected from any State that even after knowing mandatory condition, they will invite large number of public from the entire State of Jharkhand by projecting that incumbent will get appointment on the post of teacher. If the State was sure that it cannot give any appointment till the guidelines are issued by the competent authority, how the State could have issued the advertisement for appointment in violation to the NCTE guidelines when the NCTE duly notified and published in the Gazette dated 23.8.2010 and made it mandatory to give appointment on the post of teacher who passes TET, has not been explained by the State in any manner. The State also has no answer that if the guidelines would not have come even for another 1-2 years, then what would have happened to this process which they have started ?

20. Be that as it may be, the State's plea that the State could know about the guidelines of the NCTE dated 11.02.2011 only on 06:04.2011, we are believing only because of the fact that the State is stating so, and therefore, we are believing. If it is true then, not much time was passed to advertisement dated 26.3.2011 no last date for applying passed then the State should have immediately withdrawn this advertisement dated 26.3.2011 and should have proceeded to conduct fresh test for TET certificate and if wished to take combined test, should have first amended the rules as one time measure and should have given fresh opportunity to all the eligible person in the State of Jharkhand to apply. At this juncture, we may again observe that marking pattern and papers given in the Advertisement No. 46 of 2011 are contrary to rules which are in force even today as Rule 8 (Ka) has not been amended by notification dated 14.5.2011 or for marks or for making it one examination for appointment. Furthermore, the last date for submitting the applications for selection on the post of such teachers was 15.04.2011 and decision to convert this selection process into a certificate process cum selection process was taken

after 15th April, 2011 and all the candidates who would have aspirants for obtaining the certificate of the TET stand deprived from applying in this process. The person who were knowing well that only a candidate who possesses the TET certificate could have been given appointment, may not have applied for his selection in the process started by the advertisement dated 26.03.2011. We could not find out any of the justifications from any of the arguments or submissions made by the State that if a decision was taken to convert this selection process into certification process cum appointment process then why opportunity was not granted to all so as to make the competition wider.

21. It is also not in dispute that under the guidelines of NCTE, it is provided under Clause (9) that qualifying the TET would not confer a right on any person for recruitment/employment as it is only one of the eligibility criteria for appointment. Therefore, the TET itself cannot create a right to appointment. If the State had any intention to declare that a TET certificate holder shall be appointed then it should also have been known to everybody before advertising the post and at least before last date fixed in advertisement so that the candidates could have availed this opportunity. Not only this, as per the provision made under Clause 10, a TET certificate holder who obtains such certificate from any State/Union Territory then the other states may decide not to conduct a TET and can give appointment to the TET certificate holder in another State. Not only this, from the scheme of the TET, it is clear that it is not dependent upon the number of seats and a TET certificate can be given to any number of persons irrespective of the availability of the post because of the reason that it is just an eligibility test creating no right to appointment and in this situation even the number of posts as advertised in advertisement no. 27 of 2011 dated 26.03.2011 were absolutely irrelevant and this also may not have caused confusion in the minds of many persons who may have not applied by treating that there are number of limited posts available in each of the districts which has been disclosed in the advertisement.

22. Now what more has been done is that subjects have been changed and the subject of Mathematics has been included in the test which was not in the advertisement dated 26.03.2011; The subject of Child Development and Education was also not in the advertisement dated 26.03.2011. Inclusion of these subjects may also have changed the scope of competition by more applicants who may be good students of Mathematics as paper of 30 marks has been given for this subject.

23. The core question is that whether all the above could have been changed from the original process of selection and appointment started vide notification dated 26.03.2011? For this we take help from the judgement cited by the learned counsel for the State itself i.e., State of Bihar and Others Vs. Mithilesh Kumar, wherein after considering various judgments of the Supreme Court, Hon'ble Supreme Court held that "we all say in one voice that the norms and rules as existing on the dates when the process of selection begins will control

such selection and any alteration to such norms would not affect the continuing process." Learned counsel for the State submitted that this proposition has been clarified by the Hon"ble Supreme Court in this very judgment by making it clear that "unless specifically the same (amendment in rules) were given retrospective effect." Here in this case, the clarification which has been relied upon by the learned counsel for the State has no application inasmuch as it has not been shown that any of the Rule has been made applicable retrospectively so as to make this selection process guided by any retrospectively operative Rules or retrospective amendment of the Rules. Rather say, the judgement only applies to the extent that the process of selection is required to be controlled and governed by the Rules which were existing at the time of start of selection process. We find support to our view from the judgement of the Hon"ble Supreme Court delivered in the case of Madan Mohan Sharma and Another Vs. State of Rajasthan and Others, . In the said case, after holding that the subsequent amendment of the rules which was prospective, cannot be made retrospective so as to make the selection on the basis of the rules which were subsequently amended. The Hon"ble Supreme Court held that, if this was to be done then the only course left open was to recall the advertisement and issue fresh advertisement according to the Rules which had come into force. In the case of Sonia Vs. Oriental Insurance Co. Ltd. and Others, and in yet another judgment delivered in the case of N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, , it has been observed that where selection process has been initiated by issuing an advertisement inviting applications selection should normally be regulated by the Rule or Order then prevailing and also when advertisement expressly states that appointment shall be made in accordance with the existing Rule or Orders, subsequent amendment in the existing Rule or Order will not affect the pending selection process unless contrary intention is expressly or impliedly indicated. A similar view has been taken in the case of Hemani Malhotra Vs. High Court of Delhi, in the case of Rakhi Ray and Others Vs. The High Court of Delhi and Others, .

24. Not only this, the question papers have been changed, marking pattern has been changed, criteria for selection and requirement of obtaining minimum marks have also been changed, furthermore, a communication has been sent on 11.10.2011 by the Principal Secretary, Human Resources and Development Department of the State to Chair-person, Jharkhand Academic Council, conveying that the State Government has, by this decision, decided that the candidates selected in preliminary test shall be entitled to appointment and he will not have to face the main examination as notified in the original advertisement and required by Rules of 2002. Therefore, by this change, the preliminary test has been converted, not only into final test but created a right to appointment on the post. In this situation, the argument of learned counsel Sri R. Krishna that preliminary test or TET is not selection process for appointment cannot survive. At this juncture, it will be worthwhile to mention here that a person could have succeeded in preliminary examination if he would have

obtained a lower marks i.e., 35% of 30% marks in the language subjects but without amending rules, all those who may have got these marks have been deprived to appear in the final examination as the persons who secured marks less than 60 % have been declared failed. Therefore, a stringent criteria has also been prescribed.

25. Learned counsel for the State submitted that the State has not yet taken any decision (though copy of the communication dated 11.10.2011 is on record) because, for taking such decision, the Rule will require to be amended and today the State is not in a position to give any appointment to successful candidates because the Rule has not been amended to dispense with the main examination. Then in fact, as per law existing today, the State has no right to give any appointment even to the candidates who have been declared successful in the examination because of the plain and simple reason that the successful candidates faced the examination only under the advertisement dated 26.03.2011, then they can be only successful candidates for preliminary and not for main examination but at the same time the examination were not in accordance with rules or as per the advertisement dt. 26.3.2011, therefore, the successful candidates cannot be declared successful candidates even for preliminary test for Teachers appointment. It appears that the State took the decisions time to time and thereafter, tried to become wise and issued various notices and advertisements which is apparent from the fact that in spite of having condition of TET for appointment on the post of teachers, the State proceeded to advertise huge number of vacancies running in about 18,000 and invited applications of 1,31,000 candidates from entire State. Then State became wise when it received the guidelines on 06.04.2011 and issued another notice instead of withdrawing the process of selection itself and tried to make the conditions of original appointment in consonance with the guidelines issued by the NCTE. At that time also, there was no decision that the candidates who will appear in this combined or common test for TET and for selection and appointment shall not have to go for main examination and then on 11.10.2011 it has been conveyed to the Jharkhand Academic Council that the State (without amending the Rules of 2002) has taken decision to give appointment to such selected candidates directly on the post without there being completion or having the main examination and now the State's stand is that such decision has not yet attained finality and not became the part of the Rule. Therefore, till today nobody knows how these selected candidates will be dealt with and these selected candidates are under illusion that they are about to get the appointment order whereas, the candidates who were declared successful were not successful candidates either under rules which are in existence today nor as per advertisement conditions.

26. In view of the above reasons, we found from the facts of the case that nothing survives in the advertisement dated 26.03.2011 in view of the subsequent acts and actions of the State Government except misleading the all candidates who appeared in the examination which is said to be 1,31,000 in

numbers.

27. We tried to explore the possibility of saving the interest of the candidates who secured good marks in the examination but it is difficult in view of the fact that the examination itself was contrary to Rules. Process of selection which should be transparent, known to all and thereafter there must be a fair competition which, in the facts of the case, is totally missing and therefore, we have no option but to declare the entire process taken after the issuance of advertisement dated 26.03.2011, to be absolutely illegal, null and void.

28. In addition to above, other points which have been raised by the learned counsel for the petitioner in the writ petition with respect to prescribing of minimum marks for tribal and regional language for particular district and requiring of obtaining minimum marks are concerned, we are not deciding these issues in view of quashing of entire selections. Accordingly, the writ petition of the petitioner is allowed and consequently the Advertisement dated 26.03.2011 and entire process of selection undertaken under this advertisement is quashed. We also do not find any force in the submission of learned Additional Advocate General that issues raised are beyond the scope of writ because of the reason the petitioner has placed on record all relevant facts and more important is glaring illegalities are apparent from the face of the record placed by the State and the Academic Council of the State and the State got full opportunity to justify their own stand and this Court cannot ignore these illegalities. However, it is expected from the State Government to now proceed for appointment of the teachers de-novo by following the guidelines issued by the NCTE and in accordance with the Rules for appointment as the NCTE has only prescribed the eligibility criteria, passing of the TET whereas, the prescribing procedure for appointment on the post is the prerogative of the State and is in its jurisdiction, therefore, the procedure may be evolved by the State Government so as to avoid further delay in the matter. The session for schools will start from the month of July, 2012, therefore, before that, all appointment can be made by the State Government before next session.

29. The writ petition is allowed as above. In view of the fact that entire process of selection and the advertisement dated 26.03.2011 have been quashed and set aside, therefore, writ petitions being W.P.(PIL) No. 6495 of 2011 and W.P.(S) No. 6592 are also disposed of with observation that before taking any decision all issues which have been raised in this petition and in W.P. (PIL) No. 6495 and in W.P. (S) No. 6592 of 2011 may also be considered and if the State finds more corrections and amendments in the rules are required they may be made in accordance with law, if needed only.

30. No order as to costs.