

(2016) 06 RAJ CK 0068

In the Rajasthan High Court

Case No : Cr Appeal (Writ) No. 340, 93, 103, 114, 115, 140, 280, 281, 282, 283, 284, 285, 144, 254, 286, 287, 288, 289, 290, 292, 616, 351, 352, 353, 354, 355, 356, 378, 433, 435, 316, 326, 644, 645, 646 of 2016

Ganesh Narayan Mali

APPELLANT

Vs

State (Education Department)

RESPONDENT

Date of Decision : 02-06-2016

Acts Referred:

Rajasthan Educational Subordinate Service Rules, 1971 — Rule 10, 22

Citation : (2016) 2 WLCRajUC 236

Hon'ble Judges : Mr. Ajay Rastogi and Mr. Dinesh Chandra Somani, JJ.

Bench : Division Bench

Advocate : Mr. S.K. Gupta, Additional Advocate General, for the State; Mr. Ashok Gaur, Senior Counsel assisted by Mr. Ashwini Jaiman, Mr. Tanveer Ahmed, Mr. Anand Sharma, Mr. Ashwini Chobisa, Mr. Deepak Meena, Mr. Dharmendra Jain, Mr. Dushyant Singh, Mr. Hemant Tayl

Final Decision : Disposed Off

Judgement

Mr. Ajay Rastogi, J.—Instant batch of special appeals are directed against the self same judgment of the Id. Single Judge dated 07.01.2016.

2. With the consent of the parties, the facts have been noticed from D.B. Special Appeal (Writ) Nos. 340/2016, 254/2016 and 144/2016.

3. The brief facts that culled out from the averments of the several writ petitions are that the post of Physical Training Instructor Grade II (for short ?PTI Gr.II?) and Physical Training Instructor Grade III (for short ?PTI Gr.III?) are included in the Schedule appended to the Rajasthan Educational Subordinate Service Rules, 1971 and the State Government vide its Notification dated 09.12.2011 amended the Schedule-I appended to the Rajasthan Educational Subordinate Service Rules, 1971 under the heading ?Section-B Physical Training Instructors?. The aforesaid amendment was in regard to qualifications prescribed for the post of

Physical Training Instructor.

4. The selection process came to be initiated by the Rajasthan Public Service Commission vide its advertisement dated 18.09.2013 holding selections for the post of PTI Gr.II/Gr.III under the Rules, 1971. However, prior to the present advertisement in question dated 18.09.2013, earlier an advertisement dated 14.12.2011, after the amendment of 09.12.2011, came to be notified by the Commission holding selections for the post of PTI Gr.II/ Gr.III and last date for submission of application form was 15.01.2012 and as per the R.10 of the Rules, 1971, the age of the candidate is to be looked into as on 1st January of the following year i.e. 01.01.2013. Thus, all the candidates as regard the age is concerned, those who have been within age as on 01.01.2013 were considered to be eligible and the opportunity was afforded to each of them to participate in the selection process pursuant to the advertisement dated 14.12.2011.

5. Followed thereof, the present impugned Notification dated 18.09.2013 came to be published by the Commission and in all 2858 vacancies of PTI Gr.III and 1041 vacancies of PTI Gr.II came to be notified and a common competitive examination, 2013 was held for PTI Gr.II & Gr.III and the provisional cut-off was declared on 14.06.2005 of twice the number of posts advertised and candidates were called for document verification and after verification of documents, the final cut-off dated 05.10.2005 came to be notified for PTI Gr.II/Gr.III respectively.

6. The candidates who were aspiring of being selected, when their names did not find place in the select list, published by the Commission, writ petitions came to be filed before the Id.Single Judge on many fold grounds by the candidates who had participated in the selection process for the post of PTI Gr.II/Gr.III, pursuant to the advertisement dated 18.09.2013 and the Id.Single Judge taking note of the many fold grievances of the petitioners framed 11 issues, on which the Id.Single Judge examined the matter and arguments were advanced by the parties to the litigation. The 11 issues, as framed by the Id. Single Judge read ad infra:-

"1. The petitioners apprehend that ineligible candidates have been included in the select list and likely to be given appointment thus a direction may be given to the official respondents not to give appointment to ineligible candidates.

2. The candidates holding the qualification of Bachelor of Physical Education (BPE- three years course) should not be held eligible for appointment to the posts in question.

3. The candidates, who were not in possession of sports certificate/s while undergoing BPED, CPED or DPED course should be declared ineligible.

4. The candidates, who have already attained maximum age provided for appointment, may be treated as overage and should not be given appointment on the post of PTI Gr II/ PTI Gr III.

5. The candidates belonging to Jat community of districts Dholpur and Bharatpur

should not be given benefit of reservation by treating them to be in the category of OBC candidates.

6. The total numbers of posts calculated for reservation to the Special Backward Class (SBC) and Scheduled Tribes (ST) are at the district level, whereas, it should have been by taking total posts at the State level, accordingly, to provide them proper reservation.

7. The marks towards sports have not rightly been awarded to the candidates.

8. The non-petitioners may be directed to migrate those women candidates belonging to Other Backward Class (OBC) to open category who find place in merit at their own, thereby, not to be counted towards OBC (female) quota thus a direction for migration of reserve category women to open category may be given.

9. The non-petitioners have failed to give age relaxation as per rules thus a direction may be given to extend relaxation in age strictly as per rules and specially for those who were previously in service and within age at the time of their initial appointment thus to be treated within age limit.

10. The sports certificates submitted by the candidates after last date of submission of application forms may not be considered and candidates may not be held entitled to get marks towards sports certificates.

11. The previous selection was made by issuing advertisement in the year 2011 and no advertisement was issued in the year 2012, yet age relaxation has been denied for one year in which no recruitment took place. The denial of age relaxation is contrary to the rules so amended in the year 1999."

7. Against the impugned judgment of the Id.Single Judge, the present batch of special appeals came to be preferred and when the matter came up before this court on 07.04.2016, the litigating parties jointly prayed that out of 11 issues, which were considered by the Id.Single Judge, their dispute is centralised only in respect of 5 issues out of 11 issues, on which they intend to address this court. The said 5 issues read ad infra:-

"Issue No.2. The candidates holding the qualification of Bachelor of Physical Education (BPE-three years course) should not be held eligible for appointment to the posts in question.

Issue No.3. The candidates, who were not in possession of sports certificate/s while undergoing BPED, CPED or DPED course should be declared ineligible.

Issue No.5. The candidates belonging to Jat community of districts Dholpur and Bharatpur should not be given benefit of reservation by treating them to be in the category of OBC candidates.

Issue No.10. The sports certificates submitted by the candidates after last date of submission of application forms may not be considered and candidates may

not be held entitled to get marks towards sports certificates.

Issue No.11. The previous selection was made by issuing advertisement in the year 2011 and no advertisement was issued in the year 2012, yet age relaxation has been denied for one year in which no recruitment took place. The denial of age relaxation is contrary to the rules so amended in the year 1999."

8. At that stage, it was also informed to this court that the appointment orders in respect of PTI Gr.II have been dispatched and the candidates selected are in process to join or may join in the meanwhile and taking note thereof, this court vide order dated 07.04.2016 was not inclined to issue any interim order as regard PTI Gr.II is concerned. However, it was made clear that these selections shall remain subject to final decision of the instant batch of special appeals. At the same time, as regard selection process for the post of PTI Gr.III (Primary/Upper Primary Education) is concerned, which too was initiated pursuant to the advertisement dated 18.09.2013, this court considered it appropriate to observe that since the State Government has not acted upon the select list of PTI Gr.III (Primary/Upper Primary Education), let the State Government may finalise the select list of PTI Gr.III (Primary/Upper Primary Education) but may not proceed to offer appointments and await decision of this court.

9. On all the five issues, referred to supra, arguments were heard by this court in detail.

Issue No.2. The candidates holding the qualification of Bachelor of Physical Education (BPE-three years course) should not be held eligible for appointment to the posts in question.

10. The Id.Single Judge finally held that they are not eligible for appointment on the post in question. Before we may examine the issue, raised for our consideration, the brief facts may be noticed that the post of PTI Gr.II and Gr.III are included in the Schedule appended to the Rules, 1971 and after an amendment Notification dated 09.12.2011, the qualification prescribed under the scheme of Rules, 1971 for the post of PTI Gr.II and Gr.III as amended and notified in the impugned advertisement dated 18.09.2013. The amended Notification dated 09.12.2011, which is relevant for the present purpose is reproduced hereunder:-

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(Physical Training Instructor Gr. II)

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(Physical Training Instructor Gr. III)

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1. Bachelor of Physical Education (B.P.Ed.) or certificate in Physical Education (C.P.Ed.) or Diploma in Physical Education (D.P.Ed) recognised by the National Council for Teacher Education)

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2. Working knowledge of Hindi written in Devnagri Script and Knowledge Rajasthan Culture

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11. It appears from the scheme of Rules, 1971 that Bachelor of Physical Education (B.P.Ed.) recognised by the National Council for Education and working knowledge of Hindi; and Bachelor of Physical Education (B.P.Ed.) or Certificate in Physical Education (C.P.Ed.) or Diploma in Physical Education (D.P.Ed.) recognised by the National Council for Teacher Education along with working knowledge of Hindi are the basic prescribed professional qualifications for the post of PTI Gr.II and Gr.III respectively.

12. At the outset, it may be noticed that the self same controversy and the issue as to whether the candidate holding the qualification of Bachelor of Physical Education (BPE ? three year degree course) is eligible for the post of PTI Gr.II and Gr.III and this came to be examined by the coordinate Division Bench of this Court in the case of Manoj Kumar Verma v. Rajasthan Public Service Commission & Ors. [D.B.Special Appeal (Writ) No.601/2014] decided at the Bench at Jaipur vide judgment dated 22.08.2014 and the Division Bench after the matter being heard at length finally held that the schedule attached to the NCTE Regulations, 2001 does not prescribe BPE as qualification for PTI Gr.II and Gr.III for teaching in schools/high schools and senior secondary schools, where physical education is an elective subject and for secondary/high schools, under graduation with Bachelor of Physical Education (B.P.Ed.) or its equivalent, is the requisite qualification and holders of BPE, which is a degree course in Physical Education, does not hold eligibility for being considered for the post of PTI Gr.II and Gr.III under the scheme of Rules, 1971. The operative portion of the judgment of the Division Bench of this court dated 22.08.2014 reads ad infra:-

"In the present case, on the enforcement of the NCTE Regulations, 2001, prescribing qualification for teachers including Physical Education Teachers, the Rules of 1971 framed by the State of Rajasthan were required to be amended. The Schedule in the NCTE Regulations, 2001, quoted as above, does not prescribe B.P.E. as qualification for PTI Grade-II and Grade-III for teaching in schools/high schools and Senior Secondary Schools, where physical education is an elective subject. For Secondary/High Schools, Graduates with Bachelor of Physical Education (B.P.Ed.), or its equivalent, is the requisite qualification. The appellant possesses B.P.E., which is a degree course in Physical Education. He did not pursue the degree course in Physical Education (B.P.Ed.) after doing graduation. He, therefore, does not hold the requisite qualification for appointment as PTI Grade-II or even PTI Grade-III. His contention that he had taken admission in B.P.E. course in 1994 and passed out in 1997, does not hold him eligible, as he was seeking recruitment in the schools in Rajasthan in pursuance of the advertisement issued, after the NCTE Regulations, 2001 came into force."

13. The main thrust of submission of Mr.Ashok Gaur, Senior Counsel and other counsel is that candidates who are holding the qualification of BPE (3 year degree) are at least eligible for being appointed in the light of the Notification

issued by the NCTE dated 12.11.2014 amending the Second Schedule in reference to sub-reg.(2) of Reg.(4) of its Regulations and laying down the minimum academic & professional qualifications for the post of PTI Gr.II and Gr.III respectively and in terms of the amendment Notification dated 12.11.2014, the holders of BPE become eligible for the post of PTI Gr.II and Gr.III and further submit that the State Government is under an obligation to make necessary amendment under the scheme of Rules, 1971 and their further submission is that in the case of *Manoj Kumar v. State of Rajasthan* reported in 2014 (3) CDR 1572 (Raj.) observations were made by the Division Bench of this court and liberty was granted to the NCTE and the State Government to amend the Rules and keeping the observations of the Division Bench of this court into consideration, once amendment has been made by the NCTE under its Regulations vide Notification dated 12.11.2014, it is the duty of the State authorities to give it full respect and the present amendment will certainly apply to the selection process in question and their further defence is that the NCTE vide its letter dated 15.07.2015 made its intention clear that BPE holders (3 years degree) are holding equivalent qualification and are eligible to hold the post of PTI Gr.II and Gr.III and there appears no reason to out-list them from the selection process which was initiated by the Commission pursuant to the advertisement dated 18.09.2013.

14. The State Counsel and other contesting respondents jointly opposed the submission made and submit that BPE holders (3 years degree) could not be held to be eligible in view of the judgment of Division Bench of this Court in the case of *Manoj Kumar (supra)* and further submit that in the light of the judgment of this court, the question which has been raised is no more remains *res integra* and open for consideration in the instant proceedings.

15. It is not disputed by the contesting parties that the issue as regards the eligibility of those candidates who are holders of BPE (3 year degree) has been decided by the Division Bench of this court in the case of *Manoj Kumar (supra)*. However, the submission is that subsequent to the earlier recruitment, the NCTE has made amendment in the Regulations, 2014 vide Notification dated 12.11.2014 and as per the amendment Notification, the holders of BPE become eligible to hold the post of PTI Gr.II and Gr.III and the question for consideration is whether the amendment Notification dated 12.11.2014 would have any effect as regards selection process initiated pursuant to the advertisement dated 18.09.2013 i.e. much prior to the amendment in the Regulations were notified by the NCTE. The legal position has been settled that the selection process once initiated indicating eligibility in question, any later amendment, if made, will not be of any significance and the process has to be completed in terms of the conditions of eligibility laid down in the advertisement and this what the Apex Court has held in *P. Mahendran & Ors. v. State of Karnataka & Others* reported in AIR 1990 SC 405 and that apart we consider it appropriate to quote the amendment Notification dated 12.11.2014 notified by the NCTE, pursuant to which the minimum academic & professional qualifications for the post of PTI

Gr.II and Gr.III have been amended in November, 2014 by the statutory authority and the same read ad infra:-

"Second Schedule

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

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

LEVEL

MINIMUM ACADEMIC AND PROFESSIONAL QUALIFICATIONS

1. Primary and Upper Primary (For Classes I to VIII)

(1) Senior Secondary (Class XII or its equivalent) with at least 50% marks from recognised board

Or

Candidates who have passed the Senior Secondary examination (+2) or its equivalent and have participated in sports/games at least school/college/district level in accordance with the and National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.2007}

Or

Senior Secondary (Class XII or its equivalent) with at least 45% marks from recognised board {in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002

and

(b) Certificate/Diploma in Physical Education of duration not less than two years (or its equivalent) from any National Council for Teacher Education recognised institution.

2.Secondary, High School (For Classes IX-X)

Bachelor's degree with Physical Education or an elective subject with 50% marks

Or

Bachelor's degree with Physical Education as an elective subject with 45% marks and participation in National or State or Inter-University competitions in sports or games or athletics recognised by Association of Indian University or Indian Olympic Association

Or

Bachelor's degree with 45% marks and having participated in National or State or Inter-University sports or games or athletic.

Or

For deputed in-service candidates (i.e. trained Physical Education Teachers/ Coaches) ? Graduation with 45% marks and at least 3 years of teaching experience as per National Council for Teacher Education (Recognition Norms & Procedure) Regulations, 2009

Or

Graduate in Physical Education with 40% marks

Or

Graduate with Physical Education as an elective subject with 40% marks

Or

Graduate who participated school, Inter-Collegiate in sports/games or passed NCC "C" Certificate in accordance with the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 notified as 10.12.2007

Or

Graduate in Physical Education i.e. B.P.Ed. Course (or its equivalent) of 3 years duration

Or

Graduate having represented State/University in sports/games/ athletics

Or

Graduate who has secure 1st, 2nd or 3rd position in Inter-Collegiate sports/ games tournaments/possessing NCC "C" Certificate or passed basic course in Adventure Sports

Or

Graduate with one year training programme in Sports Science, Sports Management, Sports, Coaching, Yoga, Olympic Education, Sports Journalism etc. {in accordance with the National Council of Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulation, 2002 notified on 13.11.2002

And

(b) Bachelor of Physical Education (B.P.Ed) of at least one year duration (or its

equivalent) from any National Council for Teacher Education recognised Institution.

3.Senior Secondary/ Intermediate for Classes XI-XII)

Bachelor of Physical Education (B.P.Ed.) or Bachelor of Physical Education (BPE) or Bachelor of Science (B.Sc.) in Health and Physical Education and Degree in Sports with at least 55% marks as per National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2009.

Or

At least 50% marks in the B.P.Ed. Degree/B.P.Ed. (Integrated) 4 years professional degree in accordance with the and National Council for Teacher Education (Recognition Norms and Procedure) Regulation, 2007 notified on 10.12.2007}

Or

B.P.Ed. with at least 55% marks or B.P.E. Course (or its equivalent) of 3 years duration with at least 50% marks in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002.

And

(c) M.P.Ed. of at least 2 years duration from any National Council for Teacher Education recognised institution.

16. Even when we look into the amendment Notification of NCTE dated 12.11.2014, as regards the post of PTI Gr.III (Primary & Upper Primary Education) for classes I to VIII is concerned, BPE (3 year degree) is still not the minimum academic & professional qualification in holding a candidate eligible. At the same time, as regard the post of PTI Gr.II (Secondary & High School) for classes IX & X and for Senior Secondary/ Intermediate for Classes XI-XII is concerned, apart from B.P.E., B.P.Ed. and M.P.Ed. are also the prescribed professional qualification required to consider a candidate eligible to hold the post of PTI Gr.II.

17. Thus, in totality of the factual matrix of the case, a holder of BPE (3 year degree) in itself in absence of a professional qualification is not eligible for the post of PTI Gr.II or PTI Gr.III, as the case may be, either in the pre-amendment Regulations, 2011 or in the post-amendment Regulations, 2014 which are introduced by the NCTE vide amendment Notification dated 12.11.2014 and that apart the legal position is well settled and as also taken note of by the Id.Single Judge that once any change which is given effect after the process of selection being initiated, particularly with regard to the eligibility, the same cannot be given effect to in the selection which has already been processed and legitimate

right to the participant has conferred, pursuant to the advertisement in question.

18. The submission made by the counsel that BPE (3 year degree) has been treated to be an equivalent professional qualification vide communication dated 15.07.2015 is of no significance for the reason that under the scheme of Rules, 1971 the candidate is supposed to possess minimum academic & professional qualification, as prescribed under the scheme of Rules/Regulations and the scheme of Rules does not postulate any other equivalent qualification and that being so, the very correspondence made by the NCTE to the Secretary, RPSC dated 15.07.2015 will not hold the candidates of BPE (3 year degree) to be eligible for the post of PTI Gr.II and Gr.III under the present advertisement dated 18.09.2013 unless the Rules provide/prescribe equivalent qualification, merely by correspondence dated 15.07.2015 holding BPE (3 year degree) as the equivalent qualification cannot be considered as the basic minimum academic/professional qualification to hold a candidate eligible for the post of PTI Gr.II/Gr.III in question under the scheme of Rules, 1971 and to further support neither under the scheme of Rules, 1971 nor in the advertisement dated 18.09.2013, there is any provision prescribed of equivalent qualification. Thus, one is supposed to hold the basis minimum academic/professional qualification, which is prescribed under the scheme of Rules, 1971 & not the equivalent qualification prayed for.

19. Indisputably, either of the candidates who are holders of BPE (3 year degree) are not holding the qualification of BPED, CPED & DPED which could make them eligible to participate in the selection process initiated in respect of the post of PTI Gr.II and Gr.III respectively and that being so, we find no justification in the submissions made and we are in conformity with the view expressed by the Id.Single Judge in holding that the holders of BPE (3 year degree) are not eligible for the post of PTI Gr.II and Gr.III under the Rules, 1971 & under the present advertisement, pursuant to which the selection process has been initiated dated 18.09.2013.

Issue No.3. The candidates, who were not in possession of sports certificate/s while undergoing BPED, CPED or DPED course should be declared ineligible.

20. The Id. Single Judge has finally repelled the contention and observed that once candidates have acquired the qualification of BPED, CPED or DPED, as the case may be, they are holders of recognised qualification which is prescribed under the scheme of Rules, 1971 and possession of sports certificate is not the only condition precedent for obtaining the professional qualification of BPED, CPED or DPED, as the case may be.

Before we examine the issue under consideration, if we look into the scheme of the Rajasthan Educational Subordinate Service Rules, 1971 apart from the basic academic and professional qualification, which has been prescribed for the post of PTI Gr.II and Gr.III respectively, the State Government has also introduced Schedule-II laying down the scheme and syllabus for the post of PTI Gr.II and

Gr.III and if we look into para-5, there is award of marks on the basis of certificate of participation and the position gained in sports competition, which shall be as under:-

"SCHEDULE-II

5. The detailed syllabus and scope of paper for the examination will be as prescribed by the Commission from time to time and will be intimated to the candidates within the stipulated time in the manner as the Commission deems fit.

Note- (I) Award-able marks on the basis of certificate of the participation & the position gained in sports competition shall be as under:-

1. Participation at international level or winner at nation level.

40 marks

2. II position at national level.

36 marks

3. III position at national level.

32 marks

4. Participation at national level or winner at state level.

28 marks

5. II position at state level.

24 marks

6. III position at state level.

20 marks

7. Participation at state level or winner at district level.

16 marks

8. II position at district level.

12 marks

9. III position at district level.

08 marks

10. Participation at district level.

04 marks

Note-(II) Level shall be as under:-

1. District Level ? Following tournaments will be considered of district level-

- a. District level school tournament of Elementary Education Department.
 - b. District level school tournament of Secondary Education Department.
 - c. State level school tournament of Sanskrit Education Department.
 - d. Cluster level school tournament of Navoday Vidhyalay Samiti and Central School Organization.
 - e. Inter college tournament of Universities.
2. State Level ? Following tournament will be considered of state level.
- a. State level school tournament of Elementary Education Department.
 - b. State level school tournament of Secondary Education Department.
 - c. National level school tournament of Navoday Vidhyalay Samiti and Central School Organization.
 - d. Inter University tournament at zone level.
3. National Level ? Following tournaments will be considered of national level.
- a. School games tournament organised by School Games Federation of India at national level.
 - b. Inter University tournament at National or inter zone level.
4. International level. Participation in international tournaments through any one of these organisations:-

School Games Federation of India, University Sports Association or Sports Federation of India.

Note- (III) Verification of Sports Certificates-

- a. Sports certificates will be considered if they are verified by Secretary of Rajasthan Sports Council or Head of the Institute with a mention that participant is a regular student of the Institution.
- b. Sports Certificate of participation or acquired position in International tournament through School Games Federation of India, University Sport Association or Sports Federation of India will be considered only when the same is verified by the concerned federation/association."

21. The Regulations of NCTE and subsequent amendment has been noticed by the Id.Single Judge in detail and we too consider it appropriate to quote the same from the Regulations of NCTE, amended from time to time, which read ad infra:-

"C.P.Ed/ D.P.Ed. -

Regulation 2005 -

Senior Secondary Examination (+2) or its equivalent - 45% marks.

40% marks for those who have participated in State/National Level Sports Events.

Regulation 2007 -

Senior Secondary Examination (+2) or its equivalent and have participated in sports/games.

Regulation 2009 -

Senior Secondary Examination (+2) or its equivalent with 50% marks. 5% relaxation to those who have participated in International/National/SGFI/Sports Competition or position holder in Inter-Zone Sports Competition.

Regulation 2014 -

Senior Secondary Examination (+2) or its equivalent with 50% marks. 5% relaxation to those who have participated in International/National/SGFI/Sports Competition.

B.P.Ed.-

Regulation 2005 -

BPE of three year duration

or

Graduate represented State/University in sports/games/athletics

or

Graduate secured 1st, 2nd or 3rd position in inter-collegiate sports/games/tournaments/possessing NCC "C" certificate or passed basic course in adventure sports

or

Graduate one year training programme in sports science, sports management, sports coaching, yoga, Olympic education, sports journalism, etc

Regulation 2007 -

B.P.E. with 40% marks.

or

Graduate with physical education as an elective subject with 40% marks

or

Graduate participated in National/State/Inter University sports/games/athletics/SGFI

or

Any Graduate who participated School, Inter collegiate in sports/games or Passed NCC "C" Certificate

or

For Deputed/ in service candidates (trained Physical Education teachers/coaches) graduate with 40% marks

Regulation 2009 -

B.P.E. with 50% marks

or

Bachelor's Degree with Physical Education as an elective subject with fifty percent marks

or

B.P.E. with 45% marks or Bachelor's Degree with physical education as an elective subject with 45% marks and participation in National/All India Inter-University/Inter University competitions in sports recognised by AIU or IOA

or

For deputed (in-service candidates i.e. trained physical education teachers/coached

Graduate with forty five percent marks and at least three years of teaching experience.

Regulation 2014 -

Graduate in any discipline with 50% marks and have at least participated in the inter-college/Inter Zonal/District/School competition in sports and games recognised by the AIU/IOA/SGFI/Government of India

or

BPE with 45% marks

or

Graduate in any discipline with 45% marks and studied physical education as compulsory/elective subject.

or

Graduate with 45% marks and having participated in National/Inter University/State competition or secured 1st, 2nd or 3rd position in Inter College/Inter Zonal/District/School competition in sports and games as recognised by the AIU/IOA/SGFI/Government of India

or

Graduate with participation in International competitions or secured 1st, 2nd or 3rd position in National/Inter University competition in sports and games as recognised by respective federations/AIU/IOA/SGFI/Government of India

or

Graduate with 45% marks and at least three years of teaching experience (for deputed in-service candidates i.e trained physical education teachers/coaches."

22. The submission of counsel contesting the matter is that requirement of certificate of sports is a condition of eligibility for admission in BPED, CPED & DPED courses in the State of Rajasthan and according to them, the candidates from the State of Rajasthan who are not holding the sports certificate, if undertook course, their admission in obtaining professional qualification of BPED, CPED & DPED cannot be considered as a recognised qualification for being appointed on the post of PTI Gr.II & Gr.III under the scheme of Rule, 1971 and their further submission is that through RTI they were able to get information that the candidates who are finally selected for the post of PTI Gr.II & Gr.III, there are good number of candidates who did not possess any sports certificate but still have been selected for the post of PTI Gr.II & Gr.III, such qualification could not be recognised and holders of professional qualification, in absence of holding of sports certificate, which is a condition precedent to be admitted to the courses, at least cannot be considered eligible & to participate in the selection process and their selection is bad in law.

23. The issue has been contested by the Additional Advocate General and other counsel for the parties and their submission is that even as per Regulations of the NCTE sports certificate is not a pre-condition in all the circumstances and even as per the Regulations, admission in BPED, CPED & DPED is permissible even if one is not holding sports certificate to his credit. At the same time, extra benefit has been given to those who are in possession of sports certificate. It has also been submitted that even in the State of Rajasthan many candidates have been given admission and undertaking BPED course without their participation in the sports events at any level.

24. After we have heard counsel for the parties, we find that the very Regulations of NCTE reveals that if one has not participated in sports still admission in respective professional courses is permissible and that apart the appellants have not come with a specific case by naming any individual candidate that he was not in possession of required qualification at the time of being admitted to BPED, CPED & DPED courses yet he was given admission and his qualification has been recognised. Under the Regulations of NCTE, which has been amended from time to time, if a candidate took admission in any professional course, based on academic qualification where the sports certificate is not a pre-condition, then in such cases, it cannot be said that the candidate was ineligible to be admitted to BPED, CPED & DPED, at the relevant point of time when the professional qualification was acquired by him. At the same time, once

the candidate holds recognised professional qualification of BPEd, CPED & DPED, primarily it is not open for the State Government or Commission to review in the absence of any tangible evidence to support, in absence not permitted to hold a roaming enquiry regarding the qualification possessed by the individual candidate at the time to be admitted to the professional course.

25. The issue aforesaid has been considered by the Division Bench of this court at Principal Seat at Jodhpur in Sushil Sompura & Others v. State of Rajasthan & Others [D.B.Civil Writ Petition No.3964/2011 decided on 20.05.2011.

26. On the contrary, the candidates have supported by repelling the contentions that they are holding sports certificates issued by the respective federations/associations.

27. In our considered view, the candidates who are holders of professional qualification of BPEd, CPED & DPED which is a recognised qualification, it is not open for the State Government or Commission to hold a roaming enquiry of such candidates as to what was the eligibility criteria & the procedure allowed while admitted to the professional course. At the same time, those who are holders of sports certificate and participated at International and National Levels, are entitled to claim bonus marks which may add to their final merit and those who are not holding sports certificate of a kind for which marks are to be awarded, they cannot be declared ineligible to participate in the selection process initiated by the Commission, pursuant to the advertisement dated 18.09.2013. We find ourselves in conformity with the view expressed by the Id.Single Judge that as long as the candidate holds the professional qualification of BPEd, CPED & DPED and it is being recognised by the NCTE, which is the parent statutory authority, such questions are not open to be examined so cursorily when there is no fact finding material available on record and their submission deserves outright rejection.

Issue No.5. The candidates belonging to Jat community of districts Dholpur and Bharatpur should not be given benefit of reservation by treating them to be in the category of OBC candidates.

28. The aforesaid issue was considered by the Division Bench of this court in Ratan Lal Bagri & Others v. State of Rajasthan & Others reported in 2016 (1) WLC (Raj.) 618 and the Notification dated 10.01.2000, which was issued by the State of Rajasthan including the Jats of the Districts Bharatpur and Dholpur and deleting the words "except Dholpur and Bharatpur" from the original Notification dated 03.11.1999 was quashed and set aside and it was held that the Jats of the Districts Bharatpur and Dholpur will be excluded from the State List of OBCs and it was further held that the quashing of Notification dated 10.01.2000 will be prospective and will not affect the benefit of reservation already given and received by the Jats of the Districts Bharatpur and Dholpur. The extract of the judgment, which is relevant for the present purpose, is reproduced ad infra:-

"120. The writ petitions are partly allowed. The Notification dated 10.1.2000

issued by the State of Rajasthan including the Jats of Bharatpur and Dholpur, and deleting the words "except Dholpur and Bharatpur" from the original Notification dated 3.11.1999 issued by it, is quashed. The Jats of Bharatpur and Dholpur Districts will be excluded from the State List of OBCs. The quashing of Notification dated 10.01.2000 will however, be prospective, and will not affect the benefit of reservation already given and received by the Jats of Bharatpur and Dholpur Districts."

29. The submission of counsel is that when selection process was initiated pursuant to the advertisement dated 18.09.2013, the candidates of Jat community of the Districts Bharatpur and Dholpur were also considered to be the members of OBC category and admit cards were issued to them and even on the last date of submission of application form, they were in the category of OBC and although the result of examination was declared after the judgment of the Division Bench of this Court in the case of Ratan Lal Bagri (supra) i.e. on 05.10.2015 and the result might have been published at a later point of time but once they were permitted to participate as members of OBC category of the Districts Bharatpur and Dholpur in the selection process, their rights have been conferred and that could not have been either divested or taken away by a later development which has taken place.

30. Counsel further submits that even the Division Bench of this court was conscious of this fact that although the Notification dated 10.01.2000, so far it includes Jats of the Districts Bharatpur and Dholpur, has been quashed and set aside but it was made prospective and the benefit of reservation already given and received by the Jats of the Districts Bharatpur and Dholpur should not be disturbed and any later development taken place, after the process has been initiated, pursuant to the advertisement dated 18.09.2013, could not deny the benefits accrued to the candidates belonging to the OBC category of the Districts Bharatpur and Dholpur from being treated to be the members of OBC category for their participation in the selection process.

31. In our considered view, the submission is wholly without substance for the reason that when the final selection does not confer any right in their favour as envisaged u/R.22 of the scheme of Rules, 1971 and the candidates who have participated in the selection process or the inclusion of their names in the select list does not confer any right and after the Notification dated 10.01.2000, issued by the Government, including the Jats of the District Bharatpur and Dholpur has been quashed and set aside by the Division Bench of this court, such of the candidates of OBC category of the Districts Bharatpur and Dholpur could not claim any benefit of being members of OBC category at least after the judgment of this court in the case of Ratan Lal Bagri decided on 10.08.2015.

32. This question further came to be considered in the case of Ummed Singh & Others v. State of Rajasthan & Others [S.B.Civil Writ Petition No.17662/2015 decided on 01.12.2015 and it was observed that once reservation to the members of Jat community of the Districts Bharatpur & Dholpur, granted vide

Notification dated 10.01.2000, has been quashed and set aside, at least the candidates of OBC category of the Districts Bharatpur & Dholpur could claim themselves to be the members of OBC category for the purpose of their participation in the selection process and as already observed unless any right is being conferred in their favour, what has been observed by the Division Bench, which has prospective effect and will not affect the benefit of reservation already availed, may not come to the rescue of candidates of the Districts Bharatpur and Dholpur who are claiming themselves to be members of OBC category and after going through the finding of the Id.Single Judge, we are in conformity with the view expressed and does not call for our interference.

Issue No.10. The sports certificates submitted by the candidates after last date of submission of application forms may not be considered and candidates may not be held entitled to get marks towards sports certificates.

33. In fact no one has addressed on this issue before us. At the same time, the allegation is vague and there is no factual foundation to support and individual case could be considered if brought to notice and it is not a legal issue which may require attention of this court. Although sports certificate certainly, if covered under the Schedule-II, of which we have made a reference earlier, may award marks to the candidates and add to his merit but if the same has been furnished and candidate has participated in the selection process and submitted his sports certificate, it is always open for the appointing authority to consider the sports certificate submitted by the candidate, keeping in view the requirement of terms of advertisement in awarding marks which may add to his merit and we find no substance to examine the issue any further.

Issue No.11. The previous selection was made by issuing advertisement in the year 2011 and no advertisement was issued in the year 2012, yet age relaxation has been denied for one year in which no recruitment took place. The denial of age relaxation is contrary to the rules so amended in the year 1999.

34. We would like to take note of certain facts for examining the present issue and we find that an omnibus amendment was made vide amendment Notification dated 23.09.2008 which may be relevant for the present purpose and we consider it appropriate to quote the said Notification dated 23.09.2008 by which omnibus amendment has been made, which reads ad infra:-

"If a candidate would have been entitled in respect of his/her age for direct recruitment in any year in which no such recruitment was held, he/she shall be deemed to be eligible in the next following recruitment, if he/she is not overage by more than 3 years."

35. Keeping in view the amendment Notification dated 23.09.2008, we find that after the present amendment Notification, the advertisement came to be notified by the authority and the cut-off date for submission of application form was 15.01.2012 and that being so u/R.10 of the Rules, 1971, age is the first day of January following the last date fixed for the receipt of application and that came

to be looked into as on 01.01.2013. The candidates who have participated in the selection process, pursuant to the advertisement dated 14.12.2011 and those who are within the age as on 01.01.2013 were considered eligible & within age and after the selection process, pursuant to the advertisement dated 14.12.2011 was completed, the present selection process came to be initiated by the Commission vide advertisement dated 18.09.2013 holding selections for the post of PTI Gr.II & Gr.III and the eligibility in regard to the age has to be determined as on 01.01.2014 u/R.10 of the Rules, 1971. Thus, the candidate who had participated, pursuant to the advertisement dated 14.12.2011 are considered eligible up to 01.01.2013 as regard age is concerned and they had an opportunity to participate in the selection process in the previous advertisement dated 14.12.2011.

36. The amendment Notification dated 23.09.2008 in the scheme of Rules, 1971 envisage that an opportunity to the candidate to participate in the selection process of direct recruitment in any year, if recruitment has not been held, be provided by granting him relaxation by one year and he may be considered to be eligible in the next following recruitment year but with a rider that he will not become overage by more than three years.

37. In the instant case, the candidates who have participated in the previous advertisement dated 14.12.2011, such candidate were considered to be eligible as regard age is concerned up to 01.01.2013 and were permitted to participate in the selection process and in subsequent advertisement impugned herein dated 18.09.2013 those who were eligible as on 01.01.2014 were permitted to participate in the selection process. Thus, none of the candidate was deprived on account of age and all the candidates who were eligible as on 01.01.2012, 01.01.2013 & 01.01.2014 fair opportunity to participate in the selection process has been afforded to them and the object & purport of omnibus amendment Notification dated 23.09.2008 in fact has been fulfilled in the selection process which has been initiated by the Commission, pursuant to the advertisement dated 18.09.2013.

38. The submission made by the counsel that since the last advertisement was published in 2011 and no recruitment was initiated in 2012, as such, they are entitled to get relaxation in age at least by one year and as observed by the Id.Single Judge, in our considered view, the submission made is without substance for the reason that as per R.10 of the scheme of Rules, 1971, the age is always to be looked into as on 1st day of January following the last date fixed for receipt of application and the object behind is that no one should be deprived from participating in the selection process and this being the object of the Notification dated 23.09.2008, in the facts & circumstances of the present case has been fulfilled for the reason that selection process which was initiated pursuant to the earlier advertisement dated 14.12.2011, the last date of submission of application was 15.01.2012 and according to R.10 of the Rules, 1971, age of the candidate was to be looked as on 01.01.2013. Thus, all the

candidates who are within age upto 01.01.2013 were permitted to participate in the selection process and by the subsequent advertisement dated 18.09.2013 with which we are presently concerned, the candidates who are eligible as on 01.01.2014 were considered eligible to participate in the selection process. Thus, the candidates who were eligible as on 01.01.2012 or 01.01.2013 or 01.01.2014, fair opportunity has been afforded to each of them.

39. Thus, there is no year in which the candidates have been deprived from participating in the selection process on account of being overage, pursuant to the advertisement in question and the view expressed by the Id.Single Judge that since there was no advertisement in the year 2012, as such, they are entitled to relaxation of one year, in our considered view, is not sustainable in law and not in conformity with the amendment Notification dated 23.09.2008 and scheme of Rules, 1971.

40. Thus, in our view that the issue No.11 which has been decided by the Id.Single Judge in holding that the candidates are entitled to get relaxation of one year for the reason that no recruitment was held in 2012 is without substance and the finding recorded in regard to the issue No.11 in granting relaxation of one year to the candidates deserves to be set aside.

41. Consequently, we dispose of the instant batch of appeals while upholding the findings recorded by the Id.Single Judge as regard Issue Nos.2, 3, 5, & 10 are concerned and as regards Issue No.11, we set aside the finding recorded by the Id.Single Judge, in the above terms.

42. The respondents are at liberty to proceed further and finalise the process of selection initiated pursuant to the advertisement dated 18.09.2013 without any further loss of time. No costs.