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**(2010) 08 AHC CK 0159**  
**In the Allahabad High Court**

Jitendra Kumar Soni and Others

APPELLANT

Vs

State of U.P. and Others <BR>Prasiddh Narayan Singh Vs  
Principal Distt. Institution of Education and Training and  
Others

RESPONDENT

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**Date of Decision :** 13-08-2010

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 21, 226, 248  
National Council for Teacher Education Act, 1993 — Section 12, 32(2)  
National Council for Teachers Education (Recognition, Norms and Procedure)  
Regulations, 2009 — Regulation 3(3), 8, 9  
Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 — Rule 5, 8

**Citation :** (2010) 08 AHC CK 0159

**Hon'ble Judges :** Ferdino I. Rebello, C.J.;S.K. Gupta, J;A.P. Sahi, J

**Bench :** Full Bench

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## Judgement

Ferdino I. Rebello, C.J.—The questions referred to this Full Bench and which we have re-framed for consideration are;

(a) Whether the degree obtained by a student from an institution/university established by law, situate at a place out side the State of Uttar Pradesh but duly recognized by the N.C.T.E. can be refused acceptance as valid qualification for being admitted to Special B.T.C. Course-2008 by the State?

(b) Whether the classification under the Government Order between the degree of B.Ed. obtained from other State being valid for admission to B.T.C. Course-2008, while the degree of C.P.Ed., B.P.Ed. and D.P.Ed. similarly obtained from the institutions situate outside the State of Uttar Pradesh being invalid for considered for admission to B.T.C. Course-2008 is arbitrary and without any reasonable rational and therefore hit by Article 14 of the Constitution of India?

(c) Whether the Division Bench judgment in the case of Vijai Kumar Kushwaha and Others Vs. State of U.P. and Others, lays down the correct law?

2. A learned Single Judge of this Court, while hearing the writ petition of

applicants, who had applied for admission to Special B.T.C. Course, 2007 in Jitendra Kumar Soni and Ors. v. State of U.P. and Ors. in Civil Misc. Writ Petition No. 3733 of 2009, noted that their candidature had been rejected only on the ground that they had obtained a degree of Bachelor of Physical Education (B.P.Ed.)/Diploma of Physical Education (D.P.Ed.) from the colleges/University situate outside the State of Uttar Pradesh in view of the terms and conditions of the Government Order dated 14th November, 2008, regulating admission to B.T.C. Course-2007. By that order, only the students, who had passed their B.P.Ed./D.P.Ed. from the institutions situate in the State of Uttar Pradesh were alone entitled to apply for Special B.T.C.-2007. This condition was challenged before the learned Single Judge on various grounds, which can be enumerated as under:

(a) The degree obtained by the petitioners is from a recognized University established by law, although situate outside the State of Uttar Pradesh. Such degree cannot be discriminated viz-a-viz the degree granted by an University of the State of Uttar Pradesh. It is, therefore, submitted that the classification itself is arbitrary. Reference in that regard has been made to the judgment of the Hon"ble Supreme Court in the case of Dr. B.L. Asawa Vs. State of Rajasthan and Others,

(b) It is contended that the condition imposed, referred to above, results in complete exclusion of students, who have obtained identical qualification from the Universities outside the State of Uttar Pradesh. He submits that although the State can exercise preference in respect of the students, who have obtained degree from the institutions within the State of Uttar Pradesh, but such preference cannot be so extensive so as to completely exclude all the students, who have obtained degree from the institution of other States, i.e. total exclusion. In support thereof he has placed reliance upon the judgment of the Hon"ble Supreme Court in the case of Dr. Sachin D. Kulkarni and Ors. v. State of Maharashtra and Ors. reported in (1989) 2 SCC 250.

(c) There is no reasonable justification for accepting the degree of B.Ed, granted by the Universities situate outside the State, while refusing the B.P.Ed., C.P.Ed. and D.P.Ed. degree granted by University situate outside the State. It is stated that in some cases the B.Ed, and B.P.Ed, and D.P.Ed, degrees have been granted by the same University situate outside the State.

On behalf of the State, reliance was placed on the judgment in the case of Rajeshwar Singh v. State of U.P. and Ors. Writ Petition No. 2856 (M/S) of 2004, where the following question was referred for consideration of the Full Bench:

1. In Upendra Rai Vs. State of Uttar Pradesh and others, , the Division Bench of this Court has held that the restrictions imposed by the State Government are not valid and B.T.C. Certificate for appointment on the post of Assistant Teacher issued by an institute situated outside the State of U.P. but recognized by the N.C.T.E. is valid. The other Division Bench's judgment of this Court reported in

(2003) 3 UPLBEC 2211 in Vijay Kumar Kushwaha's case, upheld the government rights as well as Government Order which provides that the State has got right not to admit a candidate for appointment as Assistant Teacher in case the training certificate is provided by an institute situated outside the State of U.P. The proposition of law as per Vijay Kumar Kushwaha's case have been reiterated in Lalit Kumar Dixit's case reported in (2004) 1 UPLBEC 754 which division bench out of two lay down the correct law?

The Full Bench noted that the Supreme Court in the case of U.P. Basic Education Board v. Upendra Rai reported in (2008) 1 UPLBEC 641 has reversed the judgment of this Court in the case of Upendra Rai (supra) and upheld the finding of the Division Bench in Kushwaha's case (supra).

It was contended before the Full Bench that since the SLP filed by the Board has been allowed and the judgment and order of the Division Bench of this Court in the case of Upendra Rai has been reversed, it logically follows that law laid down in the case of Vijay Kumar Kushwaha (supra) is the correct law and, therefore, in terms of the judgment of the Division Bench in the case of Vijay Kumar Kushwaha (supra) the restriction imposed under the Government Order qua non-consideration of the candidates, who have obtained C.P.Ed. and B.P.Ed. Degree, from Institutions from outside the State of Uttar Pradesh, has to be upheld. Reference has also been made to the judgment of the Hon'ble Single Judge in the case of Hena Afroj v. State of Uttar Pradesh and Ors. in Writ Petition No. 2933 of 2004, wherein similar restriction in respect of B.T.C. Course -2004 has been upheld.

Standing Counsel further submitted that it is within the competence of the State to lay down the policy guidelines for admission to Special B.T.C. Course 2008. The State in its wisdom has decided to consider only those candidates who have obtained C.P.Ed., B.P.Ed., and D.P.Ed., degree from the institutions situate within the State of Uttar Pradesh. Such policy decision cannot be examined under Article 226 of the Constitution of India nor can it be said to be violative of Article 14 of the Constitution of India, as has been held by the Division Bench of this Court in the case of Vijay Kumar Kushwaha.

The learned Single Judge after having considered the arguments and the judgment of the Supreme Court in the case of U.P. Basic Education Board (supra) was pleased to note that one aspect still requires consideration, which reads as under:

The issue as to whether the State is competent to put any such restriction and as to whether when there is no such restriction with regard to the candidates who have obtained the B.Ed., degree from out side the State of Uttar Pradesh could the B.P.Ed., C.P.Ed. and D.P.Ed. be excluded has arisen for consideration in this case. The question which has been referred to in the Full Bench has direct bearing on the issues which have been raised in this writ petition. When the issues which have arisen for consideration in this case have already been

referred to the Full Bench, it is appropriate that these writ petitions be finally decided after the above reference is answered." From a reading of the judgment of the Division Bench in the case of Vijay Kumar Kushwaha as well as the judgment of the Hon"ble Supreme Court in the case of U.P. Basic Education Board v. Upendra Rai, this Court finds that the issue, as noticed above, has not been examined and the competence of the State Government to impose such restrictions in respect of the B.P.Ed., C.P.Ed., and D.P.Ed. degree only while accepting the B.Ed. degree granted by out of State Universities still needs to be examined.

Accordingly, the learned Single Judge, made the reference of the first two questions, which we have re-produced earlier.

3. The matter was placed before a learned Division Bench. That Division Bench was pleased to note that the judgment in Vijay Kumar Kushwaha v. State of U.P. and Ors. reported in (2003) 3 UPLBEC 2211, which had upheld the restrictions imposed by the Government Order for admission to B.T.C. course was required to be re-considered for the reasons set out therein and accordingly, referred a 3rd question and in view of that, the matter was placed before the Chief Justice, for constituting a Larger Bench.

4. At the hearing of this reference, "Whether the degree obtained by a student from an institution/university established by law, situate at a place out side the State of Uttar Pradesh but duly recognized by the N.C.T.E. can be refused acceptance as valid qualification for being admitted to Special B.T.C. Course-2008 by the State?" various contentions have been urged. It has also been contended that Question (a) is restricted only to B.T.C. Course-2008, whereas there are petitions pending in this Court in respect of similar notification for the B.T.C. Course-2004 and B.T.C. Course-2007, therefore, we ought to re-frame question (a), so that the issue is answered in all the writ petitions, as the contentions advanced are the same. Question (a) as referred, reads as under:

(a) Whether the degree obtained by a student from an institution/university established by law, situate at a place out side the State of Uttar Pradesh but duly recognized by the N.C.T.E. can be refused acceptance as valid qualification for being admitted to Special B.T.C. Course-2008 by the State?

With the consent of the Learned Counsel for the parties, we have re-framed question (a), as under:

(a) Whether the degree obtained by a student from an institution/university established by law, situate at a place out side the State of Uttar Pradesh but duly recognized by the N.C.T.E. can be refused acceptance as valid qualification for being admitted to Special B.T.C. Courses by the State.

5. To understand the controversy, we may first refer to the judgment in the case of Upendra Rai v. State of U.P. and Ors. reported in (2000) 2 UPLBEC 1340 (decided on February 18, 2000). In that case, the appellant before the Division

Bench had obtained a Diploma in Education from Zila Shiksha and Prashikshan Sansthan (DIET), Jabalpur an institution recognized under the provisions of the National Council for Teacher Education Act, 1993 (hereinafter referred to as the Act, 1993). The circular and advertisement insofar as it had the effect of excluding the candidates having teacher qualification obtained from an Institution recognized under the provisions of the Act, 1993 was challenged on the ground that it being void in view of Article 254 of the Constitution. The appellant was equipped with the requisite qualification for being considered for appointment as Assistant Teacher in Junior Basic School. The learned Division Bench held that the classification between the candidates, who had passed requisite teacher training course from a recognized institution of Gorakhpur and those who have passed such course from a recognized institution outside Gorakhpur is arbitrary and violative of Article 14 of the Constitution of India. The Government by a Circular had decided to fill up the post of Assistant Teacher in Junior Basic School only from such candidates, who have, according to the provisions of the U.P. Basic Education (Teachers) Service Rules, 1981, obtained BTC, Hindustani Teachers Certificate, Junior Teachers Certificate and Teacher Certificates from institutions run by the Government of Uttar Pradesh and equivalent to BTC course and other training courses and degrees/diplomas. Insofar the advertisement was concerned, it had been envisaged that only those candidates could apply for appointment to the Institution as per the provisions of the Act, 1993. The Court held that the impugned Government Circular and the advertisement insofar as they excluded candidates who had obtained their teachers education certificate from an institute recognized by the N.C.T.E. was void being ultra-vires Article 354 of the Constitution of India.

6. In *Ghanshyam and Ors. v. State of U.P. and Ors.* Civil Misc. Writ Petition No. 27948 of 1999, an unreported judgment, the writ petitioners had prayed for a mandamus directing the respondents to permit them to join BTC training course in pursuance of the advertisement dated 8.3.1998. The advertisement was issued in pursuance of the Government Order dated 9.1.1998. The validity of the same had been upheld in the case of *Alok Kumar Pandey v. State of U.P. and Ors.* C.M.W.P. No. 29107 of 1999-decided on 19.7.1999. The special training was to be given only to the teachers who had got their B.Ed./LT/C.P.Ed./D.P.Ed. from the institutions which are in Uttar Pradesh and not to those who got such certificates from outside U.P. Challenge was on the ground that this is violative of Articles 14 and 21 of the Constitution of India. The learned Single Judge observed that he could not accept the contention, as there was no violation of Articles 14 and 21 of the Constitution of India. Accordingly, he dismissed the writ petition with some directions.

7. The same matter was taken up in an appeal in the case of *Vijay Kumar Kushwaha (supra)*. The learned Division Bench noted, what had been held by the learned Single Judge and that the Government Order was not violative of Articles 14, 16 and 21 of the Constitution of India and observed that there is no ground to interfere with the matter, and dismissed the appeal.

It may be noted that in both the judgments of the learned Single Judges as also the Division Bench, no reasons have been assigned as to why Articles 14 and 21 of the Constitution of India are not attracted. This is for the reason, that to be a ratio decidendi. It is required amongst others that the issue must be answered by giving reasons.

8. Noticing the difference of opinion, the matter was referred to the Larger Bench in the case of *Rajeshwar Singh v. State of U.P. and Ors.* Writ Petition No. 2856 (M/S) of 2004, where the learned Full Bench noted the judgment in the cases of *Upendra Rai (supra)* and *Vijay Kumar Kushwaha (supra)*. The learned Bench then noted that the attention of the Court had been drawn to the Apex Court judgment in the case of *Basic Education Board, U.P. Vs. Upendra Rai and Others*, wherein the Supreme Court set aside the judgment of *Upendra Rai's (supra)* passed by this Court and upheld the finding of the other Division Bench judgment in the case of *Vijay Kumar Kushwaha (supra)*.

9. It may be noted that what was considered and answered by the learned Division Bench in *Kushwaha's case (supra)* were the appointment of candidates, who had obtained their degrees/diplomas/ certificates from the Institutions within the State of U.P. to post in the office of Basic Education Board. In the case of *Basic Education Board U.P. (supra)*, the question for consideration was about the qualification of the respondents for being appointed as Assistant Teacher in Junior Basic School in the State of Uttar Pradesh. The appointment is governed by the provisions of the U.P. Basic Education (Teachers) Service Rules, 1981 (hereinafter referred to as "the Rules, 1981"). In paragraph 19 of the judgment, the Supreme Court was pleased to observe as under:

19. ...Hence, the qualification for appointment as teacher in the ordinary educational institutions like the primary school, cannot be prescribed under the NCTE Act, and the essential qualifications are prescribed by the local Acts and Rules in each State. In U.P. the essential qualification for appointment as a primary school teacher in a Junior Basic School is prescribed by Rule 8 of the U.P. Basic Education (Teachers) Service Rules, 1981, which have been framed under the U.P. Basic Education Act, 1972. A person who does not have the qualification mentioned in Rule 8 of the aforesaid Rules cannot validly be appointed as an Assistant Master or Assistant Mistress in a Junior Basic School.

10. Attention of the Court is then invited to the judgment of the Supreme Court in *Irrigineni Venkata Krishna and Ors. v. Government of Andhra Pradesh and Anr.* reported in 2009 STPL 174 SC. The Supreme Court noted that a Division Bench of this Court in *Basic Education Board, U.P. (supra)* had taken a view that the regulations framed under the Act, 1993 do not bind the State Government in the matter of fixation of qualifications for teachers in formal schools. The learned Bench found that it would be in the fitness of things, if the appeals are being heard by a three-Judges' Bench for authoritative pronouncement on the following questions of law:

1. Whether NCTE Act only deals with the teachers' training institutes and the power conferred upon the National Council for Teachers' Education u/s 12(d) of that Act in laying down guidelines in respect of minimum qualifications for a person to be employed as a teacher is confined to such institutes i.e., teachers' training institutes?

2. If answer to the aforesaid question is in negative, whether the Regulations framed in exercise of the powers u/s 32(2)(d)(i) read with Section 12(d) of NCTE Act by the National Council for Teacher Education laying down qualifications for employment of teachers in primary schools is binding on the state government and in view thereof, the state government is denuded of its authority to enact qualification for appointment as teachers in primary schools?

11. Before proceeding to answer the issues, we may note that regulations have been framed under the National Council for Teachers Education Act, 1993, which are known as "The National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2009" (hereinafter referred to as "the Regulations, 2009"). Regulation 8 of Regulations, 2009 deals with conditions for grant of recognition and Regulation 9 thereof, deals with the Norms and Standards for various teachers education courses, as specified in Appendixes 1 to 13. Insofar as Appendix-I is concerned, to which we are concerned, Regulation 3(3) reads as under:

3. Intake, Eligibility and Admission Procedure

....

(3) Admission Procedure,-- Admission shall be made on merit on the basis of marks obtained in the qualifying examination and/or in the entrance examination or any other selection process as per the policy of the State Government/UT Administration.

12. It would, thus, be clear that one of the criterion for grant of recognition to an Institution for imparting education, is that admission must be based on merit, which could either be on the basis of marks obtained in the qualifying examination and/or in the entrance examination or any other selection process as per the policy of the State Government/UT Administration. The only criteria, therefore, for an Institution to be given recognition by the NCTE under the Regulations, is that the admission can only be on merit. Any other condition imposed, which departs from the criteria of merit for admission to a teachers training course would be illegal. A condition to restrict applicants, who may be more meritorious than the students passing out from another institution recognized by the N.C.T.E. in the State of U.P. would be clearly illegal.

13. The Supreme Court in *Rajesh Kumar Gupta and Others Vs. State of U.P. and Others*, was concerned with the Special BTC Course-2001. There were several issues. The present issue was not one of them. One of the issues for consideration was as to whether the selection of candidates for Special B.T.C.

training is contrary to the provisions of the U.P. Basic Education Act, 1972 and the U.P. Basic Education Teachers Service Rules, 1981. This was further in the context of the National Council for Teacher Education Act, 1993. We may gainfully refer to the following paragraph of the said judgment. Paragraph 20 thereof is as under:

20. The U.P. Basic Education (Teachers) Service Rules, 1981 provide under Rule 5 for direct recruitment to the posts of Assistant Masters and Assistant Mistress to junior basic schools. The Rules prescribe the qualifications requisite for such posts. Academic qualification required is a bachelor's degree from a university established by law in India or a degree recognized by the Government together with "training qualification" consisting of a Basic Teacher's Certificate, Hindustani teacher's certificate, junior teacher's certificate, certificate of teaching of any other training course recognized by the Government as equivalent thereto. In the face of these Rules, and particularly keeping in view the provisions of the National Council for Teacher Education Act, 1993, no fault can be found with the impugned judgment of the High Court that the Special BTC training course formulated by the State Government was contrary to the provisions of the impugned Act and the Rules and the 1993 Central Act.

Thus, it would be clear that the Supreme Court in the case of U.P. Basic Education Act, 1972 and the National Council for Teacher Education Act, 1993 has held that no B.T.C. Course could be treated as recognized, if it was not recognized by the N.C.T.E.

14. The scope of the 1993 Act has been considered in various judgments. We may refer to the judgment in State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, and to the following paragraphs:

24. Whereas Article 248 provides for residuary power of legislation, Article 254 covers cases of inconsistency between laws made by Parliament and by legislatures of the States.

25. Schedule VII to the Constitution comprises of three Lists: (i) Union List, (ii) State List and (iii) Concurrent List. While exclusive power to enact laws lies with Parliament under List I, the power to enact laws under List II is with the State Legislatures. In respect of subjects falling under List III, it is open to Parliament as well as the State Legislatures to enact laws subject to the provisions of Article 254.

45. We may, however, state that NCTE and contesting respondents are right in relying upon a decision of this Court in State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, referred to earlier. In Adhiyaman this Court was called upon to consider the constitutional validity of some of the provisions of the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Rules made thereunder as also the Madras University Act, 1923 and the Rules made thereunder. It was contended that certain provisions of the State Act were inconsistent with the provisions of the Central Act (All India Council for Technical



Education Act, 1987) and hence were inoperative. This Court upheld the contention of the petitioners and ruled that the State Legislature could not enforce an Act if it is inconsistent with the Central Act and to the extent of such inconsistency, the Central Act would operate and the State Acts would be inoperative.

62. From the above decisions, in our judgment, the law appears to be very well settled. So far as coordination and determination of standards in institutions for higher education or research, scientific and technical institutions are concerned, the subject is exclusively covered by Entry 66 of List I of Schedule VII to the Constitution and the State has no power to encroach upon the legislative power of Parliament. It is only when the subject is covered by Entry 25 of List III of Schedule VII to the Constitution that there is a concurrent power of Parliament as well as the State Legislatures and appropriate Act can be made by the State Legislature subject to limitations and restrictions under the Constitution.

63. In the instant case, admittedly, Parliament has enacted the 1993 Act, which is in force. The preamble of the Act provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving planned and coordinated development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher-education system and for matters connected therewith. With a view to achieving that object, the National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is fully and completely occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament alone could have exercised the power by making appropriate law. In the circumstances, it is not open to the State Government to refuse permission relying on a State Act or on "policy consideration.

64. Even otherwise, in our opinion, the High Court was fully justified in negating the argument of the State Government that permission could be refused by the State Government on "policy consideration". As already observed earlier, policy consideration was negated by this Court in *Thirumuruga Kirupananda Variyarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others*, as also in *Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another*,

From these paragraphs, it would be clear that once Parliament has made a law covering the field, it is not open to the State to make any law or have any policy insofar as admission to an institution established for Teachers Training. In fact, as the record shows, the Government itself had moved NCTE to grant permission for Special B.T.C. Courses, which NCTE has granted. The provisions of the Act, Rules and Regulations, therefore, will apply for admission to a B.T.C. Courses and any other law or policy to the contrary would be violative or ultra-vires Article

254 of the Constitution of India.

15. The recruitment of teacher in Basic Schools is governed by the provisions of the Rules of 1981. Rule 5(a)(ii) of the Rules, 1981 provides for recruitment of Assistant Teacher in Junior Basic School. The essential qualifications of candidates for appointment to a post referred to in Clause (a)(ii) of Rule 5 of Rules, 1981 is, a Bachelor's Degree from a University established by law in India or a Degree recognized by the Government as equivalent thereto together with the training qualification consisting of a Basic Teacher's Certificate, Vishisht Basic Teacher's Certificate (B.T.C), Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of Teaching or any other Training Course recognized by the Government as equivalent thereto.

16. We are here concerned with the Vishisht Basic Teacher's Certificate. For appointment to a post as set out in Rule 5, the essential academic qualifications are in terms of Rule 8 of Rules, 1981. This requires passing of a course as set out therein.

17. The real question for our consideration, before we answer the three questions, is as to whether it is possible to make a distinction between the prescribed educational qualifications for the posts as set out in Rule 5 and the criteria for admission to BTC Courses approved by the NCTE to correctly understand the issue.

18. One of the grounds raised by the writ petitioners in the writ petitions is that the candidates, who had passed B.Ed. examination from the institution outside the State of Uttar Pradesh, are eligible for admission to the Special B.T.C. Courses, but insofar as the LT/B.P.Ed./D.P.Ed./C.P.Ed. are concerned, the State Government has restricted it to the candidates, who have passed from Institutions located in the State of Uttar Pradesh.

In answer to that, the State has filed its counter affidavit through Sri Vinay Kumar Pandey, Principal, District Institute of Education and Training, Mahoba. It is stated in the counter affidavit that proposal was sent by the State Government to the NCTE, New Delhi on 22.6.2006 for obtaining permission to conduct the Special B.T.C. Course-2006 from the candidates having B.Ed./LT/B.P.Ed./C.P.Ed./D.P.Ed. from an institution situated within the territory of State and recognized by the NCTE for filling up of 50,000 vacancies of Assistant Teachers in Primary Schools controlled and managed by the Basic Shiksha Parishad. It was mentioned that similar proposal was made earlier and the NCTE had accorded permission for conducting the training for the year 2004, as Special B.T.C. Course, 2004. Under the proposal dated 22.6.2006, it was set out that the Special B.T.C. Course was only for the candidates having B.Ed./LT/B.P.Ed./C.P.Ed./D.P.Ed. from an institution situated within the territory of State and recognized by the NCTE. The NCTE accepted the proposal only for B.Ed. certificate holders, vide order dated 27.6.2006 and LT/B.P.Ed./D.P.Ed./C.P.Ed. certificate holders were not permitted and consequently, a Government Order was issued to that

effect followed by an advertisement from eligible candidates, who had B.Ed. N.C.T.E. did not impose any condition that such candidates must have passed out from an Institution situate within the State of Uttar Pradesh, nor did the State Government insist on such requirement. As the candidates having degree/diploma/certificate of LT/B.P.Ed./D.P.Ed./C.P.Ed. were excluded, they had preferred writ petitions before this Court. This Court, vide order dated 31.7.2007 permitted LT/B.P.Ed./D.P.Ed./C.P.Ed. certificates holders to also apply apart from the holders of B.Ed. degree. After various requests made, the NCTE, vide order dated 20.09.2007 granted permission to include LT/B.P.Ed./D.P.Ed./C.P.Ed. certificates holders also in continuation to previous permission of 27.06.2007. The only reason given by the State for imposing this condition, is that, since there was a proposal made by the State Government to NCTE and NCTE has accepted the said proposal, that condition was imposed.

19. An ancillary objection was raised based on Article 14 of the Constitution of India. The objection was that insofar as the candidates, who possess B.Ed. Degree from an Institution situate outside the State of Uttar Pradesh, they are eligible to apply for Special B.T.C. Course, but not the candidates, who possess LT/B.P.Ed./D.P.Ed./C.P.Ed. from an Institution situate outside the State of Uttar Pradesh. It is submitted that this is arbitrary as the exclusion is unreasonable. There is no answer by the State to this contention except to contend that they had sought approval from the N.C.T.E. for that purpose. Factually, N.C.T.E., whilst granting permission initially granted it only to applicants who had B.Ed. qualifications. There was no stipulation that they had to pass B.Ed. from institutions in U.P. Thereafter at the State further request, LT/B.P.Ed./D.P.Ed./C.P.Ed. were also included. Again there was no stipulation that they must possess the qualifications from institutions in State of U.P.

In our opinion, all institutions imparting training course for teachers approved by the N.C.T.E. are a class by themselves and there can be no distinction as to whether they pass their B.Ed. from an institution in the State of U.P. or other States of India, as long as the institutions are recognized by the N.C.T.E. and also have recognition of any other body in the State, if required. The State has also not provided for any reservation based on the State's interest. In our opinion, therefore, the notification excluding such degree/diploma/certificate holders as well as the advertisement would be clearly arbitrary and unreasonable.

Once the teachers training institutions constitute a class by themselves, the further classification could only be based on the grounds, which have a nexus with the object, which is imparting quality education by conferring degrees/diplomas/certificates through institutions recognized by N.C.T.E. As all institutions, which impart a course in teachers training must have the same standard, then mini classification is unreasonable. It was not open to the State Government to treat only a class of applicants, who possess B.Ed. for admission to the Special B.T.C. Course and exclude those candidates having degree/diploma/certificate in LT/B.P.Ed./D.P.Ed./C.P.Ed.

20. Considering the requirement of Sub-clause (3) of Clause-3 of Appendix-I of the Regulations, 2009, one of the conditions for grant of recognition is that "the admission shall be based on merit". Therefore, it would not be open either to the Institution or to the Government to impose any condition contrary to the aforesaid Regulations. On this count itself, the condition imposed that only those candidates, who have passed the afore-mentioned courses from the Institutions situate within the territory of the State of Uttar Pradesh, will be entitled to apply for Special B.T.C. Courses, is liable to be set aside, as it keeps out other meritorious candidates who have passed out from a teaching institution recognized by NCTE, may be from outside the State. That a candidate who successfully pursues the B.T.C. Course, considering the present number of vacancies and would be fulfilling one of the eligibility conditions is irrelevant for admission to the B.T.C. Course.

21. We are concerned with answering the questions referred to for our consideration. We have earlier, to some extent, referred to the judgments, both in the case of Upendra Rai (supra) and Vijay Kumar Kushwaha (supra). We propose to re-visit the judgments to find out the ratio of each of the judgments.

The challenge in Upendra Rai (supra), as noted, was to the legality of the advertisement dated 28.4.1999 and the Government Circular dated 11.8.1997. In terms of Government Circular dated 11.8.1997, the Government had decided to fill up the post of Assistant Teacher in Junior Basic Schools only from such candidates, who have, according to Rules, 1981, obtained the respective certificates from the Institutions run by the Government of Uttar Pradesh and to rescind with immediate effect the equivalence to BTC granted to other training courses and degrees/diplomas. The issue, therefore, was for filling up of the post of Assistant Teacher in Junior Basic School from the certificate holders mentioned earlier. In paragraph 2 of the judgment, the learned Bench framed the question for consideration, which was, "whether the appellant was eligible for appointment to the post of Assistant Teacher in Junior Basic Schools run by the Uttar Pradesh Basic Shiksha Parishad". The entire issue was thereafter considered in that context. No doubt, the learned Division Bench also noted the provisions of the Act, 1993 and observed that if any provision in the U.P. Basic Education Act, 1972 or rule made thereunder is found to be in conflict with any provision embodied in the aforesaid Central Act, the same will have to be discounted to the extent of inconsistency in view of the provisions contained in Article 254 of the Constitution of India. It is in that context, the Court held that the circular and the advertisement insofar as it has the effect of excluding the candidates having teacher qualification obtained from an Institution recognized under the provisions of NCTE Act are void in view of Article 254 of the Constitution. The Division Bench further held that the appellant was equipped with the requisite qualification for being considered for appointment as Assistant Teacher in Junior Basic School. Therefore, the Court held that the impugned circular and advertisement, which have the effect of excluding the candidature of candidates having obtained teachers education certificate from any Institution recognized

under the NCTE Act, were void being ultra vires the Article 354 of the Constitution.

22. The next judgment is Vijay Kumar Kushwaha (supra). Before the Division Bench, what was under consideration, was the judgment of the learned Single Judge dated 27.8.1999 in Civil Misc. Writ Petition No. 27948 of 1999. There also, an advertisement was issued permitting only those candidates, who had obtained B.Ed./LT/ B.P.Ed./D.P.Ed./C.P.Ed. degrees/certificates from the Institutions situate within the State of Uttar Pradesh, to apply. The learned Bench then noted the contention of the Learned Counsel for the respondents, where it was observed that the Government Order dated 9.1.1998 had already been upheld in the case of Alok Kumar Pandey v. State of U.P., decided on 19.7.1999 Writ Petition No. 29107 of 1999 and in paragraph 5 of the judgment, without giving any reason merely affirmed the order of the learned Single Judge by holding that the restriction was valid and could not be said to be violative of Articles 14, 16 and 21 of the Constitution of India. The issue of Article 254 of the Constitution was not in issue, nor considered. The judgment of the learned Single Judge, from which the appeal arose, also has given no reasons as to why Articles 14, 16 and 21 of the Constitution were not attracted.

23. In Basic Education Board, U.P. (supra) again the issue of appointment of Assistant Master in Junior Basic School. In paragraph 2 of the impugned Circular, it has been said that the appointment to the post of Assistant Teacher in Junior Basic School will be made from the candidates, who have obtained BTC, Hindustani Teaching Certificate, JCT or Certificate of Teaching from the Institutions situate within the State of Uttar Pradesh, as per the Rules, 1981, and other qualification equivalent to BTC be cancelled with immediate effect. Grant of equivalence and/or revocation of equivalence is for the body empowered and normally it would not be interfered with by the Court. The learned Bench, then referred to the NCTE Act, 1993 and observed that the qualification for appointment as teacher in the ordinary educational institutions like the primary school, cannot be prescribed under the NCTE Act.

24. A Full Bench of this Court in the case of Rajeshwar Singh (supra) noted the two judgments, Upendra Rai (Supra) and Vijay Kumar Kushwana, (Supra) and observed that the Supreme Court had set aside the judgment of Upendra Rai and upheld the findings in the case of Vijay Kumar Kushwaha (supra). We may note that in Basic Education Board, U.P. (supra), neither Upendra Rai (supra) nor Vijay Kumar Kushwaha (supra) were considered, but what was referred to was the judgment of Single Judge in Hiranman (Writ Petition No. 33856 of 1997) and Smt. Karuna Kumari (Writ Petition No. 3218 of 1997).

25. Having considered the aforesaid judgments, the issue as to whether a candidate can be excluded from consideration for admission to the Special B.T.C. Course on the ground that he had obtained degree/diploma/certificate in LT/ B.P.Ed./D.P.Ed./C.P.Ed. from an institution recognized by the NCTE situate outside the State of U.P. was not under consideration, nor in issue in any of the

judgments. In all the judgments considered, what was under consideration, was merely an issue in the matter of essential qualification for appointment to the post of Assistant Teacher. As we have noted earlier, the essential distinction is (1) appointment to a post under the Rules of 1981 and (2) eligibility for admission to Special BTC course, which may result in a candidate becoming eligible for appointment as an Assistant Teacher by acquiring an essential educational qualification.

26. On behalf of the writ petitioners, Learned Counsel had drawn our attention to the judgment in the case of Dr. B.L. Asawa Vs. State of Rajasthan and Others, The question before the Supreme Court was whether the Commission was right in law in excluding the appellant from consideration on the ground that he did not possess the academic qualification prescribed by Clause (vii) of Ordinance No. 65 of the Rajasthan University Ordinances for the post of Lecturer in Forensic Medicine. The appellant was held to be ineligible by the University, as the Post Graduate Degree in Forensic Medicine possessed by the appellant is not awarded by the University of Rajasthan and the said degree has also not been recognized by the University of Rajasthan as an educational qualification. The Supreme Court, after considering this aspect, observed as under:

11. ...A Post-graduate Medical Degree granted by a University duly established by statute in this country and which has also been recognized by the Indian Medical Council by inclusion to the Schedule of the Medical Council Act has ipso facto to be regarded, accepted and treated as valid throughout our country. In the absence of any express provision to the contrary, such a degree does not require to be specifically recognized by other Universities in any State in India before it can be accepted as a valid qualification for the purpose of appointment to any post in such a state.

Then, following paragraph will also be relevant:

11. ...In the case of a Post-graduate degree in the concerned subject awarded by a statutory Indian University, no recognition or declaration of equivalence by any other University is called for. This is all the more so in the case of a medical degree basic as well as Postgraduate that is awarded by a statutory Indian University and which has been specifically recognized by the Indian Medical Council.

27. Thus, from the judgment of the Supreme Court what follows, is that if a Post-graduate Medical Degree is awarded by the statutory Indian University and it has been specifically recognized by the Indian Medical Council, that is a valid qualification for the purpose of appointment to any post in any part of the country insofar as the academic qualification is concerned.

The Learned Counsel submitted that considering the provisions of the NCTE Act, 1993, it is the only authority under that Act that can grant recognition to the Institution for imparting training. The Scheme of the Act would also show that they have power to lay down guidelines in respect of minimum qualifications for

a person to be admitted in a teachers training institution as also to ensure planned and co-ordinated development of standard for teacher education and for the purpose of performing its functions under this Act.

28. Once that be the case, it must follow the degree/diploma/ certificate, if obtained from an institution recognized by the NCTE, may be from the State of Madhya Pradesh, that degree/diploma/certificate would entitle a person, who possesses it, to apply for admission to Special B.T.C. Course or the B.T.C. Course itself. That the Special B.T.C. Course was started for the purpose of filling in the vacancies of teachers, who possess the Special B.T.C. certificate, is irrelevant.

29. We may now answer the reference:

(1) In answer to Question No. (a), it is not open to the State or the State authorities to exclude the students, who have obtained degree/diploma/ certificate in LT/B.P.Ed./D.P.Ed./C.P.Ed. from Institutions/Universities established by law situate at place outside the State of Uttar Pradesh and duly recognized by the NCTE, from applying either for the Special B.T.C. Course or B.T.C. Course. Any such exclusion is illegal. Question No, (a) is answered, accordingly.

(2) Insofar as Question No. (b) is concerned, the classification, if any, is unreasonable and violative of Article 14 of the Constitution of India. At any rate, the only ground given by the State Government for not putting restriction on B.Ed. degree, and putting restriction on LT/B.P.Ed./D.P.Ed./C.P.Ed., is not sustainable in terms of the rules of N.C.T.E., as the admission can only be based on merit.

(3) Insofar as Question No. (c) is concerned, the judgment in Vijay Kumar Kushwaha (supra) did not answer the issue of admission to Special B.T.C. Course, but dealt with the issue of appointment to the post of Assistant Teacher. Even otherwise, considering the findings on question Nos. (a) and (b), we will have to hold that the judgment in Vijay Kumar Kushwaha does not lay down the correct law.

30. Reference is answered, accordingly. All judgments to the contrary are overruled.

31. The Government has issued orders closing these courses except for those, whose applications were rejected on the ground that they did not possess the L.T./B.P.Ed./D.P.Ed./C.P.Ed. from institutions in U.P. and the matters are pending before this Court. With respect to the Special B.T.C. Courses for the years 2004, 2007 or 2008, if the petitioners, whose petitions are pending, are eligible, they shall be considered for training for the Special B.T.C. Courses, which shall be commenced within a reasonable period.