

(2016) 07 UK CK 0002

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 912 of 2016

Khemraj Semwal

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 15-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Right of Children to Free and Compulsory Education Act, 2009 — Section 23

Uttarakhand Subordinate Education (Trained Graduate Cadre) Rules, 2014 — Rule 8(2)

Citation : (2016) LIC 3981

Hon'ble Judges : Sudhanshu Dhulia, J.

Bench : Single Bench

Advocate : Mr. Rajendra Dobhal, Senior Advocate assisted by Mr. G.D. Joshi, Advocate, Mr. Manoj Tiwari, Senior Advocate assisted by Mr. Alok Mahra, Advocate, Mr. Vinay Kumar, Mr. Niranjan Bhatt, Mr. P.C. Maulekhi, Mr. Amish Tiwari, Mr. T.P.S. Takuli, Mr. Shivanand B

Final Decision : Disposed Off

Judgement

Sudhanshu Dhulia, J.(Oral)—In all these writ petitions, the petitioners are candidates for the post of Assistant Teacher in Govt. Higher Secondary Schools. A total number of 3089 posts were advertised for the entire State of Uttarakhand vide notification dated 23.02.2014, which was duly published in the newspapers having wide circulation in the State of Uttarakhand, namely, "Dainik Jagran" and "Amar Ujala", and in the website of Uttarakhand Board of Technical Education, which is the Uttarakhand body conducting the examination. These posts were for various subjects such as Languages, Social Sciences, Natural Sciences, Mathematics, Physical Education, Home Science, Art Education, Music, etc.

2. The principal question for determination before this Court is whether the qualification known as Teachers Eligibility Test (from hereinafter referred to as TET-II) is a mandatory qualification for appointment as Assistant Teachers in Higher Secondary Schools and in case if it is so, whether the candidates who were applying to the post of Assistant Teacher in response to the above

advertisement, were liable to have accomplished this qualification prior to the date of advertisement which is 23.02.2014, or prior to the last date of submission of the documents and application form, which is 31.03.2014.

3. Another question which needs to be answered is whether the candidature is liable to be considered even though one had appeared in TET after the cut off date, but had qualified it prior to the declaration of the result in the selection process for appointment to the post of Assistant Teachers. This question is based on the logic that even if TET is a qualification, it is not a mandatory "academic qualification", and therefore a candidate can acquire this qualification at any time, though prior to his selection.

4. There are other related questions which have to be dealt with along with the above main questions, such as whether Assistant Teachers for the subjects such as Physical Education, Music, Home Science, Arts, etc., are also required to have T.E.T. qualification? In other words, whether T.E.T. is also mandatory in their case as well! This question is specific to only a few of the petitioners and shall be dealt with at the end.

5. In these bunch of writ petitions, the facts of WPSS Nos. 912 of 2016, 973 of 2016, 984 of 2016, 924 of 2016, 969 of 2016, 922 of 2016, 1031 of 2016 & 1099 of 2016 are slightly different from the majority of the case, and hence the above mentioned writ petitions shall be accordingly dealt with individually at the end, in the light of the findings.

6. As we know prior to the year 2009-2010, there was no requirement for a candidate to possess the qualification such as T.E.T., for appointment as an elementary school teacher. This qualification was added subsequent to the Parliamentary enactment known as the Right of Children to Free and Compulsory Education Act, 2009 (from hereinafter referred to as Right to Education Act), which again was a consequence to the 86th Amendment of the Constitution, in the year 2002, whereby elementary education i.e. education from Class I to Class VIII has been made a fundamental right and this education for all children of the age of six to fourteen has been made free and compulsory by way of Article 21A of the Constitution. The entire scheme of the Right to Education Act of 2009 shows that it has laudable objectives. The statement of objects and reasons of the Act of 2009 speaks of these intentions clearly, which reads as under:

"STATEMENT OF OBJECTS AND REASONS

The crucial role of universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since inception of our Republic. The Directive Principles of State Policy enumerated in our Constitution lays down that the State shall provide free and compulsory education to all children up to the age of fourteen years. Over the years there has been significant spatial and numerical expansion of elementary schools in the country, yet the goal of universal elementary education continues

to elude us. The number of children, particularly children from disadvantaged groups and weaker sections, who drop out of school before completing elementary education, remains very large. Moreover, the quality of learning achievement is not always entirely satisfactory even in the case of children who complete elementary education.

2. Article 21A, as inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, provides for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such manner as the State may, by law, determine.

3. Consequently, the Right of Children to Free and Compulsory Education Bill, 2008, is proposed to be enacted which seeks to provide,-

(a) that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards;

(b) "compulsory education" casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education;

(c) "free education" means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education;

(d) the duties and responsibilities of the appropriate Governments, local authorities, parents, schools and teachers in providing free and compulsory education; and

(e) a system for protection of the right of children and a decentralized grievance redressal mechanism.

4. The proposed legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds.

5. It is, therefore, expedient and necessary to enact a suitable legislation as envisaged in Article 21A of the Constitution.

6. The Bill seeks to achieve this objective"

7. It would be necessary to mention here that elementary education has not merely been made free and compulsory, but the purpose is to make this

education a meaningful education, and not just a formality. It has been mandated in Section 8 of the Act that the Government shall inter alia "ensure good quality elementary education conforming to the standards and the norms specified in the Schedule [Section 8 (d)]. One of the means to make elementary education a meaningful education is to lay down strict standards for teachers, who impart education in these elementary schools. With this goal in mind, standards and norms have been set in the statute itself, such as Section 19, which reads as under:

"19. Norms and standards for school.- (1) No school shall be established, or recognised, under section 18, unless it fulfils the norms and standards specified in the Schedule.

(2) Where a school established before the commencement of this Act does not fulfil the norms and standards specified in the Schedule, it shall take steps to fulfil such norms and standards at its own expenses, within a period of three years from the date of such commencement.

(3) Where a school fails to fulfil the norms and standards within the period specified under sub-section (2), the authority prescribed under sub-section (1) of section 18 shall withdraw recognition granted to such school in the manner specified under sub-section(3) thereof.

(4) With effect from the date of withdrawal of recognition under sub-section (3), no school shall continue to function.

(5) Any person who continues to run a school after the recognition is withdrawn, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues."

8. Pupil-teacher ratio has also been laid down in Section 25 of the Act read with the Schedule. Section 25 of the Act reads as under:

"25. Pupil-Teacher Ratio. - (1) Within three years from the date of commencement of this Act, the appropriate Government and the local authority shall ensure that the Pupil-Teacher Ratio, as specified in the Schedule, is maintained in each school.

(2) For the purpose of maintaining the Pupil-Teacher Ratio under sub-section (1), no teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in section 27."

9. The Schedule appended to the Act lays down that for the Classes from I to V if there are 60 students the students-teachers ratio should be 2, if there are 61 to 90 students, the students-teachers ratio should be 3, if there are 91 to 120 students, and so on. Similarly from Classes VI to VIII, it says that at least one teacher per class so that there shall be at least one teacher each for (i) Science

and Mathematics; (ii) Social Studies; and (iii) Languages. There should be at least one teacher for every thirty-five children and where admission of children is above one hundred, there should be (i) a full time head-teacher and (ii) part time instructors for Art Education, Health and Physical Education and Work Education.

10. Section 27 of the Act lays down regarding prohibition of deployment of teachers for non-educational purposes, which reads as under:

"27. Prohibition of deployment of teachers for non-educational purposes.- No teacher shall be deployed for any non-educational purposes other than the decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament, as the case may be."

11. It has further been laid down in Section 28 of the Act that no teacher shall engage in private tuition or private teaching activity.

12. Section 29 of the Act lays down the curriculum and evaluation procedure. Section 29 of the Act reads as under:

29. Curriculum and evaluation procedure.- (1) The curriculum and the evaluation procedure for elementary education shall be laid down by an academic authority to be specified by the appropriate Government, by notification.

(2) The academic authority, while laying down the curriculum and the evaluation procedure under sub-section(1), shall take into consideration the following, namely:-

- (a) conformity with the values enshrined in the Constitution;
- (b) all round development of the child;
- (c) building up child's knowledge, potentiality and talent;
- (d) development of physical and mental abilities to the fullest extent;
- (e) learning through activities, discovery and exploration in a child friendly and child-centered manner;
- (f) medium of instructions shall, as far as practicable, be in child's mother tongue;
- (g) making the child free of fear, trauma and anxiety and helping the child to express views freely;
- (h) comprehensive and continuous evaluation of child's understanding of knowledge and his or her ability to apply the same."

13. Under Section 23 of the Act "an academic authority authorised by the Central Government" has been empowered to lay down the qualification for an elementary school teacher. Section 23 of the Act addresses this issue, which

reads as follows :-

"23. (1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification: Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.

(3) The salary and allowances payable to, and the terms and conditions of service of, teacher shall be such as may prescribed."

14. A perusal of Sub-Section (1) of Section 23 shows that the minimum qualifications for a teacher in elementary school have to be laid down by "an academic authority, which is authorised by the Central Government by a notification and only such teachers who are eligible as per the qualifications laid down by such an academic authority can be appointed as a teacher in elementary school.

15. Interestingly, though the academic authority has been empowered to lay down the minimum qualifications, the power to relax these qualifications is not left with the academic body but is given to the Central Government under sub-section (2) of Section 23 that too in specified contingencies alone, mentioned in the sub-section.

16. Under the above provision i.e., Section 23(1) of the Act, National Council for Teachers Education (from hereinafter referred to as NCTE) has been authorised vide a notification as the academic authority to lay down minimum qualifications for appointment of teachers in elementary school. Thereafter, this academic body i.e. NCTE vide Gazette Notification dated 23.08.2010 had laid down the minimum qualifications for a person to be eligible for appointment as a teacher in elementary school. It prescribes minimum qualification for teachers as under:

"Minimum Qualifications:-

Classes I-V

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

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2 years

Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure), Regulations 2002.

OR

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

OR

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

AND

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

Classes VI-VIII

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

OR

B.A./B.Sc. with at least 50% marks and 1 year Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition Norms and Procedure), Regulations issued from time to time in this regard.

OR

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

OR

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

OR

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

AND

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

17. Later on, by a further clarification by the N.C.T.E., in February 2011 the syllabus for TET for senior elementary education has been differentiated from that of a primary school i.e., for Class I to V. Now, the examination, which a teacher for elementary school (Class I to V) has to qualify, is a test known as TET-

I and for a teacher to impart education in Senior Elementary School (i.e. Class VI, VII & VIII), the qualifying test is known as TET-II.

18. It has also been brought to the notice of this Court that it is not uncommon for a Senior Elementary/Junior High School to be attached to a high secondary or sometimes even intermediate school. Therefore, teachers who are imparting education in a higher secondary school in particular, are also expected to take classes of VI to VIII, apart from his normal duties of taking Classes of IX and X. Since such teachers by implication have to impart education in an elementary school at senior elementary level (Classes VI to VIII). The conditions laid down by the NCTE vide its notification dated 23.08.2010 (subsequently clarified or elaborated by subsequent notifications) will also be applicable, ipso facto, to these teachers, as they also impart education at elementary level. The minimum qualification hence which all such teachers have to meet, inter alia the qualification known as TET-II.

19. The State of Uttarakhand has framed its new Rules, namely, Uttarakhand Subordinate Education (Trained Graduate Cadre) Rules, 2014 (hereinafter referred to as "2014 Rules"). As per these Rules, 60% posts of Assistant Teacher L.T. Grade(*) have to be filled by way of direct recruitment on the basis of written examination, 30% of the posts are to be filled by way of promotion of Assistant Teachers in senior elementary schools and 10% of the posts are to be filled by way of departmental written examination from only Assistant Teachers in primary schools, Principals in primary schools and Assistant Teachers and Principals in Junior High Schools. Presently we are concerned with the direct recruitment process by which 60 % posts of the existing vacancies of Assistant Teachers are going to be filled by way of direct recruitment.

(*)Assistant Teacher LT Grade is a teacher who imparts education for class VI to class X, and Lecturer is a teacher who imparts education to Class XI and XII.

20. From the appraisal of the aforesaid provisions of law, with which presently we are concerned, the main grievance of the petitioners in the above bunch of writ petitions, as argued by learned Senior Counsel for the petitioners Mr. Manoj Tiwari and Mr. Rajendra Dobhal, is that TET is not an academic qualification but only an "additional qualification", which has been subsequently included by the Rules in 2014, that too barely two days prior to the advertisement in the website of Uttarakhand Board of Technical Education, which is the conducting body for the examination of TET-I and TET-II. Learned Senior Counsels have submitted that in the Form to be filled by a candidate, there was again no column where a candidate was asked to give his particulars regarding TET-II. Therefore, TET was never a mandatory educational qualification. In any case, Rule 8(2), on which such a heavy reliance is being placed by the State Government TET can be seen, if at all as mandatory, it can be mandatory only prior to the appointment, as the words given are "one must have TET qualification prior to selection/appointment", and since one way of reading this provision would be that if a candidate has qualified the TET prior to his appointment, he has all the requisite

qualifications including TET, by necessary implication.

21. On the other hand, the State Counsel Mr. B.P.S. Mer as well as the counsels for the Uttarakhand Board of Technical Education Mr. Rakesh Thapliyal and Mr. N.S. Pundir would argue that the terms and conditions of the advertisement are absolutely clear. They submit that each of the prospective candidates were cautioned in the advertisement dated 23.02.2014 itself, not at one place but at least at two different places where necessary directions have been given for a prospective candidate. Firstly, note no. I, if translated into English, would read as follows :-

"Uttarakhand Technical Education Board does not advice any candidate as to his qualifications. As such a candidate must carefully study the terms and conditions of the entire advertisement and only if he is satisfied that he fulfils the eligibility requirement should he apply. A brief description of the syllabus for the written examination has been given at column no. II. Only such candidates should apply for the post who fulfil the minimum eligibility conditions for the post prior to the date of advertisement."

22. According to the learned counsel for the Board of Technical Education, this aspect has been further stressed at condition no. 5 which is again in Hindi and its translation in English would read as under :-

"All candidates who apply for the post must ensure that they fulfil all the eligibility conditions for the post. The permission to appear in the examination is purely provisional in nature which is subject to the verification of the eligibility conditions. In case it is discovered, at any stage, that a candidate does not fulfil the minimum eligibility requirement, his/her application form shall be rejected. If it is discovered, at any stage, that his application form was liable to be rejected or was not liable to be considered at the admission stage itself, his candidature shall be rejected summarily and even if he is finally selected by the Board, the name shall be taken away from the select list."

23. The respondent counsels would hence emphasise that all the candidates applied for the said posts, with their eyes and ears open, knowing fully well that what are the eligibility conditions and since the petitioners on the date of advertisement, were not having the TET qualification, they were not eligible and their candidature was hence liable to be rejected. The name of the petitioners have been included in the select list but at the stage of the counselling/ verification of the documents, which would include appreciation of the TET, when it was found that they had not passed TET, prior to the date of the advertisement, they have been declared ineligible.

24. TET-I and TET-II have been made compulsory for appointment as teachers at elementary level. It is now a mandatory qualification and a candidate and one who is not having such a qualification is not qualified to be considered for appointment on the post of teacher in elementary school. On this, there can be no doubt.

25. Although the counsel for the NCTE as well as the State Counsel have not been able to bring before this Court any mandatory guidelines of NCTE as to when and at what frequency the State Government should conduct the TET, this Court in the case of Narendra Singh and another v. State of Uttarakhand and others (WPSS No. 913 of 2014) has given directions vide order dated 12.01.2015 that since such vacancies keep on coming, it is desirable that TET must be held preferably twice a year, but at least once a year, so that the posts of teachers should not remain vacant for want of qualified TET teachers. This Court has further been informed that the State has not been able to conduct TET examination every year. The last TET was conducted on 29.04.2015, and prior to that in the year 2013.

26. However, it is also true that apart from the State Government, at the Central Level also similar test known as CTET-I and CTET-II are being conducted under the guidelines and control of the CBSE, which is done twice a year. A candidate whether he has done TET-I or TET-II at State Level or CTET-I or CTET-II at the Central Level, is eligible for appointment as a teacher in primary and senior primary school respectively. Therefore, this grievance that TET examinations are not being held at frequent intervals also does not hold any reasonable ground.

27. The argument of the learned Senior Counsels Mr. Manoj Tiwari and Mr. Rajendra Dobhal that TET is not a mandatory educational qualification is wholly misconceived. It is definitely not an educational qualification or even a minimum educational qualification, but it has been made a mandatory qualification after the notification of the NCTE dated 23.08.2010, which is in compliance with the mandate of Section 23 of the Act of 2009, which is a Parliamentary Legislation. Therefore, technically speaking even though it is not a minimum educational qualification, it is definitely a mandatory qualification and for the purposes of appointment in elementary school it is now mandatory for a teacher to have qualified the examination called TET.

28. It is absolutely necessary at this juncture to refer to two recent judgments, which have come from the High Court of Judicature at Allahabad. In both the cases, the importance and significance, inter alia, of the Teachers Eligibility Test has been examined and it has been held to be a "qualification", albeit a mandatory qualification, for any person, who seeks appointment as a teacher in elementary school.

29. In the first case i.e. Shiv Kumar Sharma v. State of U.P. and others reported in (2013) 3 UPLBEC 2156, the Full Bench of Allahabad High Court had to confront this issue directly, where out of many questions raised in the context of Teachers Eligibility Test or TET, was one that it is not a qualification, as is being argued before this Court by the counsels for the petitioners. This argument was rejected by the Full Bench of Allahabad High Court and it was held that Teachers Eligibility Test is an essential qualification which a candidate must possess if he seeks appointment as a elementary school teacher.

30. Soon thereafter, it fell before another Full Bench of the High Court to determine the validity of an amendment in this service Rules of teachers, whereby, TET was exempted in case of "Shiksha Mitras" who were to be absorbed as Assistant Teacher in Government Primary Schools. The Full Bench of Allahabad High Court in the case of Shivam Rajan and others v. State of U.P. and others reported in (2015) 3 UPLBEC 2297 held such a provision to be arbitrary and ultra vires and the same was quashed. While doing so, it again emphasised the importance of TET and said as under:

"101. The object and purpose of introducing the TET is to ensure that a teacher who embarks upon instructing students of primary and upper primary classes is duly equipped to fulfil the needs of the students, understands the relevance of education for a child at that stage and can contribute to the well rounded development of the child. Teaching a child is not merely a matter of providing information. Deeply embedded in the process of imparting education is sensitivity towards the psyche of the child, the ability to understand the concerns of a young student of that age, the motivations which encourage learning and the pitfalls which have to be avoided. The emphasis on clearing the TET is to ensure the maintenance of quality in imparting primary education. These requirements which have been laid down by NCTE fulfil an important public purpose by ensuring a complement of trained teachers who contribute to the learned process of children and enhance their growth and development."

31. In both the decisions the Full Benches of the learned Judges of Allahabad High Court had taken due recognition of the guidelines framed by NCTE vide its Notification No. 76-4/2010/NCTE/Acad dated 11.02.2011, wherein it had set out and declared its rationale for making TET, as mandatory. In para 3 of the notification dated 11.02.2011, NCTE has stated as under:

"3. The rationale for including the TET as a minimum qualification for a person to be eligible for appointment as a teacher is as under:

- i. It would bring national standards and benchmark of teacher quality in the recruitment process;
- ii. It would induce teacher education institutions and students from these institutions to further improve their performance standards;
- iii. It would send a positive signal to all stakeholders that the Government lays special emphasis on teacher quality."

32. In the above notification, a detail eligibility criteria is laid down for a candidate who has to appear in the TET. The structure and content of TET is given, the kind of question papers to be set up and the break-up of marks in the examination have also been set out in detail. An evaluation of the guidelines would show that its emphasis was not merely on elementary education but on pedagogy, which is the science and the skill of teaching. What has been emphasised in the guidelines and duly recognised with approval by the two

mentioned Full Benches of Allahabad High Court, is the emphasis by the NCTE not merely on the knowledge of a candidate to impart elementary education but also the evaluation of ability as a pedagogue.

33. We may also mention here at this juncture that the State of Uttarakhand was carved out of the State of Uttar Pradesh by a Parliamentary Legislation known as Uttarakhand Reorganisation Act, 2000. Most of the Acts which are presently in force in the State of Uttarakhand, are the ones which were earlier applicable in the erstwhile State of Uttar Pradesh. In any case the Right to Education Act, 2009 is a parliamentary legislation applicable in the entire length and breadth of the country.

34. The elementary education in the State of Uttarakhand is in the same peril and is facing same difficulties and challenges as the ones being faced in the State of Uttar Pradesh. The problem, which were being encountered by the stakeholders in the respective States of Uttarakhand and Uttar Pradesh are almost the same, as the changes had to be made in elementary education, in both the States after implementation of the Right to Education Act and the guidelines set up by the NCTE. Therefore, these two judgments, referred above are from a different High Court, have more than just a persuasive value before this Court. The ratio laid down by the learned Judges of Allahabad High Court in both the judgments, referred above will be squarely applicable to the present controversy.

35. The only question which remains is whether such petitioners who have done their TET, though subsequent to the advertisement, can be treated to be qualified and be considered for the selection or not? The answer here would again be clearly in the negative for the simple reason that all candidates were required, in terms of the guidelines and instructions given in the advertisement, to have qualified TET prior to the date of advertisement, which is 23.02.2014. Since they have not, these candidates do not fulfil this mandatory qualification of having TET.

36. In view of the aforesaid, WPSS Nos. 921 of 2016, 917 of 2016, 923 of 2016, 934 of 2016, 984 of 2016, 963 of 2016, 965 of 2016, 1001 of 2016, 1002 of 2016, 1004 of 2016, 1038 of 2016, 1042 of 2016 & 1092 of 2016 fail and are hereby dismissed. Interim order, if any, also stands vacated.

37. So far as WPSS No. 924 of 2016 and WPSS No. 969 of 2016 are concerned, their case is that they had appeared in the CTET examination conducted by the CBSE on 16.02.2014, which is prior to the date of advertisement in question. It is again admitted fact that in both the cases, the petitioners were not declared successful in the examination prior to the date of advertisement, and were declared successful only on 21.03.2014, when results were declared. In both the cases, the date of advertisement is 23.02.2014, the last date of submission of form was 31.03.2014 and they were qualified in TET, prior to the submission of their application forms.

38. On these distinct set of facts, Ms. Neetu Singh, learned counsel for the

petitioner in WPSS No. 924 of 2016 and Mr. Pankaj Negi, learned counsel for the petitioner in WPSS No. 969 of 2016 today that the petitioners were having the mandatory qualification of TET prior to the date of submission of application and, as such, they are eligible to be considered for the said post.

39. All the same, this Court has already held in the preceding paragraphs that the petitioners were required in terms of the guidelines and instructions given in the advertisement to have the TET qualification prior to the date of advertisement, which is 23.02.2014. These candidates, therefore also do not fulfil this condition of having mandatory qualification of TET prior to the date of the advertisement. Consequently, WPSS Nos. 924 of 2016 and 969 of 2016 also fail and are hereby dismissed.

40. As far as petitioner in WPSS No. 1099 of 2016 is concerned, the name of the petitioner does not figure in the select list. The case of the petitioner is that this has happened as the Rules of the game have been changed midway in order to favour certain candidates, who had applied for the post of Assistant Teacher LT Grade (Music). The case of the petitioner is that TET is also a mandatory qualification for an Assistant Teacher L.T. Grade (Music) and after the advertisement the entire selection process has been completed and now by the Government Order dated 20.06.2016 a clarification has come whereby it has been given that it is not mandatory for Assistant Teacher (Music) to have TET qualification.

41. In the considered view of this Court that a mandatory condition cannot be relaxed as that would be in complete violation of Right to Education Act as well as in violation of notification of NCTE dated 23.08.2010 as amended from time to time. All the same, the said Government Order has been issued in the light of the guidelines of the NCTE that for such teachers, who are imparting education in Art Education, which would also include Music, the minimum educational qualification as existing will continue to be in force till a minimum eligibility criteria for them as well is laid down by the NCTE. In other words, TET was never a mandatory qualification in their case. It is, however, only a clarification and not a change in the Rules, as it is being alleged by the petitioner. In the 2014 Rules, which were enforced on 19.02.2014 apart from laying down the qualifications for Assistant Teachers L.T. Grade, a further qualification was added in Rule 8(2) by which it has been provided that a candidate for appointment/selection to the post of Assistant Teacher L.T. Grade must have qualified an examination known as TET-II and this shall be mandatory. All the same, such teachers, who are imparting education in "Physical Education", Arts and Home Science, the minimum education as existing earlier would continue to be in force till a minimum eligibility criteria for them as well is laid down by the NCTE.

42. In order to clear the ambiguity whether TET-II is mandatory for teachers of Physical Education, Arts and Home Science as well, we will have to revert to the notification issued by NCTE on 23.08.2010 and its clarification dated 29.07.2011. Notification dated 29.07.2011, is a clarification of that principal notification dated

23.08.2010, and it says as follows:-

"(IV) For para 5 of the Principal Notification, the following shall be substituted, namely:-

5. (a) Teacher appointed after the date of this Notification in certain cases:- Where an appropriate Government, or local authority or a school has issued an advertisement to initiate the process of appointment of teachers prior to the date of this Notification, such appointments may be made in accordance with the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time).

(b) The minimum qualification norms referred to in this Notification apply to teachers of Languages, Social Studies, Mathematics, Science, etc. In respect of teachers for Physical Education, the minimum qualification norms for Physical Education teachers referred to in NCTE Regulation dated 3rd November, 2001 (as amended from time to time) shall be applicable. For teachers of Art Education, Craft Education, Home Science, Work Education, etc. the existing eligibility norms prescribed by the State Governments and other school managements shall be applicable till such time the NCTE lays down the minimum qualification in respect of such teachers."

43. Our answer to above question is in Clause 5(b) which has been substituted for clause 5. The above provision clarifies that the qualifications laid down for elementary and senior elementary teachers is only applicable in cases of teachers for the subjects such as Languages, Social Studies, Mathematics, Science, etc. In respect of teachers for imparting Physical Education, Art Education, Home Science, etc, the minimum qualification norms referred to in the earlier NCTE Regulations of 03.11.2001 shall be applicable. In the year 2001, there was admittedly no requirement of TET. Hence, the logical implication would be that for a teacher imparting education in Physical Education, Art Education, etc the qualification of TET, whether I or II, is not at all a mandatory qualification, till it is made so by the NCTE. There is as of now no such directions by the NCTE in this regard which makes TET-I or TET-II mandatory for a teacher imparting education in the subjects such as Physical Education, Craft Education, Home Science & Art Education.

44. At this juncture, we may also clarify that though the subject Music has not been specifically dealt with but in the clarification issued by the NCTE earlier, the term "Art Education" would also include teacher imparting education in Music. In other words, a teacher who is imparting education in Music at senior elementary level is not required to qualify TET.

45. All this clearly makes sense. It is a common knowledge that teacher in Music for example is to be judged primarily by his skill, therefore TET, which is a test laying down minimum standards and benchmark for a teacher in general education alone not for specialised subjects. Nevertheless as and when some kind of a specialised TET is still required in their case, that may still be done by

the duly authorised education authority such as NCTE, but until that comes up, the earlier provision will occupy the field.

46. In view of the aforesaid, WPSS No. 1099 of 2016 also fails and is hereby dismissed.

47. So far as WPSS Nos. 922 of 2016 is concerned, the case of the petitioners is entirely on different footing. They do not have the mandatory qualification of TET even uptill now, yet they claim themselves to be eligible for the posts of Assistant Teachers on ground that the TET qualification is not a mandatory qualification. This argument is based on the fact that the Government itself has exempted TET qualification for the 10 % posts which are to be filled from the departmental candidates i.e. such candidates who are already teaching in elementary schools, as 10 % of the existing posts of Assistant Teachers LT Grade have to be filled from them by way of departmental examination.

48. TET is compulsory for appointment as Assistant Teacher LT Grade. Whether exemption of mandatory qualification of TET for such 10 % posts is violative of Article 14 of the Constitution of India has still to be seen. The case of the petitioners, however, is that since this exemption has been given to the departmental candidates for promotion under 10 % quota, the same exemption was also liable to be given in their case as well. There is no challenge to the Rules. The petitioners have thrown a challenge on the alleged ground of unreasonable classification in the Rules, without any pleadings to that effect or more importantly without any challenge to the Rules. This Court has already dismissed the writ petitions of the candidates holding that TET is a mandatory qualification for appointment to the post of Assistant Teacher LT Grade. As the petitioners are not having TET qualification, they are not eligible to be appointed as Assistant Teachers LT Grade.

49. Having said this, however, in a proper writ petition, with proper pleadings and challenge to the Rules, this aspect as to whether there is any justification in exempting the departmental candidates will be considered and the dismissal of the writ petition (WPSS No. 922 of 2016) will not prejudice their case if such a challenge is thrown in a proper manner.

50. WPSS No. 922 of 2016 as of now fails and is hereby dismissed.

51. So far as WPSS Nos. 912 of 2016 and 973 of 2016 are concerned, in both these writ petitions, the case of the petitioners is that they have all the qualifications for appointment on the post of Assistant Teachers L.T. Grade including TET qualification, which they had acquired prior to the date of advertisement on 23.02.2014. However, since the candidature of the petitioners who had acquired TET qualification subsequent to the date of advertisement, was also being considered in the select list, their candidature has not been considered, and they have not been included in the select list and have not been called for counselling. Needless to say that since this Court has already given a finding that TET continues to be a mandatory qualification and all such

candidates who were not having the said qualification prior to the date of advertisement were ineligible and their candidature was not liable to be considered. Their writ petitions have already been dismissed by this Court today in the present order. The natural consequence of the above finding would be that petitioners (in WPSS No. 912 of 2016 and 973 of 2016) will now be duly considered by the Board and subject to the other qualifications, in case they qualify, their names shall be included in the select list and they shall be called for counselling.

52. Subject to the observations as aforesaid, WPSS Nos. 912 of 2016 and 973 of 2016 stand disposed.

53. So far as WPSS No. 1031 of 2016 is considered, since the bunch of writ petitions has already been decided and the interim order has been vacated, the present petitioner who was aggrieved by the interim order, has no grievance left.

54. In view of the above, the learned counsel for the petitioner seeks permission to withdraw the writ petition. Writ Petition No. 1031 of 2016 is accordingly dismissed as withdrawn.

55. All the pending applications in the bunch of writ petitions also stand disposed of accordingly.

56. Let copy of this judgment be placed in each connected writ petition.